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DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

[DHS–2006–0073]

RIN 1601–AA41

Clarification to Chemical Facility Anti-Terrorism Standards; Propane

AGENCY: Department of Homeland Security.

ACTION: Clarification.

SUMMARY: This notice clarifies how certain provisions of the Chemical Facility Anti-Terrorism Standards (CFATS) apply to the Chemical of Interest (COI) propane, which the Department of Homeland Security (DHS or Department) understands to contain at least 87.5% of the chemical propane. Specifically, this notice clarifies how the Screening Threshold Quantity and certain counting rule provisions apply to the COI propane.

DATES: *Effective Dates:* Effective March 21, 2008.

FOR FURTHER INFORMATION CONTACT: Dennis Deziel, Infrastructure Security Compliance Division, Department of Homeland Security, 703–235–5263.

SUPPLEMENTARY INFORMATION: Section 550 of the Homeland Security Appropriations Act of 2007 provided the Department with authority to promulgate interim final regulations for the security of certain chemical facilities in the United States. *See* Pub. L. 109–295, sec. 550. On December 28, 2006, the Department issued an Advance Notice of Rulemaking seeking comment on the significant issues and regulatory text (*see* 71 FR 78276) for such rulemaking, and on April 9, 2007, the Department published an Interim Final Rule (IFR) establishing the Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR Part 27 (*see* 72 FR 17688).

The IFR, except for Appendix A to Part 27, went into effect on June 8, 2007. Appendix A to the IFR contained a tentative list of Chemicals of Interest (COIs) and corresponding Screening Threshold Quantities (STQs). DHS accepted comments on the tentative list of COIs and STQs. In an Appendix A Final Rule published on November 20, 2007, the Department responded to the many comments received and provided a final list of COIs and STQs. *See* 72 FR 65396. Pursuant to 6 CFR 27.210(a)(1)(i), any facility that possesses any of the COIs listed in Appendix A at or above any applicable STQ must complete and submit a Top-Screen questionnaire to DHS. *See* 6 CFR 27.200(b)(2).

Among other revisions to the final Appendix A, DHS set a special STQ for the COI propane.[1] DHS listed the COI propane as a release-flammable COI with an STQ of 60,000 pounds; this is in contrast to the 10,000 pound STQ that DHS used for most other release-flammable COI.[2] In addition, the Appendix A Final Rule included a special rule for calculating whether a facility meets the STQ for the COI propane.[3] The reasons for the unique STQ provisions for the COI propane are detailed in the preamble to the Appendix A Final Rule. *See* 72 FR 65406–65407, 65409–65410.

The Appendix A Final Rule also included provisions on how facilities should treat mixtures of COI (known as the mixtures provisions). *See* 6 CFR 27.204. Under certain conditions, 6 CFR 27.204(a)(2) (the release-flammable mixtures rule) provides that if a release-flammable COI is present in a mixture in a concentration equal to or greater than one percent by weight, the facility shall count the entire amount of the mixture toward the STQ for that COI.

Since publication of the Appendix A Final Rule, the Department has received numerous inquiries about the STQ provisions for the COI propane and about the applicability of the release-flammable mixture provisions to products that contain the COI propane and to other products that contain some propane. To respond to those inquiries and alleviate any confusion, the Department is publishing this notice to provide clarification on this matter.

The Appendix A Final Rule was drafted with the understanding that the COI propane consists predominantly of the chemical propane, in combination with other flammable gases—such as butane, pentane, ethane, and/or propylene (which are also release-flammable COI under Appendix A). That understanding was likewise in mind when the Department developed the special STQ (i.e., 60,000 pounds) and STQ counting rule for the COI propane (*see* 6 CFR 27.204(b)(3)). It was, and is, commonly understood, however, that not every product containing any amount of the chemical propane is considered ''propane'' for commercial or other purposes.

As is well-known, the COI propane typically consists predominantly of the chemical propane in combination with other release-flammable COI, as noted above.[4] Within the propane industry, it is very typical for the COI propane to contain at least 87.5 percent of the chemical propane. This is reflected in the Material Safety Data Sheets (MSDS) for Odorized Propane of many propane companies as well as in the model MSDS from the National Propane Gas Association (NPGA).[5] This is consistent with DHS's understanding of the COI propane.

Since DHS intends the COI propane to refer to products containing at least 87.5 percent of propane, as well as other release-flammable COI, it follows that the release-flammable mixtures rule does not apply to such products. In fact, it would not make sense to apply the release-flammable mixtures rule to the combination of chemicals that constitute the COI propane because that would largely negate the intended effect of the 60,000 pound STQ and the special STQ counting rule for the COI propane.[6] By contrast, the release-

[1] In this notice, DHS clarifies what is meant by the Chemical of Interest propane (or COI propane), as opposed to other products that contain some amount of the chemical propane.

[2] In the tentative list of chemicals in the IFR, DHS had suggested an STQ of 7,500 pounds for all release-flammable COI, including the COI propane. *See* 72 FR 17743 (April 9, 2007).

[3] Under 6 CFR § 27.203(b)(3), in calculating whether a facility possesses an amount that meets the 60,000 pound STQ for the COI propane, a facility need not include propane in tanks of 10,000 pounds or less.

[4] The COI propane may also contain relatively small amounts of additives (such as odorants) or contaminants.

[5] The model MSDS from NPGA can be found on the NPGA Web site at *http://www.npga.org/files/public/Tech_Bulletin_NPGA_210–96.pdf*.

[6] For example, if a combination of 90% propane and 10% butane were subject to the release-

Continued

flammable mixtures rule does apply to products that are a combination of less than 87.5 percent propane and other release-flammable COI, since such mixtures are not themselves the COI propane.[7]

Robert Stephan,

Assistant Secretary for Infrastructure Protection, Department of Homeland Security.

[FR Doc. 08–1059 Filed 3–18–08; 12:04 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket #AMS–2006–0136; FV–06–303]

Potatoes; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the United States Standards for Grades of Potatoes. These standards are issued under the Agricultural Marketing Act of 1946. The rule provides en route or at destination tolerances for the U.S. No. 1 and U.S. No. 2 grades, revises current tolerances in all grades, deletes the U.S. Extra No. 1 grade and ''Unclassified'' section, and defines damage and serious damage by the following defects which will be added to Table III of the External Defects section: Cuts, Clipped Ends, Elephant Hide, Flattened or Depressed Areas/Pressure Bruises, Grub Damage, Nematode (Root Knot), Rodent or Bird Damage, Russeting, Silver Scurf, Sunken Discolored Areas, and Surface Cracks. The following defects and scoring guidelines that are currently listed in Table III of the External Defects section are also revised to reflect current inspection instructions: Air Cracks, Bruises, External Discoloration, Flea Beetle Injury, Greening, Growth Cracks, Rhizoctonia, Pitted Scab, Russet Scab, Surface Scab, and Wireworm or Grass Damage. Also, changes to the current scoring guide for sprouts are being made. In the Internal Defects section, Internal Black Spot is revised by implementing a color chip to assist in the scoring of this defect. Also, Table IV in this section is redesignated as Table I. Additionally, a revised large size is added as well as the inclusion of Chef and Creamer sizes. Most of the changes were the result of the detailed work performed by the Joint U.S./Canadian Potato Council that was charged with harmonizing the U.S. and Canadian Potato Grade Standards. This rule updates and revises the standards to more accurately reflect today's marketing practices.

DATES: Effective April 21, 2008.

FOR FURTHER INFORMATION CONTACT: Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720–2185. The United States Standards for Grades of Potatoes are available through the Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Regulatory Flexibility Act and Paperwork Reduction Act

The Joint U.S./Canadian Harmonization Council (Council) which was established by the United States Secretary of Agriculture and the Canadian Minister of Agriculture, is charged with harmonizing the U.S. and Canadian grade standards. The United States Standards for Grades of Potatoes was last revised in 1991. The Council, which consists of representatives from the industry and government, meets annually to discuss issues concerning cross border marketing and trade of potatoes. AMS and the Canadian Food Inspection Agency (CFIA) have been working with the Council for the past 14 years in the harmonizing of the standards. To complete the harmonization process, both the Canadian and U.S. grade standards, require revisions. The revision will benefit all aspects of the potato industry and make the standards current with today's marketing trends and practices.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), AMS has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this final regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule revises the U.S. Standards for Grades of Potatoes that were issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) (Act). Standards issued under the Act are voluntary.

Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Using annual data from the National Agricultural Statistics Service (NASS), the average potato crop value for 2002–2004 is $2.538 billion. Dividing that figure by 9,408 farms yields an average potato crop value per farm of just under $270,000. Since this is well under the SBA threshold of annual receipts of $750,000, it can be concluded that the majority of these producers may be classified as small entities. Additionally, there are approximately 180 handlers of potatoes which are classified as small entities, that may be affected by this rule.

Additional evidence comes from examining the Agricultural Census acreage breakdown more closely. Out of a total of 9,408 potato farms in 2002, 60 percent were under 5 acres and 76 percent were under 100 acres. An estimate of the number of acres that it would take to produce a crop valued at $750,000 can be made by dividing the 2002–04 average crop value of $2.538 billion by three-year average bearing acres (1.227 million), yielding an average potato revenue per acre estimate of $2,068. Dividing $750,000 by $2,068 shows that farms with at least 363 acres that received at least the average price in 2002–04 would have produced crops valued at $750,000 or more, and would therefore be considered large potato

flammable mixtures provision, as little as 10,000 pounds of that product would meet the STQ for butane, and thus trigger the Top-Screen reporting requirement of CFATS. This effect would be inconsistent with the purpose of the special 10,000 pound counting rule and the 60,000 pound STQ for the COI propane and with DHS's express intent not to subject facilities to the Top-Screen requirement when the only COI that would otherwise trigger that requirement is less than 60,000 pounds of COI propane. *See* 72 FR 65406–65407, 65409–65410.

[7] The statement in the Appendix A Final Rule preamble that the mixtures provisions for propane are the same as for all other release-flammables, 72 FR 65407, should be read in this intended context. Since it would not be logical or reasonable to apply the release-flammable mixtures provision to the COI propane (products containing at least 87.5% propane), the preamble statement was intended to cover mixtures containing less than 87.5% propane.

farms under the SBA definition. Looking at farm numbers for additional census size categories shows that 8,084 potato farms (86 percent) are under 250 acres and 8,735 (92 percent) are under 500 acres. Since a farm with 363 acres of potatoes falls into the middle of this range, it can be concluded that the proportion of small potato farms under the SBA definition is likely to be between 86 and 90 percent of all U.S. potato farms.

In addition, an estimated 168 importers of potatoes may be affected by this rule. Many of these importers may be classified as small entities.

This rule develops en route or at destination tolerances for the U.S. No. 1 and U.S. No. 2 grades, revises the current tolerances in all grades, deletes the ''Unclassified'' section, and defines damage and serious damage by the following defects which will be added to Table III of the External Defects section: Cuts, Clipped Ends, Elephant Hide, Flattened or Depressed Areas/ Pressure Bruises, Grub Damage, Nematode (Root Knot), Rodent or Bird Damage, Russeting, Silver Scurf, Sunken Discolored Areas, and Surface Cracks. The following defects and scoring guidelines that are currently listed in Table III of the External Defects section are revised to reflect current inspection instructions: Air Cracks, Bruises, External Discoloration, Flea Beetle Injury, Greening, Growth Cracks, Rhizoctonia, Pitted Scab, Russet Scab, Surface Scab, and Wireworm or Grass Damage. Also, a revision to the current scoring guide for sprouts was proposed. In the Internal Defects section, Internal Black Spot is revised by implementing a color chip to assist in the scoring of this defect. Also, Table IV in this section is redesignated as Table I. Additionally, a revised large size as well as a Chef and Creamer sizes are added to the size section of the standard.

The effects of this rule are not expected to be disproportionately greater or smaller for small handlers, producers, or importers than for larger entities. This action would make the standard more consistent and uniform with marketing trends and practices. This action will not impose any additional reporting or recordkeeping requirements on either small or large potato producers, handlers, or importers. USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there are marketing programs which regulate the handling of potatoes under 7 CFR parts 945–948 and 953. Potatoes under a marketing order have to meet certain requirements set forth in the grade standards. In addition, potatoes are subject to section 8e import requirements under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674) which requires imported potatoes to meet grade, size, and quality under the applicable marketing order (7 CFR part 980).

A proposed rule regarding these revisions to the United States Standards for Grades of Potatoes was published in the **Federal Register** on September 22, 2006 [71 FR 55356]. A comment period of sixty days was issued which closed on November 21, 2006.

Comments

In response to the request for comments, AMS received comments from twenty-five respondents in regards to the proposed revisions. One response was from a potato committee, and fifteen additional comments were received from the committee's members, all supporting the proposal. Four comments were received from a potato council representing growers and producers of potatoes, of which three of the comments supported the proposal. One supporting comment was from a national trade association representing independent produce receivers, and two supporting comments were received from two State potato committees. One comment was received from a shipper supporting the proposed rule, while another shipper's comments opposed the entire proposed rule. In addition to commenting in support or opposition to the proposed rule, some commentors also proposed additional revisions.

A comment received from a potato shipper opposing the entire proposed rule stated while the shipper supported revisions to the standards that make the inspection process more consistent, the shipper did not agree with relaxing the U.S. standards in order to harmonize them with Canada's standards. The proposed revisions are generally for defects and scoring guidelines that were defined as materially detracting from the appearance of the potato. The intent of these revisions is not to relax the standards or allow for inferior product. The revised scoring guidelines were adopted by the harmonization committee to make the two standards more consistent and uniform with one another; which would also assist in the importing and exporting of potatoes between the two countries. Accordingly, AMS is proceeding with the revision as proposed.

AMS proposed the deletion of the U.S. Extra No. 1 and the ''Unclassified'' section. One comment was received from a national trade association supporting the deletion of the U.S. Extra No. 1 grade, but was opposed to deleting the ''Unclassified'' section because they believe that it serves a useful purpose in categorizing ungraded lots of potatoes. Some sectors of the industry have assumed that ''Unclassified'' is an actual grade. However, ''Unclassified'' is not an actual grade. Further, unclassified is being deleted from all standards that are revised because this category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary. Therefore, to avoid further confusion all references to this term are eliminated.

AMS proposed adding a ''Chef'' and ''Creamer'' size as well as increasing the maximum diameter and weight in the Large size from 4¼ inches or 16 ounces to 4½ inches or 28 ounces. One comment was received from a State committee also supporting the proposal, but recommended the USDA change the creamer maximum diameter from the proposed 1⅝ inches to 1⅞ inches. The commentor believes the 1⅞ inches corresponds to what is currently being used in the industry for ''C'' or creamer type potatoes. The proposed maximum diameter of 1⅝ inches was determined to be best suited to be used by the U.S. and Canada for national and international trade. Additionally, the committee asks that the ''Chef'' designation be reevaluated as it has a very similar size profile encompassing both the medium and the proposed large size. This size was proposed by the industry and has been in practice by some members of both U.S. and Canadian industry, prior to this proposal. Therefore, AMS is proceeding with the chef and creamer sizes as proposed.

AMS proposed ''en route'' or ''at destination'' tolerances in the U.S. No. 1 and No. 2 grades as well as deleting the 3 percent tolerance for potatoes which are affected by freezing, southern bacterial wilt, ring rot, late blight, soft rot or wet breakdown. An opposing comment was received from a national trade association stating that its members opposed the en route or at destination tolerances because they believe it would dilute the grades and allow for a lesser quality product to enter the marketplace. We disagree. ''en route'' or ''at destination'' tolerances are generally applicable to all lots and will make this standard consistent with other U.S. standards. The tolerances are intended to better reflect product quality in the marketplace. The comment also stated that good delivery tolerances under the Perishable Agricultural Commodities Act (PACA) already allowed for damage en route or at destination. While there is PACA suitable shipping condition guidelines

in place, they are a separate set of guidelines which are not applicable to these standards. Furthermore, ''en route'' or ''at destination'' tolerances are generally applicable to all lots and will make this standard consistent with other U.S. standards. Therefore, AMS is proceeding with the revisions as proposed.

AMS proposed defining damage and serious damage for the following defects as well as adding them to Table III in the External Defects section: Cuts, Clipped Ends, Elephant Hide, Flattened or Depressed Areas/Pressure Bruises, Grub Damage, Nematode (Root Knot), Rodent or Bird Damage, Russeting, Silver Scurf, Sunken Discolored Areas, and Surface Cracks. Five commenters opposed and requested tighter scoring criteria. One commenter said its members were dissatisfied with the proposed scoring criteria even though the intent is to provide an objective means of evaluating defects, beyond materially/seriously detracting from the appearance of the potato. In their view the proposed changes are too lenient. Additionally, two commenters believed the proposed 50 percent of the surface area allowed for silver scurf was too strict and recommended it be set at 55 percent of the surface area. They also suggested the term aggregate be used when referencing removal of damage caused by root knot nematodes. The proposed scoring guidelines, including silver scurf, as well as the current application of the potato inspection instructions reflect the results of studies conducted under the U.S./Canadian Harmonization Project. As such, the standards should be updated to reflect current market practices. Damage caused by root knot nematodes is currently scored on a waste basis by weight, therefore the use of the term aggregate is not necessary. Therefore, AMS is proceeding with the revisions as proposed.

AMS also proposed the following defects and scoring guidelines, which are currently listed in Table III of the External Defects section, be modified to reflect current inspection instructions: Air Cracks, Bruises, External Discoloration, Flea Beetle Injury, Greening, Growth Cracks, Rhizoctonia, Pitted Scab, Russet Scab, Surface Scab, and Wireworm or Grass Damage.

One commentor opposed the proposed scoring guide for growth cracks because he believes the depth guide is too lenient and doesn't take into account how growth cracks can alter the shape as to materially detract from the form of the potato. Growth cracks and misshapen tubers are two separate defects with individual scoring guidelines. If the shape of the potato is altered or compromised, the scoring guidelines for shape, which are currently in the standard would apply. Revising the scoring criteria for growth cracks provides an objective means of evaluating this particular defect. Therefore, the scoring guide is revised as proposed.

A comment was received suggesting AMS review the scoring criteria in the proposal for both grub damage and rodent or bird damage due to each defect having the same criteria for damage and serious damage. After reviewing these proposed scoring criteria, AMS has identified errors that were made in the proposed scoring criteria for serious damage. The scoring criteria for serious damage in both defects incorrectly stated ''i.e. more than ¾ inch on a 2½ inch or 6 ounce potato.'' Therefore, the scoring criteria has been corrected to read, ''i.e. more than 1¼ inch on a 2½ inch or 6 ounce potato.'' This final rule reflects these changes.

Four comments suggested that AMS remove all references to ''appearance'' or ''when materially detracting from appearance of the potato'' when determining scoring criteria for any defect. In their view, this would provide an objective means of evaluating the defects and would avoid the subjectivity of opinion. AMS is removing all references to ''appearance'' or ''when materially detracting from appearance of the potato'' when possible. However, these references can not be removed from all the defects or their scoring guidelines due to several factors associated with these defects and their progression. For example, some defects will progress more rapidly than others when they are exposed to any moisture, therefore making it more difficult to meet specific scoring criteria when more time is needed during storage and/or transportation. Also, the proposed references to ''appearance'' or ''when materially detracting from appearance of the potato'' in the scoring criteria for bruising, were made in error. Therefore, AMS is removing in this final rule, the references to ''appearance'' or ''when materially detracting from appearance of the potato'' in the scoring guidelines for bruising.

One comment received concerned internal black spot. The comment asked for a comment period to be opened on color chip POT–CC–2 (internal black spot). The comments asserted that it would be difficult for the industry to make a reasonable comment on the chip itself when there are no alternatives. Prior to the developing of this rule, AMS, Fresh Product Branch field offices presented three alternative color chips were distributed to a large number of potato growers, packers, and wholesale marketers to determine which color chip was appropriate to use in the standards. The color chip that was selected reflects a consensus of industry feedback. Therefore, the color chip POT–CC–2 will be referenced as stated in the proposal.

Several commenters also suggested that color chips or visual aids be developed for external discoloration, greening, and elephant hide. They believe this would be a useful tool for identifying and scoring these defects. AMS develops color chips or visual aids continuously and will evaluate the needs for developing color chips or visual aids for the proposed defects. Color chips for the suggested defects above require additional research which can not be addressed in this action. However, AMS will review and evaluate the issue at a later date.

AMS proposed revising the scoring guidelines for sprouts to read as follows: Score as damage when not more than 5 percent of the potatoes in a lot may have individual or clusters of sprouts not more than ¼ inch at shipping point and ½ inch at destination. Score as serious damage when not more than 10 percent of the potatoes in a lot may have individual or clusters of sprouts not more than ½ inch at shipping point and 1 inch at destination. AMS received four comments opposing this revision. They believe the existence of a ¾ inch sprout constitutes a level of damage unacceptable to the industry. They also believe there should be no distinction between shipping point and destination. While there are measures in place throughout the marketing chain to control the development of sprouts, sprouts can nonetheless naturally progress while potatoes are in transit. An en route or at destination tolerance takes into account the natural progression of this defect, but should not compromise the quality of the U.S. No. 1 grade. Therefore, AMS is revising the scoring guideline for sprouts as proposed.

Additionally, a comment was received suggesting AMS give special consideration to allow for packing a U.S. No. 1 mixed variety of potato. This change is outside the scope of this rulemaking but will be considered separately at a later time.

Based on all the comments received and information gathered, AMS believes these revisions to the standards will foster marketing of fresh potatoes.

The official grade of a lot of potatoes covered by these standards are determined by the procedures set forth

in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

PART 51—[AMENDED]

■ For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621—1627.

Subpart—United States Standards for Grades of Potatoes § 51.1540 [Removed and Reserved]

■ 2. Remove and reserve § 51.1540.

§ 51.1544 [Removed and Reserved]

■ 3. Remove and reserve § 51.1544.

■ 4. In § 51.1545, Table I is revised to read as follows:

§ 51.1545 Size.

* * * * *

TABLE I

Size designation	Minimum diameter [1] or weight		Maximum diameter [1] or weight	
	Inches	Ounces	Inches	Ounces
Creamer	¾	(3)	1⅝	(3)
Chef	2¾	8	4½	28
Size A [2]	1⅞	(3)	(3)	(3)
Size B	1½	−3	2¼	−3
Small	1¾	−3	2½	6
Medium	2¼	5	3¼	10
Large	3	10	4½	28

[1] Diameter means the greatest dimension at right angles to the longitudinal axis, without regard to the position of the stem end.
[2] In addition to the minimum size specified, a lot of potatoes designated as Size A shall contain at least 40 percent of potatoes which are 2½ inches in diameter or larger or 6 ounces in weight or larger.
[3] No requirement.

* * * * *

■ 5. In § 51.1546, paragraph (a) is revised to read as follows:

§ 51.1546 Tolerances.

* * * * *

(a) *For defects—(1) U.S. No. 1. At Shipping Point.* A total of 8 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided*, that included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(i) 5 percent for external defects;

(ii) 5 percent for internal defects;

(iii) Including therein not more than 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown.

(2) *En route or at Destination.* A total of 10 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided*, that included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(i) 7 percent for external defects;

(ii) 7 percent for internal defects;

(iii) Including therein not more than 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(3) *U.S. Commercial.* A total of 20 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided*, that included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(i) 10 percent for potatoes which fail to meet the requirements for U.S. No. 2 grade, including therein not more than:

(ii) 6 percent for external defects;

(iii) 6 percent for internal defects; or,

(iv) Including therein not more than 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

(4) *U.S. No. 2. At Shipping Point:* A total of 10 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided,* that included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(i) 6 percent for external defects;

(ii) 6 percent for internal defects;

(iii) Including therein not more than 1 percent for potatoes which are frozen or affected by soft rot or wet breakdown.

(5) *En route or at Destination:* A total of 12 percent for potatoes in any lot which fail to meet the requirements for the grade: *Provided*, that included in this tolerance not more than the following percentages shall be allowed for the defects listed:

(i) 8 percent for external defects;

(ii) 8 percent for internal defects;

(iii) Including therein not more than 2 percent for potatoes which are frozen or affected by soft rot or wet breakdown. See § 51.1547.

* * * * *

■ 6. In § 51.1564, Table III is revised, and new Tables IV, V, and VI are added to read as follows:

§ 51.1564 External defects.

* * * * *

TABLE III.—EXTERNAL DEFECTS

Defect	Damage	Serious damage
Air Cracks	When removal causes a loss of more than 5 percent of the total weight of the potato or when the air crack(s) affects more than ⅓ the length or diameter of the potato (whichever is greater) in the aggregate.	When removal causes a loss of more than 10 percent of the total weight of the potato or when the air crack(s) affects more than ¾ the length or diameter of the potato (whichever is greater) in the aggregate.

TABLE III.—EXTERNAL DEFECTS—Continued

Defect	Damage	Serious damage
Artificial Coloring	When unsightly or when concealing any defect causing damage or when penetrating the flesh and removal causes loss of more than 5 percent of total weight of potato.	When concealing a serious defect or when penetrating into the flesh and removal causes loss of more than 10 percent of total weight of potato.
Bruises (Not including pressure bruise and sunken discolored areas).	When removal causes a loss of more than 5 percent of the total weight of the potato or when the area affected is more than 5 percent of the surface in the aggregate (i.e. ¾ inch on a 2½ inch or 6 oz. potato). Correspondingly lesser or greater areas in smaller or larger potatoes.	When removal causes a loss of more than 10 percent of the weight of the potato or when the area affected is more than 10 percent of the surface in the aggregate (i.e. 1¼ inches on a 2½ inch or 6 oz. potato). Correspondingly lesser or greater areas in smaller or larger potatoes.
Cuts	When one smooth cut affects more than 5 percent of the surface area.	Cut(s) that affect more than 10 percent of the surface area in the aggregate or when a single side cut extends beyond ½ the length of the potato.
Dirt	When materially detracting from the appearance of the potato.	When seriously detracting from the appearance of the potato.
Elephant Hide	When affecting over 10 percent of the surface area of the potato.	When affecting over 25 percent of the surface area.
Enlarged Lenticels	When materially detracting from the appearance of the potato.	When seriously detracting from the appearance of the potato.
External Discoloration (Areas that are light tan or lighter in color and blends should be ignored).	When more than 30 percent of the surface is affected by light tan or light brown colors which do not blend or when more than 15 percent of the surface is affected by colors darker than light tan or light brown.	When more than 60 percent of the surface is affected by light tan or light brown colors which do not blend or when more than 30 percent of the surface is affected by colors darker than light tan or light brown.
Flattened or Depressed Areas/Pressure Bruises.	When removal of underlying discolored flesh causes a loss of more than 5 percent of the total weight of the potato or when the flattened or depressed area(s) covers more surface area than allowed in Table IV. (See Table IV.).	When removal of underlying discolored flesh the causes a loss of more than 10 percent of the weight of the potato or when the flattened depressed area(s) covers more surface area than allowed in the Table IV. (See Table IV.)
Flea Beetle Injury	When materially detracting from the appearance or when removal causes a loss of more than 5 percent of the total weight of the potato or when the area affected is more than 5 percent of the surface in the aggregate.	When seriously detracting from the appearance of the potato or when removal causes a loss of more than 10 percent of the weight of the potato or when the area affected is more than 10 percent of the surface in the aggregate.
Greening	When removal causes a loss of more than 5 percent of the total weight of the potato or when green color affects more than 25 percent of the surface in the aggregate.	When removal causes a loss of more than 10 percent of the weight of the potato or when green color affects more than 50 percent of the surface in the aggregate.
Growth Cracks	When the growth crack(s) affects more than ½ the length of the potato in the aggregate on round varieties or more than ⅓ the length in the aggregate on long varieties; or, when the depth is greater than that as outlined in Table V. (See Table V.).	When the growth crack(s) affects more than ¾ the of the length potato in the aggregate or when the depth is greater than that as outlined in Table V. (See Table V.)
Grub Damage	When removal causes a loss of more than 5 percent of the total weight of the potato or when affecting more than 5 percent of the surface area (i.e. more than ¾ inch on a 2½ inch or 6 ounce potato). Correspondingly lesser or greater areas in smaller or larger potatoes.	When removal causes a loss of more than 10 percent of the total weight of the potato or when affecting more than 10 percent of the surface area (i.e. more than 1¼ inch on a 2½ inch or 6 ounce potato). Correspondingly lesser or greater areas in smaller or larger potatoes.
Insects or Worms	(See Serious Damage.)	When present inside the potato.
Nematode (Root Knot)	When removal causes loss of more than 5 percent of total weight of potato.	When removal causes loss of more than 10 percent of total weight of potato.
Rhizoctonia	When affecting more than 15 percent of the surface in the aggregate.	When affecting more than 50 percent of the surface in the aggregate.
Russeting (On Non Russet Type).	When more than 50 percent of the surface is affected in the aggregate.	N/A.
Rodent or Bird Damage	When removal causes a loss of more than 5 percent of the total weight of the potato or when affecting more than 5 percent of the surface area (i.e. more than ¾ inch on a 2½ inch or 6 ounce potato). Correspondingly lesser or greater areas in smaller or larger potatoes.	When removal causes a loss of more than 10 percent of the total weight of the potato or when affecting more than 10 percent of the surface area (i.e. more than 1¼ inch on a 2½ inch or 6 ounce potato). Correspondingly lesser or greater areas in smaller or larger potatoes.
Scab, Pitted	When removal causes a loss of more than 5 percent of the total weight of the potato or when scab affects an aggregate area of more than ½ inch. (Based on a potato 2½ inches in diameter or 6 oz. in weight.) Correspondingly lesser or greater areas in smaller or larger potatoes.	When the removal causes a loss of more than 10 percent of the total weight of the potato or when scab affects an aggregate area of more than 1 inch. (Based on a potato 2½ inches in diameter or 6 oz. in weight.) Correspondingly lesser or greater areas in smaller or larger potatoes.
Scab, Russet	Smooth and affecting more than ⅓ of the surface or rough russet scab which affects more than 10 percent of the surface in the aggregate.	Rough and affecting more than 25 percent of the surface in the aggregate.

TABLE III.—EXTERNAL DEFECTS—Continued

Defect	Damage	Serious damage
Scab, Surface	When more than 5 percent of the surface in the aggregate is affected.	When more than 25 percent of the surface in the aggregate is affected.
Second Growth	When materially detracting from the appearance of the potato.	When seriously detracting from the appearance of the potato.
Silver Scurf	When affecting more than 50 percent of the surface area of the potato.	When its severity causes a wrinkling of the skin over more than 50 percent of the surface.
Sprouts	Not more than 5 percent of the potatoes in a lot may have individual or clusters of sprouts not more than ¼ inch at shipping point and ½ inch at destination.	Not more than 10 percent of the potatoes in a lot may have individual or clusters of sprouts not more than ½ inch at shipping point and 1 inch at destination.
Sunburn	When removal causes loss of more than 5 percent of total weight of potato.	When removal causes loss more than 10 percent of total weight of potato.
Sunken Discolored Areas	SEE TABLE VI	SEE TABLE VI.
Surface Cracks (Areas affected by fine net-like cracking should be ignored.).	When smooth shallow cracking affects more than ⅓ of the surface or when rough deep cracking affects more than 5 percent of the surface.	When rough deep cracking affects more than 10 percent of the surface.
Wireworm or Grass Damage	When affecting the flesh of the potato and removal causes loss of more than 5 percent of total weight of potato..	When affecting the flesh of the potato and removal causes loss of more than 10 percent of total weight of potato.

The following defects are considered serious damage when present in any degree: 1. Freezing. 2. Late blight. 3. Ring rot. 4. Southern bacterial wilt. 5. Soft rot. 6. Wet breakdown.

TABLE IV.—FLATTENED OR DEPRESSED AREAS—PRESSURE BRUISES MAXIMUM AREA ALLOWED

Diameter	Weight	No. 1 (aggregate area)	No. 2 (aggregate area)
Potato is:	Potato is:	Not more than:	Not more than:
Less than 2 in	Less than 4 oz	½ in	1 in
2 to 2½ in	4 to 6 oz	1 in	1½ in
More than 2½ to 3 in	More than 6 to 8 oz	1¼ in	1¾ in
More than 3 to 3½ in	More than 8 to 14 oz	1½ in	1⅞ in
More than 3½ to 4 in	More than 14 to 20 oz	1¾ in	2 in
More than 4 to 4½ in	More than 20 to 28 oz	2 in	2¼ in
More than 4½ to 5 in	More than 28 to 36 oz	2¼ in	2¾ in
More than 5 in	More than 36 oz	2½ in	3¼ in

TABLE V—DEPTH ALLOWED FOR GROWTH CRACKS

Diameter	Weight	No. 1 (depth)	No. 2 (depth)
Potato is:	Potato is:	Not more than:	Not more than:
Less than 2 in	Less than 4 oz	⅛ in	¼ in
2 to 2½ in	4 oz to 6 oz	¼ in	⅜ in
More than 2½ to 3 in	More than 6 oz to 8 oz	⅜ in	½ in
More than 3 in	More than 8 oz	½ in	⅝ in

TABLE VI.—SUNKEN DISCOLORED AREAS MAXIMUM AREA ALLOWED

Diameter	Weight	No. 1 (aggregate area)	No. 2 (aggregate area)
Potato is:	Potato is:	Not more than:	Not more than:
Less than 2 in	Less than 4 oz	⅜ in	¾ in
2 to 2½ in	4 to 6 oz	¾ in	1 in
More than 2½ to 3 in	More than 6 to 8 oz	1 in	1¼ in
More than 3 to 3½ in	More than 8 to 14 oz	1¼ in	1½ in
More than 3½ to 4 in	More than 14 to 20 oz	1½ in	1¾ in
More than 4 to 4½ in	More than 20 to 28 oz	1¾ in	2 in
More than 4½ to 5 in	More than 28 to 36 oz	2 in	2¼ in
More than 5 in	More than 36 oz	2¼ in	2½ in

■ 7. In § 51.1565, Table IV is redesignated as Table I and revised to read as follows:

§51.1565 Internal Defects.

* * * * *

TABLE I.—INTERNAL DEFECTS

Defects	Damage maximum allowed	Serious damage maximum allowed
Occurring outside of or not entirely confined to the vascular ring		
Ingrown Sprouts, Internal Discoloration, Vascular Browning, Fusarium Wilt, Net Necrosis, Other Necrosis, Stem End Browning.	5 percent waste	10 percent waste.
Internal Black Spot	When the spot(s) are darker than the official color chip (POT–CC–2) after removing 5 percent of the total weight of the potato.	When the spot(s) are darker than the official color chip (POT–CC–2) after removing 10 percent of the total weight of the potato.
Occurring entirely within the vascular ring		
Hollow Heart or Hollow Heart with Discoloration.	Area affected not to exceed that of a circle ½ inch in diameter in a potato 2½–inches in diameter or 6 ounces in weight.[1]	Area affected not to exceed that of a circle ¾ inch in diameter in a potato 2½–inches in diameter or 6 ounces in weight.[1]
Light Brown Discoloration (Brown Center)	Area affected not to exceed that of a circle ½ inch in diameter in a potato 2½–inches in diameter or 6 ounces in that of weight.[1]	Area affected not to exceed a circle ¾ inch in diameter in a potato 2–½ inches in diameter or 6 ounces in weight.[1]
Occurring entirely within the vascular ring		
Internal Brown Spot and Similar Discoloration (Heat Necrosis).	Not more than the equivalent of 3 scattered spots ⅛ inch in diameter in a potato 2½–inches in diameter or 6 ounces in weight.[1]	Not more than the equivalent of 6 scattered spots ⅛ inch in diameter in a potato 2½–inches in diameter or 6 ounces in weight.[1]

[1]Note: Correspondingly lesser or greater areas in smaller or larger potatoes.

Authority: 7 U.S.C. 1621–1627.

Dated: March 17, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–1058 Filed 3–18–08; 2:27 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0246; Airspace Docket No. 07–ASO–26]

Amendment of Class E Airspace; Danville, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action modifies Class E Airspace at Danville, KY. Additional airspace is required to support new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) that have been developed for Stuart Powell Field Airport. This action enhances the safety and management of Instrument Flight Rule (IFR) operations in the area by providing the required controlled airspace to support these approaches around Danville, KY. This action also imparts a technical amendment to change the airport's name from Goodall Field Airport to Stuart Powell Field Airport.

DATES: Effective 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before May 5, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0246; Airspace Docket No. 07–ASO–26, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support Group, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5581, Fax 404–305–5572.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on

the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. The direct final rule is used in this case to facilitate the timing of the charting schedule and enhance the operation at the airport, while still allowing and requesting public comment on this rulemaking action. An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html.*

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–0246; Airspace Docket No. 07–ASO–26.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace at Danville, KY, providing the controlled airspace required to support new Standard Instrument Approach Procedures (SIAPs) that were developed for the Stuart Powell Field Airport (KDVK). Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required to encompass all SIAPs to the extent practical. The current E5 airspace at the airport is insufficient for these approaches, so additional controlled airspace must be developed. The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to modify Class E5 airspace at Danville, KY, by adding an extension to the current 7-mile radius area. This new area extends southeastward from the 7-mile radius to 11.8 miles from the airport via the 122° bearing supporting the descent gradient for the new approaches.

During 1993, the airport name was changed from ''Goodall Field'' to ''Stuart Powell Field Airport'' by the Airport Authority. Research indicates an official name change did not reach all entities, therefore, for clarification, this docket imparts that name change. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007, effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at the Stuart Powell Field Airport.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Danville, KY [REVISED]

Stuart Powell Field Airport, Danville, KY
(Lat. 37°34′41″ N., long. 84°46′11″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a

7-mile radius of Stuart Powell Field Airport and within 2 miles each side of the 122° bearing from the airport extending from the 7-mile radius to 11.8 miles southeast of the airport.

* * * * *

Issued in College Park, Georgia, on February 26, 2008.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. E8–5575 Filed 3–20–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0072; Airspace Docket No. 08–ASO–03]

Establishment of Class E Airspace; Lady Lake, FL

AGENCY: Federal Aviation Administration WAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Lady Lake, FL to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Village of Homewood Lady Lake Hospital. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing that required controlled airspace for this approach around Lady Lake, FL.

DATES: Effective 0901 UTC, June 05, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before May 5, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Management, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–0072; Airspace Docket No. 08–ASO–03, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610; fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov*. Recently published rule making documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html*. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0072; Airspace Docket No. 08–ASQ–03.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Lady Lake, FL providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 195 Point in Space (PinS) instrument approach developed for the Village of Homewood Lady Lake Hospital. In today's environment where speed of treatment for medical injuries is imperative, various landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights; the Village of Homewood Lady Lake Hospital has been chosen as one of these sites. Controlled airspace, known as Class E5 airspace, extending upward from 700 feet Above Ground Level (AGL) is required for Instrument Flight Rule (IFR) operations and to encompass all Instrument Approach Procedures (IAPs) to the extent practical, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish a 6-mile radius Class E5 airspace area at Lady Lake, FL. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is

incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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 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.

This rule making is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Village of Homewood Lady Lake Hospital in Lady Lake, FL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment:

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

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

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.G. 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, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Lady Lake, FL [NEW]

Village of Homewood Lady Lake Hospital
(Lat. 28°56′59″ N., long. 81°57′36″ W.)
Point in Space Coordinates .
(Lat. 28°57′36″ N., long. 81°57′50″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the Point in Space Coordinates (Lat. 28°57′36″ N., long. 81°57′50″ W.) serving the Village of Homewood Lady Lake Hospital.

* * * * *

Issued in College Park, Georgia, on February 26, 2008.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. E8–5603 Filed 3–20–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0245; Airspace Docket No. 07–ANE–95]

Establishment of Class E Airspace; Lewiston, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule that establishes a Class E airspace area to support Area Navigation (RNA V) Global Positioning System (GPS) Special Instrument Approach Procedures (IAPs) that serve the Central Maine Medical Center, Lewiston, ME.

DATES: Effective 0901 UTC, March 21, 2008. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support, AJ02–E28.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5581; fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 19, 2007 (72 FR 71758). The FAA uses the direct final rule making procedure for a non controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 14, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, GA on February 27, 2008.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. E8–5564 Filed 3–20–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0160; Airspace Docket No. 08–AEA–13]

Establishment of Class E Airspace; Milford, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Milford, PA to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Myer Airport. This action enhances the safety and

management of Instrument Flight Rule (IFR) operations by providing that required controlled airspace to protect for this approach around Milford, PA.

DATES: Effective 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before May 5, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–0160; Airspace Docket No. 08–AEA–13, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed 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 **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0160; Airspace Docket No. 08–AEA–13.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Milford, PA providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 008 Point in Space (PinS) approach developed for Myer Airport. In today's environment where speed of treatment for medical injuries is imperative, landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights; this is one of those sites. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required for Instrument Flight Rules (IFR) operations and to encompass all Instrument Approach Procedures (IAPs) to the extent practical, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish a 6-mile radius Class E5 airspace area around the PinS Missed Approach Point (MAP), ZUMAN Waypoint, that serves the Myer Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

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

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Myer Airport in Milford, PA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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, effective September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Milford, PA [NEW]

Myer Airport
(Lat. 41°21′0.331″ N., long. 74°55′59″ W.)
ZUMAN Waypoint
(Lat. 41°20′10″ N., long. 74°55′01″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the ZUMAN Waypoint serving the Myer Airport.

* * * * *

Issued in College Park, Georgia, on February 25, 2008.

Mark D. Ward,

Manager, System Support Group, Eastern Service Center.

[FR Doc. E8–5574 Filed 3–20–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9368]

RIN 1545–BG55

Reduction of Foreign Tax Credit Limitation Categories Under Section 904(d); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments

SUMMARY: This document contains corrections to final and temporary regulations (TD 9368) that were published in the **Federal Register** on Friday, December 21, 2007 (72 FR 72582) regarding the reduction of the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code. These regulations affect taxpayers claiming foreign tax credits and provide guidance needed to comply with the statutory changes made by the American Jobs Creation Act of 2004 (AJCA).

DATES: The correction is effective March 21, 2008.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9368) that are the subject of the correction are under section 904 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9368) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following amendments:

PART 1—INCOME TAXES

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

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

■ **Par. 2**. Section 1.904–4 is amended as follows:

■ 1. In paragraph (h)(4) *Example 3,* in the first sentence, the language ''Example (3)'' is removed and the language ''Example 2'' is added in its place.

■ 2. In paragraph (i), in the last sentence, the language ''dividends received or accrued by the taxpayer from each separate noncontrolled section 902 corporation'' is removed and the language ''income in each separate category'' is added in its place.

■ **Par. 3**. Section 1.904–7T(g) is amended as follows:

■ 3. In paragraph (g)(2), in the last sentence, the language ''Similar rules shall apply to characterize any deficits in the pre-2007 pools and previously-taxed earnings and profits described in section 959(c)(1)(A) that are attributable to earnings in the pre-2007 pools.'' is removed and the language ''Similar rules shall apply to characterize any deficits in the pre-2007 pools and previously-taxed earnings and profits described in section 959(c)(1) and (2) that are attributable to earnings in the pre-2007 pools.'' is added in its place.

■ 4. In paragraph (g)(4), in the last sentence, the language ''Similar rules shall apply to characterize any deficits or previously-taxed earnings and profits described in section 959(c)(1)(A) that are attributable to pre-1987 accumulated profits.'' is removed and the language ''Similar rules shall apply to characterize any deficits or previously-taxed earnings and profits described in section 959(c)(1) and (2) that are attributable to pre-1987 accumulated profits.'' is added in its place.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–5685 Filed 3–20–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9368]

RIN 1545–BG55

Reduction of Foreign Tax Credit Limitation Categories Under Section 904(d); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correction.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9368) that were published in the **Federal Register** on

Friday, December 21, 2007 (72 FR 72582) regarding the reduction of the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code. These regulations affect taxpayers claiming foreign tax credits and provide guidance needed to comply with the statutory changes made by the American Jobs Creation Act of 2004 (AJCA).

DATES: The correction is effective March 21, 2008.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry, (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9368) that are the subject of the correction are under section 904 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9368) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9368), which were the subject of FR Doc. E7–24782, is corrected as follows:

1. On page 72585, column 1, in the preamble, under the paragraph heading ''V. Post–1986 Undistributed Earnings and Post–1986 Foreign Income Taxes of a Foreign Corporation as of the End of the Corporation's Last Pre–2007 Taxable Year'', second line of the first paragraph of the column, the language ''described in section 959(c)(1)(A),'' is corrected to read ''described in section 959(c)(1) and (2),''.

2. On page 72586, column 3, in the preamble, under the paragraph heading ''VI. Separate Limitation Losses and Overall Foreign Losses'', first line of the second paragraph of the column, the language ''Section 1.904–12T(h)(4) provides that'' is corrected to read ''Section 1.904(f)–12T(h)(4) provides that''.

3. On page 72586, column 3, in the preamble, under the paragraph heading ''VI. Separate Limitation Losses and Overall Foreign Losses'', first line of the third paragraph of the column, the language ''Section 1.904–12T(h)(5) provides that'' is corrected to read ''Section 1.904(f)–12T(h)(5) provides that''.

4. On page 72586, column 3, in the preamble, under the paragraph heading ''VI. Separate Limitation Losses and Overall Foreign Losses'', sixth line of the third paragraph of the column, the language ''rules of § 1.904–12T(g)(1) and (2)'' is corrected to read ''rules of § 1.904(f)–12T(g)(1) and (2)''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E8–5683 Filed 3–20–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9388]

RIN 1545–BH24

Classification of Certain Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains temporary and final regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes. The regulations are needed to make the Federal tax classification of Bulgarian public limited liability companies consistent with the Federal tax classification of public limited liability companies organized in other countries of the European Economic Area. The regulations will affect persons owning an interest in a Bulgarian aktsionerno druzhestvo on or after January 1, 2007. The text of the temporary regulations serves as the text of the proposed regulations (REG–143468–07) set forth in the notice of proposed rulemaking on this subject in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on March 21, 2008.

Applicability Date: For the dates of applicability of these regulations, see § 301.7701–2T(e)(7).

FOR FURTHER INFORMATION CONTACT: S. James Hawes, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The IRS and the Treasury Department issued final regulations concerning the Federal tax classification of entities under section 7701 of the Internal Revenue Code on December 18, 1996. See TD 8697 (1997–1 CB 215; 61 FR 66584) and §§ 301.7701–1 through 301.7701–3. Under those regulations, a business entity that is not specifically classified as a corporation can elect its classification for Federal tax purposes under certain circumstances. Section 301.7701–2(b)(8) provides a list of certain foreign business entities that are nevertheless always classified as corporations for Federal tax purposes. This list is known as the per se corporation list. The foreign business entities on this list are referred to as per se corporations. Recent changes in European law require the IRS and the Treasury Department to amend the per se list. See § 601.601(d)(2)(ii)(*b*).

On October 8, 2001, the Council of the European Union adopted Council Regulation 2157/2001 (2001 Official Journal of the European Communities, L 294/1) (the EU Regulation) to provide for a new business entity called the European public limited liability company, which is also known as a Societas Europaea or SE. The EU Regulation entered into force October 8, 2004. The EU Regulation provides general rules that govern the formation and operation of an SE. With respect to many issues, however, the EU Regulation defers to the laws of the country in which the SE has its registered office. An SE must have a registered office in one of the Member States of the European Economic Area, which includes Norway, Iceland, Liechtenstein, and every country in the European Union. For further background, see TD 9197 (2005–1 CB 985; 70 FR 19697) and Notice 2004–68 (2004–43 IRB 706). See § 601.601(d)(2)(ii)(*b*).

The IRS and the Treasury Department stated in Notice 2004–68 that the SE is properly classified as a per se corporation for Federal tax purposes. Consequently, the IRS and the Treasury Department issued regulations modifying § 301.7701–2(b)(8) to include the SE on the per se corporation list. Those regulations included certain public limited liability companies organized in Member States that did not already appear on the per se list. See TD 9197 and TD 9235 (2006–1 CB 338; 70 FR 74658). With the entry of Bulgaria into the European Union on January 1, 2007, an SE can now have its registered office in Bulgaria.

Explanation of Provisions

Bulgaria's SE is called an aktsionerno druzhestvo. The IRS and the Treasury Department stated in Notice 2007–10 (2007–4 IRB 354) that § 301.7701–2(b)(8) would be modified to include the aktsionerno druzhestvo on the per se corporation list. The temporary regulations in this document make that

modification. In accordance with Notice 2007–10, these regulations will be effective for any Bulgarian aktsionerno druzhestvo formed on or after January 1, 2007.

Notice 2007–10 also stated that the regulations would be effective for any Bulgarian aktsionerno druzhestvo formed before January 1, 2007, upon a 50 percent or greater change of ownership in such entity subsequent to that date. See section 7805(b)(1)(C) and § 601.601(d)(2)(ii)(*b*). The temporary regulations therefore provide that a Bulgarian aktsionerno druzhestvo formed before January 1, 2007, will become a per se corporation on the date that, in the aggregate, a 50 percent or more interest in the entity is owned by a person or persons who were not owners of the entity as of January 1, 2007. In the case of a partnership, an interest means a capital or profits interest. In the case of a corporation, an interest means an equity interest in the entity measured by vote or value.

The standard provided by these temporary regulations for determining the application of the regulations to a Bulgarian aktsionerno druzhestvo formed before January 1, 2007, clarifies the standard described in Notice 2007–10 and the standard to be applied with respect to entities listed in § 301.7701–2(b)(8), including those entities listed in TD 8697, TD 9197, and TD 9235. Comments are requested with respect to this clarification.

Special Analyses

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

Drafting Information

The principal author of these regulations is S. James Hawes of the Office of Associate Chief Counsel (International); however, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

■ **Par. 2.** Section 301.7701–2(b)(8)(vi) and (e)(7) are added and the paragraph heading for paragraph (e) is revised to read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(vi) [Reserved]. For further guidance, see § 301.7701–2T(b)(8)(vi).

* * * * *

(e) Effective/applicability date.* * *

(7) [Reserved]. For further guidance, see § 301.7701–2T(e)(7).

■ **Par. 3.** Section 301.7701–2T is added to read as follows:

§ 301.7701–2T Business entities; definitions (temporary).

(a) through (b)(8)(v) [Reserved]. For further guidance, see § 301.7701–2(a) through (b)(8)(v).

(b)(8)(vi) *Certain European entities.* The following business entity formed in the following jurisdiction:

Bulgaria, Aktsionerno Druzhestvo.

(c) through (e)(6) [Reserved]. For further guidance, see § 301.7701–2(c) through (e)(6).

(7) The reference to the Bulgarian entity in paragraph (b)(8)(vi) of this section applies to such entities formed on or after January 1, 2007, and to any such entity formed before such date from the date that, in the aggregate, a 50 percent or more interest in such entity is owned by any person or persons who were not owners of the entity as of January 1, 2007. For purposes of the preceding sentence, the term *interest* means—

(i) In the case of a partnership, a capital or profits interest; and

(ii) In the case of a corporation, an equity interest measured by vote or value.

(8) *Expiration date.* The applicability of this section expires on or before March 18, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: March 12, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–5686 Filed 3–20–08; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4006 and 4007

RIN 1212–AB11

Premium Rates; Payment of Premiums; Variable-Rate Premium; Pension Protection Act of 2006

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is a final rule to amend PBGC's regulations on Premium Rates and Payment of Premiums. The amendments implement provisions of the Pension Protection Act of 2006 (Pub. L. 109–280) that change the variable-rate premium for plan years beginning on or after January 1, 2008, and make other changes to the regulations. (Other provisions of the Pension Protection Act of 2006 that deal with PBGC premiums are the subject of separate rulemaking proceedings.)

DATES: Effective April 21, 2008. (For information about applicability of the amendments made by this rule, see Applicability in the **SUPPLEMENTARY INFORMATION**.)

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative and Regulatory Department; or Catherine B. Klion, Manager, or Deborah C. Murphy, Attorney, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA).

Pension plans covered by Title IV must pay premiums to PBGC. The flat-rate premium applies to all covered plans; the variable-rate premium applies only to single-employer plans. Section 4006 of ERISA deals with premium rates, including the computation of premiums. Section 4007 of ERISA deals with the payment of premiums, including premium due dates and interest and penalties on premiums not timely paid, and with recordkeeping and audits.

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Pub. L. 109–280 (PPA 2006). PPA 2006 makes changes to the funding rules in Title I of ERISA and in the Internal Revenue Code of 1986 (Code) on which the variable-rate premium is based. Section 401(a) of PPA 2006 amends the variable-rate premium provisions of section 4006 of ERISA to conform to those changes in the funding rules and to eliminate the full-funding limit exemption from the variable-rate premium.

On May 31, 2007 (at 72 FR 30308), PBGC published in the **Federal Register** a proposed rule to amend PBGC's regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) to implement the amendment to ERISA section 4006 made by PPA 2006. (PPA 2006 also includes other provisions affecting PBGC premiums that were not addressed in the proposed rule, including provisions that cap the variable-rate premium for certain plans of small employers, make permanent the new ''termination premium'' (created by the Deficit Reduction Act of 2005) that is payable in connection with certain distress and involuntary plan terminations, and authorize PBGC's payment of interest on refunds of overpaid premiums. Those provisions are or will be the subject of other rulemaking actions. See, for example, PBGC's final rule published December 17, 2007 (at 72 FR 71222).) PBGC received comments on the proposed rule from two commenters—an actuary and an organization representing plan sponsors and service providers. The comments are discussed below with the topics they relate to.

The final rule is nearly the same as the proposed rule. In addition to changes prompted by public comments, PBGC has added two definitional cross-references, clarified the definition of ''new plan,'' eliminated unnecessary verbiage from one of the due date rules, clarified the relationship between the funding interest rate transition rule and the premium funding target, extended the small-plan deadline for making certain elections, clarified how participants are counted for purposes of determining plan size, provided illustrations of the provision on vesting, and clarified the provision dealing with plans to which special funding rules apply. These changes are discussed below. There are also a few merely editorial refinements in the proposed rule's regulatory language.

Overview of Regulatory Amendments

For purposes of determining a plan's variable-rate premium (VRP) for a premium payment year beginning after 2007, the rule requires unfunded vested benefits (UVBs) to be measured as of the funding valuation date for the premium payment year. The asset measure underlying the UVB calculation is to be determined for premium purposes the same way it is determined for funding purposes, except that any averaging method adopted for funding purposes is disregarded. The liability measure underlying the UVB calculation is to be determined for premium purposes the same way it is determined for funding purposes, except that only vested benefits are included and a special premium discount rate structure is used. Filers may make an election (irrevocable for five years) to use funding discount rates for premium purposes instead of the special premium discount rates.

The rule revises the premium due date and penalty structure of the existing regulation to give some plans more time to file and others the ability to make VRP filings based on estimated liabilities and then follow up with amended filings to adjust the VRP without penalty. Three special relief rules for VRP filers are eliminated as no longer appropriate or necessary, and two new relief rules are added.

The rule also explains when certain benefits are considered ''vested'' and makes some other changes unrelated to PPA 2006. For example, the rule provides explicitly that (in the absence of an exemption) a premium filing made on paper or in any other manner other than the prescribed electronic filing method (applicable to all plans for plan years beginning after 2006) does not satisfy the requirement to file. It also clarifies and strengthens recordkeeping and audit provisions.

A more detailed discussion follows.

Variable-Rate Premium Determination Dates

Under ERISA section 4006(a)(3)(E)(i) and (ii), a plan's per-participant VRP for a plan year is generally—

> $9.00 for each $1,000 (or fraction thereof) of unfunded vested benefits [''UVBs''] under the plan as of the close of the preceding plan year.

divided by the plan's participant count as of the close of the preceding plan year. (Under ERISA section 4006(a)(3)(H), added by section 405 of PPA 2006, the per-participant VRP is capped at $5 times the participant count as of the close of the prior plan year for certain plans of small employers. The cap provision is the subject of another rulemaking.) Under ERISA section 4006(a)(3)(A)(i), the per-participant VRP is multiplied by the number of participants ''in [the] plan during the plan year'' to yield the total VRP. The existing premium rates regulation treats all of these provisions as referring to a single determination date. In most cases, this is the last day of the prior plan year; it is the first day of the premium payment year (the plan year for which the premium is being paid) for two categories of plans: new and newly covered plans (which are not in existence as covered plans on the last day of the prior plan year) and certain plans involved in plan spinoffs and mergers as of the beginning of the premium payment year (which otherwise would double-count or not count certain participants and UVBs for premium purposes).

The term ''unfunded vested benefits'' (''UVBs'') is defined in ERISA section 4006(a)(3)(E)(iii). In section 4006(a)(3)(E)(iii) before amendment by PPA 2006, ''UVBs'' is defined as unfunded current liability (a term found in the funding provisions of the Code and Title I of ERISA) determined by counting only vested benefits and using a special interest rate and (under certain circumstances) a special measure of plan assets. PPA 2006 changes the funding rules for single-employer plans, eliminating the concept of current liability for plan years beginning after 2007. (As discussed below, certain plans will not use the new funding rules until a later date.) To conform to this change, PPA 2006 changes the definition of UVBs in ERISA section 4006(a)(3)(E)(iii). As amended by PPA 2006, for plan years beginning after 2007, section 4006(a)(3)(E)(iii) provides that ''UVBs''—

> means, for a plan year, the excess (if any) of * * * the funding target of the plan as determined under [ERISA] section 303(d) [corresponding to Code section 430(d)] for the plan year by only taking into account vested benefits and by using the interest rate described in [ERISA section 4006(a)(3)(E)(iv)], over * * * the fair market value of plan assets for the plan year which are held by the plan on the valuation date.

New ERISA section 303(g) says that with certain exceptions not relevant here, ''all determinations under this section [which includes the definition

of ''funding target'' in section 303(d)(1)] for a plan year shall be made as of the valuation date of the plan for such plan year.'' Thus PBGC concludes that the ''valuation date'' for plan assets referred to in new section 4006(a)(3)(E)(iii) is the valuation date determined under section 303(g)(2). In general (under section 303(g)(2)(A)), the valuation date for a plan year is the first day of the plan year, but certain small plans may designate a different valuation date (under section 303(g)(2)(B)), which may be any day in the plan year.

The change in the definition of UVBs thus creates ambiguity about the date as of which UVBs are to be measured. Section 4006(a)(3)(E)(ii), which was not changed by PPA 2006, refers to two plan years—the ''plan year'' for which the VRP is being paid (the premium payment year) and the ''preceding plan year,'' at the close of which UVBs are to be measured. New section 4006(a)(3)(E)(iii) refers only to the ''plan year'' in defining UVBs. And a plan's funding target and assets—the elements of UVBs—are to be measured as of the valuation date, which need not be the close of the plan year and which for many plans (those not small enough to elect otherwise) must be the beginning of the plan year.

To resolve the statutory ambiguity, PBGC is adopting a rule regarding the date as of which UVBs are to be measured. In view of the following considerations, PBGC is requiring that UVBs be measured as of the valuation date in the premium payment year rather than a date in the prior plan year.

Historical data indicate that most premium filers use beginning-of-the-plan-year valuation dates for funding purposes; under PPA 2006 many of them will be required to do so. Although funding valuations don't themselves produce UVB numbers that can be used for VRP purposes, they involve the gathering of the same basic data for analysis, and the valuations are done in the same way, simply using different assumptions. It would be burdensome and impractical to require plans that must do funding valuations as of the first day of a plan year to do separate valuations as of the last day for VRP purposes.

Requiring a funding valuation done as of the first day of the prior plan year to be ''rolled forward'' to the last day of the prior plan year is likewise burdensome and impractical. Instructions for ''roll-forwards'' would necessarily be complex, especially in light of the new ''segment rate'' interest assumption under ERISA sections 303(h)(2)(C) and 4006(a)(3)(E)(iv) as amended by PPA 2006. And ''rolled-forward'' valuations would tend to be inaccurate because correcting for the many changes in circumstances that can occur during the course of a year involves a significant element of estimation.

Furthermore, basing the VRP on a valuation done in the premium payment year reflects a plan's current funding status much better than basing it on a valuation done in the prior year, especially a valuation done as of the first day of the prior year. And with some changes (discussed below) in PBGC's premium due date and penalty rules, there will be adequate time for plans to compute premiums based on a premium payment year valuation.

Accordingly, this rule requires that UVBs be measured as of the valuation date for the premium payment year (referred to as the ''UVB valuation date'') and adjusts premium due dates and penalty rules to accommodate the fact that this UVB valuation date is later (by at least a day and in some cases perhaps as much as a year) than ''the close of the preceding plan year,'' the date used under section 4006(a)(3)(E) before amendment by PPA 2006. (No change is made in the date as of which participants are counted, which the regulations as amended by this final rule refer to as the ''participant count date.'')

Variable-Rate Premium Computation

As noted above, UVBs under PPA 2006 are based on a plan's funding target and the market value of its assets. Under new ERISA section 303(d)(1), as set forth in section 102 of PPA 2006, ''the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.'' But new ERISA section 303(g) makes clear that the funding target is to be determined as of the valuation date, which for small plans may not be the beginning of the plan year. PBGC thus believes that what ERISA section 303(d)(1) requires is that the benefits to be valued as of the valuation date are those accrued as of the beginning of the plan year. If the valuation date is later than the first day of the plan year, accruals after the beginning of the plan year are to be ignored.

The situation regarding assets is similar. New ERISA section 4006(a)(3)(E)(iii)(II) refers to ''the fair market value of plan assets for the plan year which are held by the plan on the valuation date.'' Under new ERISA section 303(g)(4)(B), however, plan assets as of a valuation date later than the first day of the plan year do not include contributions for the plan year made during the plan year but before the valuation date or interest thereon. PBGC interprets section 4006(a)(3)(E)(iii)(II) as incorporating this rule, as well as the corresponding rule for prior-year contributions in section 303(g)(4)(A). Thus for a valuation date later than the first day of the plan year, UVBs are to reflect neither accruals nor contributions for the plan year.

In general, a plan's funding target and the value of its assets are to be determined for premium purposes the same way they are for funding purposes except as new ERISA section 4006(a)(3)(E)(iii) and (iv) provides otherwise. In order to distinguish the funding target used for premium purposes from that used for funding purposes, the rule introduces the term ''premium funding target.'' In general, this means the funding target determined by taking only vested benefits into account and by using the special segment rates described in new ERISA section 4006(a)(3)(E)(iv) (the ''standard premium funding target''). Those special segment rates are ''spot rates'' (based on bond yields for a single recent month), as opposed to the 24-month average segment rates used for funding purposes.

But in certain circumstances (described below), PBGC is permitting filers to use an ''alternative premium funding target'' that may be less burdensome to use than the standard premium funding target. A plan's alternative premium funding target is the vested portion of the plan's funding target under ERISA section 303(d)(1) that is used to determine the plan's minimum contribution under ERISA section 303 for the premium payment year—that is, an amount calculated using the same assumptions as are used to calculate the plan's funding target under ERISA section 303(d)(1), but based only on vested benefits, rather than all benefits.

Although instructions for annual reports on Form 5500 series for plan years beginning after 2007 are not final, PBGC expects plans to be required to compute the vested portion of the funding target (broken down by participant category) for Form 5500 filings. PBGC also expects that the final instructions will permit or require benefits to be categorized as vested or non-vested in a manner consistent with the provisions of this rule (discussed below) that explain when certain benefits are considered vested for premium purposes. The advantage to a filer of using the alternative premium funding target will be that, if the plan determines the vested portion of its funding target for purposes of the annual report (Form 5500 series) in a

manner consistent with PBGC's rules, it can use the same number for premium purposes and thus avoid having to do a second calculation for premium purposes alone.

Under the rule, the alternative premium funding target may be used where the plan makes an election to do so that is irrevocable for a period of five years. As financial markets fluctuate, the averaged rates used for the alternative premium funding target will fluctuate above and below the spot rates used for the standard premium funding target. Locking in the election for five years will keep plans from calculating the premium funding target both ways each year and using the smaller number; the reason for permitting use of the alternative premium funding target is to reduce not premiums but the burden of computing premiums. PBGC expects that normal interest rate fluctuations will make premiums computed with the alternative premium funding target—on average, over time—approximately equal to premiums calculated with the standard premium funding target. Requiring a five-year commitment to the use of the alternative premium funding target will give this averaging process time to work. If a plan administrator concludes that the averaging process has not had enough time to work by the end of the minimum five-year election period, the election may be left in place to give the averaging process more time to work.

The proposed rule required that an election (or revocation of an election) to use the alternative premium funding target be made by the end of the first plan year to which it would apply. The final rule changes the election/revocation deadline to the VRP due date for the first plan year to which the election or revocation would apply. This will allow an election or revocation to be made at the same time as a plan's VRP filing for the first plan year to which it applies, even if the plan year ends before the due date (such as for a small plan (as discussed below) or a short plan year). And since the VRP depends on whether an available election or revocation is made, there is no need for the election/revocation deadline to be later than the VRP due date if the VRP due date occurs before the end of the plan year. PBGC plans to provide for such elections and revocations in its electronic premium filing application.

The proposed rule did not explicitly address the applicability of the transition rule in ERISA section 303(h)(2)(G) to the calculation of the premium funding target. Section 303(h)(2)(G) calls for a two-year transition from the current liability interest rate to the new segment rates for purposes of determining the funding target. However, in describing the interest rate to be used in determining the standard premium funding target, ERISA section 4006(a)(3)(E)(iv) (as added by PPA 2006) refers only to subparagraphs (C) and (D) of ERISA section 303(h)(2), not to the funding interest assumption as a whole. Thus, the fact that there is a transition rule for funding purposes does not mean that there is a transition rule for premium purposes.

Furthermore, since the current liability interest rate is not the interest assumption that has heretofore been used to determine UVBs, a literal application of the section 303(h)(2)(G) transition rule would lead to illogical results. The only reasonable way the transition rule could be applied to the calculation of the standard premium funding target would be by reading into section 303(h)(2)(G) (for premium purposes) a reference to the required interest rate heretofore used to determine UVBs, rather than the current liability interest rate that section 303(h)(2)(G) actually refers to. Accordingly, the proposed rule did not provide for the applicability of the transition rule to the determination of the standard premium funding target, and the premium filing instructions that PBGC submitted for approval by the Office of Management and Budget when the proposed rule was published reflected this. Section 4006.4(b)(2)(ii) of the premium rates regulation, as amended by the final rule, makes this point explicit.

The alternative premium funding target, on the other hand, is based directly on the funding target under ERISA section 303(d)(1), which will be calculated using the transition rule (unless elected out of under ERISA section 303(h)(2)(G)(iv)). Thus the alternative premium funding target will clearly reflect the provisions of section 303(h)(2)(G), just as it will reflect the provisions of section 303(h)(2)(D)(ii) (election to use the full yield curve instead of segment rates) or section 303(h)(2)(E) (election of ''applicable month'' for determining the yield curve). PBGC believes that this point is clearly implicit in the language of the proposed rule, and has not changed that language for the final rule.

Since new ERISA section 4006(a)(3)(E)(iii)(II) speaks explicitly of the ''fair market value'' of assets, PBGC concludes that it would be inconsistent with the statute to permit or require the use of the averaging process described in new ERISA section 303(g)(3)(B) or the reduction of assets by the prefunding and funding standard carryover balances described in new ERISA section 303(f)(4). (The existing premium rates regulation also provides that credit balances do not reduce assets for premium purposes.)

As noted above, however, PBGC believes that adjustments must be made for contributions as described in new ERISA section 303(g)(4). Similar adjustments are required under the current premium rates regulation. For simplicity, PBGC is providing that the adjustments are to be made using the effective interest rates determined for funding purposes, rather than effective interest rates computed on the basis of the premium segment rates. This will mean that the adjustments do not have to be calculated twice (once for funding purposes and again for premium purposes), and plans can use for premium purposes a figure for the value of assets that they are expected to be entering in the annual report (Form 5500 series). PBGC anticipates that the differences between funding and premium rates and the periods of time over which these rates are applied for this purpose will be small enough to justify this simplification. And as funding rates fluctuate above and below premium rates, the differences in each direction should cancel out over time.

This rule does not include an ''alternative calculation method'' for rolling forward prior year values to the current year. The alternative calculation method (ACM) in § 4006.4(c) of the current premium rates regulation was instituted when much actuarial valuation work was done using hand calculators and tables of factors. High-speed, high-memory computers are now the norm for handling both data and mathematical computations. Actuarial valuations are thus much faster now. Furthermore, the segment rate methodology for valuing benefits does not lend itself to the kind of formulaic transformation process exemplified by the existing ACM. PBGC accordingly believes that an alternative calculation method is both unnecessary and impracticable under PPA 2006.

Noting that the proposed rule ignored premium payment year accruals in determining the premium funding target for plans with UVB valuation dates after the beginning of the year, one commenter urged that benefit increase amendments adopted after the UVB valuation date but implemented retroactively to the beginning of the premium payment year be ignored for premium purposes. PBGC is not adopting any express provision on this subject. The premium funding target is

based on the funding target under ERISA section 303(d); whether a benefit increase (even if retroactive) is taken into account for premium purposes depends on whether it is taken into account for funding purposes, an issue not addressed in this rule.

Due Dates and Penalty Rules

PBGC expects that most plans that are required (or choose) to do funding valuations as of the beginning of the plan year (and whose UVB valuation date is thus the first day of the premium payment year) will be able to determine their UVBs by the VRP due date currently provided for in PBGC's premium payment regulation (generally, the middle of the tenth full calendar month after the beginning of the plan year). But there are some circumstances that can make timely determination of the VRP difficult or impossible: for example, use of a valuation date after the beginning of the plan year (applicable to small plans only) or difficulty in collecting data (e.g., because of the occurrence of unusual events during the preceding year). To deal with such circumstances, PBGC is revising its premium due date and penalty structure to give smaller plans more time to file and larger plans the ability to make VRP filings based on estimated liabilities and then correct them without penalty. The following detailed discussion of the due date and penalty structure is followed by a summary table.

PBGC's current due date structure for flat- and variable-rate premiums is based on two categories of plans: those that owed premiums for 500 or more participants for the plan year preceding the premium payment year (''large'' plans) and those that did not. The new structure is based on three categories. The large-plan category remains the same. A new ''mid-size'' category consists of plans that owed premiums for 100 or more, but fewer than 500, participants for the plan year preceding the premium payment year. A category of ''small'' plans includes all other plans. The participant count for this purpose will continue to be the prior year's count; the rule provides uniform language for determining both single- and multiemployer plans' participant counts for determining due dates, eliminating a slight language difference in the existing regulation.

The final rule makes clear that the number of participants used for determining plan size is the participant count used for purposes of the flat-rate premium (not the number of participants whose benefits are taken into account in computing the VRP). Since both flat-rate and variable-rate premium due dates are based on plan size, plan size must be determinable for plans (such as multiemployer plans) that do not compute the VRP. Furthermore, the VRP does not reflect the number of participants directly except for certain plans of small employers that are subject to a VRP cap based on the number of participants (in which case it is the flat-rate participant count that is used). Tying plan size to the flat-rate premium participant count is consistent with the existing regulation.

The 100-participant break-point between the small and mid-size categories approximates the break-point in the PPA 2006 funding rules between plans that are required to use beginning-of-the-year valuation dates under ERISA section 303(g)(2)(A) and those permitted to use another date under ERISA section 303(g)(2)(B). The correspondence with the valuation date provision is only approximate. Under the valuation date provision, PPA 2006 counts participants on each day of a plan year and aggregates plans within controlled groups; under the premium due date rules, participants are counted in one plan on one day. Furthermore, PPA 2006 funding rules look back to the plan year preceding the valuation year; the PBGC participant count for the plan year preceding the premium payment year is typically as of the last day of the plan year before that. Accordingly, there may be plans that are eligible to elect valuation dates other than the first day of the plan year but that do not fall into PBGC's new small-plan category. But most plans that use valuation dates other than the first day of the plan year are expected to be ''small'' under the new due date structure, and there is enough flexibility in the due date rules for large and mid-size plans to make premium filing manageable in most cases even for plans with valuation dates after the beginning of the plan year. In unusual cases, where a plan with a valuation date late in the year finds itself in the large or mid-size category, PBGC has authority to waive late premium penalties.

Small Plans

For plans in the ''small'' category, all premiums will be due on the last day of the sixteenth full calendar month that begins on or after the first day of the premium payment year (for calendar-year plans, April 30 of the year following the premium payment year). This will give any small plan at least four months to determine UVBs.

The same due date will apply to both variable- and flat-rate premiums. While there is no reason these small plans cannot determine the flat-rate premium by the current due date (the 15th day of the tenth full calendar month that begins on or after the first day of the premium payment year), PBGC wants to avoid requiring them to make two filings per year. And for simplicity, PBGC is making no distinction for due date purposes between single-employer plans that pay the VRP and single-employer (and multiemployer) plans that do not. Small single-employer plans that qualify for an exemption from the VRP and small multiemployer plans (which are not subject to the VRP) will have the same deferred due date as small single-employer plans that owe a VRP.

Mid-Size Plans

For mid-size plans, the rule retains the current premium due date—the 15th day of the tenth full calendar month that begins on or after the first day of the premium payment year (October 15th for calendar-year plans)—for both flat- and variable-rate premiums. With rare exceptions, these plans will perform valuations as of the first day of the premium payment year, and in most cases should be able to calculate UVBs by the current due date. However, in recognition of the possibility that circumstances might make a final UVB determination by the due date difficult or impossible, the rule permits VRP filings to be made based on estimated liabilities and provides a penalty-free ''true-up'' period to correct a VRP based on an erroneous estimate.

Under this provision, the VRP penalty is waived for a period of time after the VRP due date if, by the VRP due date, the plan administrator submits an estimate of the VRP that meets certain requirements and pays the estimated amount. The waiver of the penalty covers the period from the VRP due date until the small-plan due date or, if earlier, the filing of the final VRP. Interest is not suspended; if the VRP estimate falls short of the correct amount, interest will accrue on the amount of the underpayment from the date when the payment was due to the date the shortfall was paid, just as with the existing ''safe harbor'' rule for large plans' flat-rate premium payments.

The requirements for the VRP estimate are that it be based on (1) a final determination of the market value of the plan's assets and (2) a reasonable estimate of the plan's premium funding target for the premium payment year that takes into account the most current data available to the plan's enrolled actuary and is determined in accordance with generally accepted actuarial

principles and practices. The estimate of the premium funding target must be certified by the enrolled actuary and, like other premium information filed with PBGC, is subject to audit. PBGC needs a good estimate of its VRP income for inclusion in its annual report, which is prepared during October (because its fiscal year ends September 30), when most plans (those with calendar plan years) submit VRP filings. Thus, it is important to have assurance that the estimate of the premium funding target has been prepared in good faith.

Since this penalty relief is based on the plan's reporting a final figure for the value of assets by the VRP due date, the relief is lost if there is a mistake in the assets figure so reported, whether the mistaken figure is lower or higher than the true figure. PBGC will consider a request for an appropriate penalty waiver in such a situation and in acting on the request will consider such facts and circumstances as the reason for the mistake, whether assets were over- or understated, and, if assets were overstated, the extent of the overstatement.

Since the provision of a period for ''truing up'' the VRP without penalty, after a filing based on an estimate, is not an extension of the VRP due date, it does not provide additional time to make an alternative premium funding target election.

Large Plans

The due date and penalty structure for ''large'' plans is the same as for ''mid-size'' plans except that the early due date for the flat-rate premium under the existing regulation is retained, along with the related ''safe harbor'' penalty rules. However, there is a change in the ''safe harbor'' rules to accommodate the unlikely event that a plan might be in the small-plan category for one year but in the large-plan category for the next year. Under §§ 4007.8(f) and (g)(2)(ii) of the existing premium payment regulation, a plan may be entitled to safe harbor relief if its flat-rate filing is consistent with its reported participant count for the prior plan year, even if the reported count is later determined to be wrong. But under the new rules, a plan that is small for one year and large for the next year will not have to report its participant count for the first year until after the flat-rate due date for the second year. Thus, to get the benefit of these special safe-harbor rules, a plan in such circumstances would have to make its final filing for the first year two months before it was due. To alleviate this problem, the rule provides safe-harbor relief for any plan whose flat-rate due date for the plan year preceding the premium payment year is later than the large-plan flat-rate due date for the premium payment year.

Due Date Table

The following table shows the relevant premium due dates for small, mid-size, and large calendar year plans (as described above) for the 2008 premium payment year:

	Small plans (under 100 participants)	Mid-size plans (100–499 participants)	Large plans (500 or more participants)
Flat-rate premium due	April 30, 2009	October 15, 2008	February 29, 2008. See flat-rate premium safe harbor rules.
Flat-rate premium reconciliation due	N/A	N/A	October 15, 2008.
Variable-rate premium due	April 30, 2009	October 15, 2008. Estimate may be filed and paid. See rules on correcting VRP without penalty.	October 15, 2008. Estimate may be filed and paid. See rules on correcting VRP without penalty.
Latest VRP penalty starting date. If certain conditions are met, penalty is waived until this date or, if earlier, the date the final VRP is filed.	N/A	April 30, 2009	April 30, 2009.

Special Variable-Rate Premium Rules

The existing premium rates regulation includes a number of special ''exemption'' or ''relief'' rules for VRP filers. One of these—the full-funding limit exemption, which was created by statute—has been eliminated by PPA 2006. Three others—created by PBGC regulation in 1988—have lost their justification, as explained below, and PBGC is eliminating them as well. PBGC is also introducing two new ''relief'' rules.

The three regulatory special rules that are eliminated are (1) the rule that a plan with fewer than 500 participants for the premium payment year is exempt from reporting its VRP information if the plan has no UVBs (the ''small well-funded plan rule''), (2) the rule that a plan with 500 or more participants may report (and compute its VRP on the basis of) accrued rather than vested benefits (the ''large plan accrued benefit rule''), and (3) the rule that a plan may value benefits using the funding interest rate rather than the variable-rate premium interest rate if the funding rate is less than the premium rate (the ''funding interest rate rule''). All three represent compromises between the need for accuracy in the determination of the VRP and the reporting of VRP data on the one hand and the need to reduce the burden of compliance on the other.

PBGC needs accurate data about UVBs and assets—now as in 1988—to verify the correctness of the reported VRP and for financial projections. But whereas the cost of determining this information 20 years ago could be very significant, because much actuarial valuation work was done using hand calculators and tables of factors, valuations are now computerized and thus cost less. PBGC's need for accurate data now outweighs the burden of determining and reporting the data. The elimination of these three special rules reflects that change in the balance between need and burden. Furthermore, both the ''large plan accrued benefit rule'' and the ''funding interest rate rule'' overstate UVBs and are used by very few plans—fewer than three dozen plans used each of these two special rules for the 2004 filing year (the last year for which data are available).

In addition, one of the two new ''relief'' rules that PBGC is introducing—the new alternative premium funding target provision discussed above—provides relief for filers that might otherwise have used any of these three special rules. The alternative premium funding target provision permits the use of funding rates for premium purposes (like the ''funding interest rate rule'') without the need for a comparison of rates (albeit with a requirement for a five-year commitment). And by using the alternative premium funding target provision, plans that might have used the ''large plan accrued benefit rule'' or the ''small well-funded plan rule'' may be able to base premium reporting on

figures that are computed for and included in the annual report (Form 5500 series).

PBGC's second new ''relief'' rule—in addition to the alternative premium funding target provision—is a reporting relief provision for certain small-employer plans. Section 405 of PPA 2006 caps the VRP for certain plans of small employers, a provision that is the subject of another PBGC rulemaking proceeding. This rule exempts plans that qualify for the VRP cap and pay the full amount of the cap from determining or reporting UVBs.

Meaning of ''Vested''

As discussed above, the determination of UVBs—both before and after the PPA 2006 amendments—requires that only vested benefits be taken into account. PBGC believes that there is some uncertainty among pension practitioners as to the meaning of the term ''vested'' as used in ERISA section 4006(a)(3)(E). With a view to reducing uncertainty and promoting consistency in the VRP determination process, § 4006.4(d) of the premium rates regulation, as amended by this final rule, explains—for premium purposes only—when certain benefits are considered vested.

The proposed rule specified two circumstances that would not prevent a participant's benefit from being vested for premium purposes. One circumstance is that the benefit is not protected under Code section 411(d)(6) and thus may be eliminated or reduced by the adoption of a plan amendment or by the occurrence of a condition or event (such as a change in marital status). PBGC considers such a benefit to be vested (if the other conditions of entitlement have been met) so long as the benefit has not actually been eliminated or reduced. The other circumstance—applicable to certain benefits payable upon a participant's death—is that the participant is living. The benefits to which this would apply are (1) a qualified pre-retirement survivor annuity, (2) a post-retirement survivor annuity such as the annuity paid after a participant's death under a joint and survivor or certain and continuous option, and (3) a benefit that returns a participant's accumulated mandatory employee contributions. PBGC considers such benefits to be vested (if the other conditions of entitlement have been met) notwithstanding that the participant is alive. The final rule includes two illustrative examples.

There was a public comment that the vesting provision in the proposed rule did not address two types of benefits as to which guidance was needed: Pre-retirement lump sum death benefits and disability benefits. PBGC does not intend new § 4006.4(d) (the vesting provision) to be an exhaustive treatment of the subject; the provision is meant merely to provide clarification for the specific cases it mentions. In response to this comment, however, PBGC is expanding § 4006.4(d) to provide that a pre-retirement lump sum death benefit (other than one that returns mandatory employee contributions) is not considered vested for premium purposes where the participant is living and that a disability benefit is not considered vested for premium purposes where the participant is not disabled.

Another commenter stated that many practitioners have not been treating as vested the benefits that PBGC would consider vested under the proposed rule and that PBGC's vesting provision is at odds with the standards (currently under revision) of the American Academy of Actuaries. The commenter expressed a preference that PBGC not adopt the proposed vesting provision and urged that the provision be applied prospectively only. PBGC acknowledges that some actuaries may not be using the interpretation of vesting prescribed by this rule but believes that many are doing so; it is precisely to promote consistency in this regard that the vesting provision—applicable for premium purposes only—is included in the rule.

For plans that have been computing UVBs without counting benefits that are considered vested under PBGC's rule, adoption of the rule may increase UVBs. As stated in Applicability below, the rule is effective for plan years beginning after 2007. Although PBGC has made no determination as to the position it may take regarding the interpretive issue for prior periods, PBGC currently has no plans to focus on this issue in audits of premium filings for plan years beginning before 2008.

Recordkeeping and Audits

The rule clarifies and strengthens the provisions of the premium payment regulation dealing with recordkeeping and audits. Most of the changes simply reflect existing recordkeeping and audit practices.

In describing the premium records to be kept, the current premium payment regulation mentions explicitly only those prepared by enrolled actuaries and insurance carriers. The rule broadens this to include plan sponsors and employers required to contribute to a plan for their employees and clarifies, with a list of examples of relevant records, that PBGC interprets the term ''records'' broadly. Similarly, the rule refers explicitly to records supporting the amount of premiums that were *required* to be paid and the premium-related information that was *required* to be reported (rather than just what was actually paid or reported). Where a premium or premium-related information is determined through the use of a manual or automated system or process, the rule allows PBGC to require that the operation of the system or process be demonstrated so that its effectiveness, and the reliability of the results produced, can be assessed. In addition, in situations where plan records are deficient, the rule broadens the categories of data on which PBGC may rely to establish the amount of premiums due to include not just participant count data but UVB data.

The rule also makes clear that the 45 days permitted for producing records under § 4007.10(c) applies to records sent to PBGC, not to records audited on-site (which PBGC expects to be produced much more promptly). And the rule broadens the circumstances in which PBGC can require faster submission of records. The existing regulation limits such circumstances to those where collection of money may be jeopardized. This is changed to authorize shorter response times where the interests of PBGC may be prejudiced by delay—such as where PBGC has reason to suspect that records might be destroyed or manipulated.

Miscellaneous Provisions

Plans Subject to Special Funding Rules

Sections 104, 105, and 106 of PPA 2006 defer the effective date of the funding amendments for certain plans described in those sections, which in general deal with plans of cooperatives, plans affected by settlement agreements with PBGC, and plans of government contractors. Section 402 of PPA 2006 (amended by section 6615 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110–28) applies special funding rules to certain plans of commercial passenger airlines and airline caterers. None of these provisions affects the applicability of the amendments to ERISA section 4006 regarding the determination of the VRP. The rule provides explicitly that plans in this small group must determine UVBs in the same manner as all other plans. The language of this provision has been revised in the final rule to make this point clearer (in light, particularly, of the amendment to

section 402 of PPA 2006, which was made after the proposed rule was cleared for publication in the **Federal Register**).

New and Newly Covered Plans

The rule eliminates confusing language in the existing regulations that raised questions about the determination of due dates, participant count dates, and premium proration for new and newly covered plans in certain circumstances. The new language makes clear that the first day of a new plan's first plan year for premium purposes is the effective date of the plan. The final rule goes beyond the proposed rule in this regard by revising the definition of ''new plan'' to eliminate wording that might suggest that a new plan could become effective after the beginning of its first premium payment year. These changes will obviate the need for plan administrators to choose between the effective date and the adoption date as the first day of the plan year for premium filing.

In addition, the final rule eliminates one of the alternative due date computation rules for new and newly covered plans (in new § 4007.11(c)). The proposed rule included an alternative under which the due date would be not earlier than 90 days after the plan's coverage date. This alternative is not necessary. The coverage date must fall within the premium payment year in order for premiums to be due at all, and the due date cannot be earlier than sixteen months after the beginning of that year. Thus, the due date will be at least four months (i.e. more than 90 days) after the date on which the plan became covered. Accordingly, an alternative due date that is 90 days after the coverage date would never come into play and can be eliminated from the regulation.

Electronic Filing Requirement

Effective July 1, 2006, PBGC amended its regulations to require that annual premium filings be made electronically (71 FR 31077, June 1, 2006). (Exemptions from the e-filing requirement may be granted for good cause in appropriate circumstances.) For PBGC's premium processing systems to work effectively and efficiently, information must be received in an electronic format compatible with those systems; the burden of reformatting information received on paper or in other incompatible formats is significant, and the reformatting process gives rise to data errors. The premium payment regulation as amended by this rule therefore provides explicitly that, in the absence of an exemption, premium filing on paper or in any other manner other than the prescribed electronic filing method does not satisfy the requirement to file. Thus, a penalty under ERISA section 4071 may be assessed for the period from the due date of the premium filing until it is made electronically, even if a timely paper filing is made.

Billing ''Grace Period'' for Interest

The rule consolidates paragraphs (b) and (c) of § 4007.7, both of which deal with the ''grace period'' for interest on premium underpayments where a bill is paid within 30 days. No substantive change is intended.

VRP Rate

ERISA section 4006(a)(3)(E)(ii) sets the variable-rate premium at $9 for each $1,000 (or fraction thereof) of UVBs. Section 4006.3(b) of the existing premium rates regulation omits the phrase ''(or fraction thereof).'' The requirement is made clear in PBGC's premium instructions; the rule adds this phrase to the regulatory text.

Pre-1996 Penalty Accrual Rules

The rule eliminates the pre-1996 penalty accrual rules as anachronistic.

Definitional Cross-Reference

The definition of ''participant'' in § 4006.6 uses the term ''benefit liabilities,'' which is defined in § 4001.2 of PBGC's regulation on Terminology. Existing § 4006.2 (dealing with defined terms used in the premium rates regulation) does not include a cross-reference to the definition of ''benefit liabilities'' in § 4001.2. This final rule corrects that omission (which was not corrected in the proposed rule).

Other Changes

The rule includes a number of clarifying and editorial changes.

Applicability

The regulatory changes made by this rule, like the statutory changes to the VRP, apply to plan years beginning after 2007.

Compliance With Rulemaking Guidelines

E.O. 12866

PBGC has determined, in consultation with the Office of Management and Budget, that this rule is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget has therefore reviewed the rule under E.O. 12866. Pursuant to section 1(b)(1) of E.O. 12866 (as amended by E.O. 13422), PBGC identifies the following specific problems that warrant this agency action:

- There is ambiguity in ERISA section 4006(a)(3)(E) regarding the date as of which UVBs are to be measured. This problem is significant because, unless the statutory ambiguity is resolved, it will be unclear what date UVBs are to be measured as of.
- The statute lacks clarity and specificity in describing how UVBs are calculated. This problem is significant because, unless clarity and specificity are provided, it will be unclear how to compute UVBs.
- The statute does not expressly provide for an alternative premium funding target as described above. This problem is significant because the standard premium funding target provided for in the statute is more burdensome to use than the alternative premium funding target described above without generating significantly different premium revenue than the less burdensome alternative premium funding target.
- PBGC's existing premium due date and penalty rules do not accord well with the new rules for the date as of which and manner in which UVBs are to be determined. This problem is significant because, without changes in the due date and penalty rules, some plans may experience difficulties in paying premiums timely and without late payment penalties.
- Some existing PBGC VRP relief rules are anachronistic and some new relief provisions are warranted by statutory changes. This problem is significant because the outmoded relief rules detract from accuracy in determining the VRP and deprive PBGC of VRP data without significantly reducing burden, while statutory changes have made it possible to grant new relief without significant adverse consequences for the PBGC insurance program.
- There is uncertainty as to the meaning of the term ''vested'' that is used in the statute to describe benefits taken into account in determining the VRP. This problem is significant because, without improved clarity in the meaning of ''vested'' as applied to VRP determinations, those determinations may be inconsistent.
- PBGC's current recordkeeping and audit rules do not match current recordkeeping and audit practices in scope and specificity, and provide relatively narrow circumstances in which PBGC may require expedited submission of records. This problem is significant because inadequate recordkeeping and audit rules could compromise PBGC's ability to enforce

the premium rules in the statute and PBGC's regulations thereunder.

• PBGC's existing premium payment regulation does not provide explicitly that, in the absence of an exemption, premium filing on paper or in any other manner other than the prescribed electronic filing method does not satisfy the requirement to file. This problem is significant because, in the absence of an explicit statement, filers might believe they had a basis for taking the position that penalties for late filing would not apply if they timely filed on paper or in some other non-approved manner.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

Most of the amendments implement statutory changes made by Congress. They provide procedures for calculating, substantiating, and paying the premiums prescribed by statute and impose no significant burden beyond the burden imposed by statute. To the extent that this rule makes changes that are outside the explicit scope of the statute, they affect primarily the requirement to perform and manner of performing VRP calculations. When the VRP provisions were added to PBGC's regulations nearly 20 years ago, these calculations were mostly done using actuarial tables and hand calculators. Today they are almost universally done using high-memory, high-speed computers. The VRP calculations parallel funding calculations that must be done independently of PBGC premium requirements. Thus, the VRP calculations can be done for the most part by plugging in different parameters (such as interest rates) to computer programs that are used for funding purposes. The incremental cost of such calculations for entities of any size is insignificant. Not including a computation option like the existing alternative computation method (ACM) in the new rules does not significantly affect compliance costs because such an option would itself be complex and thus burdensome to use and because a simplified computation method is no longer needed in the current environment of computerized actuarial computations.

Changes that would tend to increase compliance costs (*e.g.,* elimination of the VRP exemption for well-funded small plans) are offset by changes tending to reduce compliance costs (*e.g.,* the introduction of the reporting exemption for plans of small employers paying the maximum capped VRP).

The shift from prior-year to current-year data and the deferral of the due date for small plans (those with fewer than 100 participants) should not affect the cost of compliance. Under existing rules, UVBs are determined as of the end of the prior year (or in some cases the beginning of the current year) and the VRP is due 9½ months later. Under the new rules, UVBs will be determined as of the UVB valuation date, which for most small plans may be any day in the current year. For plans that choose a valuation date at the beginning of the year, the VRP is now due 16 months later. For those that choose a valuation date at the end of the year, the VRP is now due 4 months later. For a plan that chooses a mid-year valuation date, the VRP is due 10 months later, providing about the same time for data-gathering and computations as under the existing rules. But even a 4-month period between the valuation date and the due date should be adequate for the data-gathering and UVB computations of small plans, and the change in timing should not affect the cost of compliance.

PBGC believes that the changes to the recordkeeping requirements in general simply codify existing practices. The changes to the audit rules will not affect a significant number of plans of any size.

Paperwork Reduction Act

The information collection requirements under this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212–0009; expires 02/28/2011). 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.

PBGC needs premium-related information to identify the plan for which premiums are paid to PBGC, to verify the determination of the premium, and to help the PBGC determine the magnitude of its exposure in the event of plan termination.

The information collection requirements under the premium rates and premium payment regulations that OMB approved included the following changes from those previously approved:

• Filers will be required to include in the addresses of the plan sponsor and plan administrator the countries where the addresses are located (if other than the United States).

• Filers will no longer be required to report coverage status.

• Filers will be required to provide the plan contact's e-mail address (if any).

• Filers will no longer be required to provide information on participant notices under ERISA section 4011 (that requirement having been eliminated by PPA 2006).

• Filers will be required to report if they qualify for premium proration (for a short plan year) and if so, to report the number of months in the proration period. Proration will be reported separately from credits. (This change will not apply to 2008 estimated flat-rate premium filings.)

• Filers will be required to report plan size (small, mid-size, or large) based on the prior year's participant count (or report that the plan is filing for the first time).

• Filers will have an opportunity to make alternative premium funding target elections as part of the premium filing.

• Filers will be required to report the participant count date.

• Most existing VRP information items will be eliminated in connection with the implementation of the new VRP rules. Items retained will be the identification of any applicable VRP exemption and the amount of UVBs.

• New VRP data required will be qualification for the VRP cap for certain plans of small employers, the UVB valuation date, the premium funding target as of the UVB valuation date, the premium funding target method (standard or alternative), whether the reported premium funding target is an estimate, the segment rates used to compute the premium funding target (or indication that the full yield curve was used), the market value of assets as of the UVB valuation date, the (unprorated) VRP cap (for plans eligible for the cap), and the (unprorated) uncapped VRP (for plans not eligible for the cap).

• For a final filing, filers will be required to report the date and type of event that results in the cessation of the filing obligation.

• The existing item on transfers from disappearing plans will be replaced by two new items: information about transfers from other plans (whether disappearing or not) and information about transfers to other plans. (This change will not apply to 2008 estimated flat-rate premium filings.)

• For frozen plans, filers will be required to identify the type of freeze and its effective date.

• For amended filings, filers will be required to report any change in the beginning and ending dates of the plan year being reported and any change in the plan identifying numbers being reported from those in the original filing.

List of Subjects

29 CFR Part 4006

Pension insurance, Pensions.

29 CFR Part 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ For the reasons given above, 29 CFR parts 4006 and 4007 are amended as follows.

PART 4006—PREMIUM RATES

■ 1. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

■ 2. In § 4006.2:

■ a. The introductory text is amended by removing the words ''chapter: Code'' and adding in their place the words ''chapter: benefit liabilities, Code''; and by removing the words ''irrevocable commitment, multiemployer plan'' and adding in their place the words ''irrevocable commitment, mandatory employee contributions, multiemployer plan''.

■ b. The definition of ''new plan'' is amended by removing the words ''became effective within'' and adding in their place the words ''did not exist before''.

■ c. The definition of ''short plan year'' is revised, and four new definitions are added, to read as follows:

§ 4006.2 Definitions.

* * * * *

Participant count of a plan for a plan year means the number of participants in the plan on the participant count date of the plan for the plan year.

Participant count date of a plan for a plan year means the date provided for in § 4006.5(c), (d), or (e) as applicable.

Premium funding target has the meaning described in § 4006.4(b)(1).

* * * * *

Short plan year means a plan year of coverage that is shorter than a normal plan year.

UVB valuation date of a plan for a plan year means the plan's funding valuation date for the plan year determined in accordance with ERISA section 303(g)(2).

■ 3. In § 4006.3:

■ a. Paragraph (a) is amended by removing the words ''last day of the plan year preceding the premium payment year,'' and adding in their place the words ''participant count date''.

■ b. Paragraph (b)(1) is amended by removing the words ''$1,000 of a single-employer plan's unfunded vested benefits'' and adding in their place the words ''$1,000 (or fraction thereof) of a single-employer plan's unfunded vested benefits for the premium payment year''.

■ 4. Section 4006.4 is revised to read as follows:

§ 4006.4 Determination of unfunded vested benefits.

(a) *In general.* Except as provided in the exemptions and special rules under § 4006.5, the amount of a plan's unfunded vested benefits for the premium payment year is the excess (if any) of the plan's premium funding target for the premium payment year (determined under paragraph (b) of this section) over the fair market value of the plan's assets for the premium payment year (determined under paragraph (c) of this section). Unfunded vested benefits for the premium payment year must be determined as of the plan's UVB valuation date for the premium payment year, based on the plan provisions and the plan's population as of that date. The determination must be made in a manner consistent with generally accepted actuarial principles and practices.

(b) *Premium funding target*— (1) *In general.* A plan's premium funding target is its standard premium funding target under paragraph (b)(2) of this section or, if an election to use the alternative premium funding target under § 4006.5(g) is in effect, its alternative premium funding target under § 4006.5(g).

(2) *Standard premium funding target.* A plan's standard premium funding target under this section is the plan's funding target as determined under ERISA section 303(d) (or 303(i), if applicable) for the premium payment year using the same assumptions that are used for funding purposes, except that—

(i) Only vested benefits are taken into account, and

(ii) The interest rates to be used are the segment rates for the month preceding the month in which the premium payment year begins that are determined in accordance with ERISA section 4006(a)(3)(E)(iv). These are the rates that would be determined under ERISA section 303(h)(2)(C) if ERISA section 303(h)(2)(D) were applied by using the monthly yields for the month preceding the month in which the premium payment year begins on investment grade corporate bonds with varying maturities and in the top 3 quality levels rather than the average of such yields for a 24-month period. For this purpose, the transition rule in ERISA section 303(h)(2)(G) is inapplicable.

(c) *Value of assets.* The fair market value of a plan's assets under this section is determined in the same manner as for funding purposes under ERISA section 303(g)(3) and (4), except that averaging as described in ERISA section 303(g)(3)(B) must not be used and prior year contributions are included only to the extent received by the plan by the date the premium is filed. Contribution receipts must be accounted for as described in ERISA section 303(g)(4), using effective interest rates determined under ERISA section 303(h)(2)(A) (not rates that could be determined based on the segment rates described in paragraph (b)(2) of this section).

(d) ''*Vested.*'' For purposes of ERISA section 4006(a)(3)(E), this part, and part 4007 of this chapter:

(1) A participant's benefit that is otherwise vested does not fail to be vested merely because of the circumstance that the participant is living, in the case of the following death benefits:

(i) A qualified pre-retirement survivor annuity (as described in ERISA section 205(e)), (ii) A post-retirement survivor annuity that pays some or all of the participant's benefit amount for a fixed or contingent period (such as a joint and survivor annuity or a certain and continuous annuity), and

(iii) A benefit that returns the participant's accumulated mandatory employee contributions (as described in ERISA section 204(c)(2)(C)).

(2) A benefit otherwise vested does not fail to be vested merely because of the circumstance that the benefit may be eliminated or reduced by the adoption of a plan amendment or by the occurrence of a condition or event (such as a change in marital status).

(3) A participant's pre-retirement lump-sum death benefit (other than a benefit described in paragraph (d)(1)(iii) of this section) is not vested if the participant is living.

(4) A participant's disability benefit is not vested if the participant is not disabled.

(e) Illustration of vesting principles. The vesting principles set forth in paragraph (d) of this section are illustrated by the following examples:

(1) Example 1. Under Plan A, if a participant retires at or after age 55 but before

age 62, the participant receives a temporary supplement from retirement until age 62. The supplement is not a QSUPP (qualified social security supplement), as defined in Treasury Reg. § 1.401(a)(4)–12, and is not protected under Code section 411(d)(6). The temporary supplement is considered vested, and its value is included in the premium funding target, for each participant who, on the UVB valuation date, is at least 55 but less than 62, and thus eligible for the supplement. The calculation is unaffected by the fact that the plan could be amended to remove the supplement after the UVB valuation date.

(2) Example 2. Plan B provides a qualified pre-retirement survivor annuity (QPSA) upon the death of a participant who has five years of service, at no charge to the participant. The QPSA is considered vested, and its value is included in the premium funding target, for each participant who, on the UVB valuation date, has five years of service and is thus eligible for the QPSA. The calculation is unaffected by the fact that the participant is alive on that date.

(f) *Plans to which special funding rules apply.* Unfunded vested benefits must be determined (whether the standard premium funding target or the alternative premium funding target is used) without regard to the following provisions of the Pension Protection Act of 2006 (Pub. L. 109–280):

(1) Section 104, dealing generally with plans of cooperatives.

(2) Section 105, dealing generally with plans affected by settlement agreements with PBGC.

(3) Section 106, dealing generally with plans of government contractors.

(4) Section 402, dealing generally with plans of commercial passenger airlines and airline caterers.

■ 5. In § 4006.5:

■ a. Paragraph (a) introductory text is amended by removing the words ''paragraphs (a)(1)–(a)(5)'' and adding in their place the words ''paragraphs (a)(1)–(a)(3)''; and by removing the words ''determine its unfunded vested benefits'' and adding in their place the words ''determine or report its unfunded vested benefits''.

■ b. Paragraphs (a)(1) and (a)(5) are removed.

■ c. Paragraphs (a)(2), (a)(3), and (a)(4) are redesignated as paragraphs (a)(1), (a)(2), and (a)(3) respectively.

■ d. Redesignated paragraph (a)(1) is amended by removing the words ''benefit liabilities'' from the heading and adding in their place the word ''participants''; by removing the word ''did'' and adding in its place the word ''does''; and by removing the words ''last day of the plan year preceding the premium payment year'' and adding in their place the words ''UVB valuation date''.

■ e. Redesignated paragraph (a)(2) is amended by removing the figures ''412(i)'' where they appear once in the heading and once in the body of the paragraph and adding in their place the figures ''412(e)(3)''; by removing the word ''was'' and adding in its place the word ''is''; and by removing the words ''last day of the plan year preceding the premium payment year'' and adding in their place the words ''UVB valuation date''.

■ f. Redesignated paragraph (a)(3)(ii) is amended by removing the words ''last day of the plan year preceding the premium payment year'' and adding in their place the words ''UVB valuation date''.

■ g. The heading of paragraph (e) is amended by removing the words ''*Special determination date rule for*'' and adding in their place the words ''*Participant count date;*''.

■ h. Paragraph (e)(2) introductory text is amended by removing the words ''paragraph (e)(2) if'' and adding in their place the words ''paragraph (e)(2) for a plan year if''.

■ i. Paragraph (e)(2)(ii) is amended by removing the words ''on the first day of the plan's premium payment year'' and adding in their place the words ''at the beginning of the plan year''.

■ j. Paragraph (f) introductory text is amended by removing the words ''year as described'' and adding in their place the words ''year described''.

■ k. Paragraphs (b), (c), (d), (e)(1), and (f)(1) are revised, and paragraph (g) is added, to read as follows:

§ 4006.5 Exemptions and special rules.

* * * * *

(b) *Reporting exemption for plans paying capped variable-rate premium.* A plan that qualifies for the variable-rate premium cap described in ERISA section 4006(a)(3)(H) is not required to determine or report its unfunded vested benefits under § 4006.4 if it reports that it qualifies for the cap and pays a variable-rate premium equal to the amount of the cap.

(c) *Participant count date; in general.* Except as provided in paragraphs (d) and (e) of this section, the participant count date of a plan for a plan year is the last day of the prior plan year.

(d) *Participant count date; new and newly-covered plans.* The participant count date of a new plan or a newly-covered plan for a plan year is the first day of the plan year. For this purpose, a new plan's first plan year begins on the plan's effective date.

(e) *Participant count date; certain mergers and spinoffs.*

(1) The participant count date of a plan described in paragraph (e)(2) of this section for a plan year is the first day of the plan year.

* * * * *

(f) *Proration for certain short plan years.* * * *

(1) *New or newly covered plan.* A new plan becomes effective less than one full year before the beginning of its second plan year, or a newly-covered plan becomes covered on a date other than the first day of its plan year. (Cessation of coverage before the end of a plan year does not give rise to proration under this section.)

* * * * *

(g) *Alternative premium funding target.* A plan's alternative premium funding target is the vested portion of the plan's funding target under ERISA section 303(d)(1) that is used to determine the plan's minimum contribution under ERISA section 303 for the premium payment year, that is, the amount that would be determined under ERISA section 303(d)(1) if only vested benefits were taken into account. A plan may elect to compute unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2), and may revoke such an election, in accordance with the provisions of this paragraph (g). A plan must compute its unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2) if an election under this paragraph (g) to use the alternative premium funding target is in effect for the premium payment year.

(1) An election under this paragraph (g) to use the alternative premium funding target for a plan must specify the first plan year to which it applies and must be filed by the plan's variable-rate premium due date for that plan year. The first plan year to which the election applies must begin at least five years after the first plan year to which a revocation of a prior election applied. The election will be effective—

(i) For the plan year for which made and for all plan years that begin less than five years thereafter, and

(ii) For all succeeding plan years until the first plan year to which a revocation of the election applies.

(2) A revocation of an election under this paragraph (g) to use the alternative premium funding target for a plan must specify the first plan year to which it applies and must be filed by the plan's variable-rate premium due date for that plan year. The first plan year to which the revocation applies must begin at least five years after the first plan year to which the election applied.

■ 6. In paragraph (c) of § 4006.6:
■ a. Example 1 is amended by removing the words ''July 1, 2000'' and adding in their place the words ''July 1, 2008''; by removing the words ''December 31, 2000'' where they appear twice and adding in their place the words ''December 31, 2008''; by removing the words ''snapshot date'' and adding in their place the words ''participant count date''; and by removing the words ''2001 premium'' where they appear twice and adding in their place the words ''2009 premium''.
■ b. Example 2 is amended by removing the words ''February 1, 2002'' where they appear twice and adding in their place the words ''February 1, 2010''; by removing the words ''July 1, 2000'' and adding in their place the words ''July 1, 2008''; by removing the words ''July 1, 2001'' and adding in their place the words ''July 1, 2009''; by removing the words ''December 31, 2002'' and adding in their place the words ''December 31, 2010''; by removing the words ''snapshot date'' and adding in their place the words ''participant count date''; and by removing the words ''2003 premium'' where they appear twice and adding in their place the words ''2011 premium''.
■ c. Example 3 is amended by removing the words ''January 1, 2004'' and adding in their place the words ''January 1, 2012''; by removing the words ''December 30, 2005'' where they appear twice and adding in their place the words ''December 30, 2013''; by removing the words ''January 9, 2006'' and adding in their place the words ''January 9, 2014''; by removing the words ''December 31, 2005'' and adding in their place the words ''December 31, 2013''; by removing the words ''snapshot date'' and adding in their place the words ''participant count date''; and by removing the words ''2006 premium'' where they appear twice and adding in their place the words ''2014 premium''.
■ d. Example 4 is amended by removing the words ''January 1, 2006'' and adding in their place the words ''January 1, 2014''; by removing the words ''December 31, 2005'' and adding in their place the words ''December 31, 2013''; and by removing the words ''2006 premium'' and adding in their place the words ''2014 premium''.

PART 4007—PAYMENT OF PREMIUMS

■ 7. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

■ 8. In § 4007.2:
■ a. Paragraph (a) is amended by removing the word ''insurer,''; and by removing the words ''multiemployer plan,''.
■ b. Paragraph (b) is amended by removing the words ''participant, premium payment year'' and adding in their place the words ''participant, participant count, premium funding target, premium payment year''.
■ 9. In § 4007.3:
■ a. The first three sentences (ending with the words ''prescribed in the instructions.'') of the text of § 4007.3 are designated as paragraph (a), and the remainder of the text (beginning with the words ''Information must be filed electronically'') is designated as paragraph (b).
■ b. Newly designated paragraph (a) is amended by adding the heading ''In general.''; and by removing the words ''estimation, declaration, reconciliation, and payment'' and adding in their place the words ''estimation, determination, declaration, and payment''.
■ c. Newly designated paragraph (b) is amended by adding the heading ''*Electronic filing.*''; by removing the words ''requirement to file electronically does not apply'' and adding in their place the words ''requirement to file electronically applies to all estimated and final flat-rate and variable-rate premium filings (including amended filings) but does not apply''; and by adding two new sentences to the end of the paragraph to read as follows:

§ 4007.3 Filing requirement; method of filing.

* * * * *

(b) *Electronic filing.* * * * Unless an exemption applies, filing on paper or in any other manner other than by a prescribed electronic filing method does not satisfy the requirement to file. Failure to file electronically as required is subject to penalty under ERISA section 4071.

■ 10. In § 4007.7, paragraph (c) is removed, and paragraph (b) is revised to read as follows:

§ 4007.7 Late payment interest charges.

* * * * *

(b) With respect to any PBGC bill for a premium underpayment and/or interest thereon, interest will accrue only until the date of the bill if the premium underpayment and interest billed are paid within 30 days after the date of the bill.

■ 11. In § 4007.8:
■ a. Paragraph (a) introductory text is amended by adding at the end of the paragraph the words ''The penalty rate is—''.
■ b. Paragraph (a)(1) introductory text and paragraph (a)(2) are removed, and paragraphs (a)(1)(i) and (a)(1)(ii) are redesignated as paragraphs (a)(1) and (a)(2) respectively.
■ c. Paragraph (f) is amended by removing the figures ''§ 4007.11(a)(2)(iii)'' and adding in their place the figures ''§ 4007.11(a)(3)(iii)''; by removing the words ''filing is due if fewer'' and adding in their place the words ''filing is due if either—Fewer''; by removing the period at the end of paragraph (f) and adding in its place '', or''; and by designating as paragraph (f)(1) the portion of the text of paragraph (f) that begins with the words ''Fewer than 500''.
■ d. Paragraph (i) is amended by removing the figures ''§ 4007.11(a)(2)(iii)'' and adding in their place the figures ''§ 4007.11(a)(3)(iii)''.
■ e. New paragraphs (f)(2) and (j) are added to read as follows:

§ 4007.8 Late payment penalty charges.

* * * * *

(f) *Safe-harbor relief for certain large plans.* * * *

* * * * *

(2) The due date for paying the flat-rate premium for the plan year preceding the premium payment year is later than the due date for paying the flat-rate premium for the premium payment year.

* * * * *

(j) *Variable-rate premium penalty relief.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(ii) or (a)(3)(iv). PBGC will waive the penalty on any underpayment of the variable-rate premium for the period that ends on the earlier of the date the reconciliation filing is due or the date the reconciliation filing is made if, by the date the variable-rate premium for the premium payment year is due under § 4007.11(a)(2)(i) or (a)(3)(ii)—

(1) The plan administrator reports—

(i) The fair market value of the plan's assets for the premium payment year, and

(ii) An estimate of the plan's premium funding target for the premium payment year that is certified by an enrolled actuary to be a reasonable estimate that takes into account the most current data available to the enrolled actuary and that has been determined in accordance with generally accepted actuarial principles and practices; and

(2) The plan administrator pays at least the amount of variable-rate premium determined from the value of assets and estimated premium funding target so reported.

■ 12. In § 4007.10:

■ a. Paragraph (c)(3) is amended by removing the words ''that collection of unpaid premiums (or any associated interest or penalties) would otherwise be jeopardized'' and adding in their place the words ''that the interests of PBGC may be prejudiced by a delay in the receipt of the information (e.g., where collection of unpaid premiums (or any associated interest or penalties) would otherwise be jeopardized)''.

■ b. Paragraphs (a)(1), (b), and (c)(1) are revised, and paragraph (a)(4) is added, to read as follows:

§ 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments*—(1) *In general.* The designated recordkeeper under paragraph (a)(3) of this section must retain, for a period of six years after the premium due date, all plan records that are necessary to establish, support, and validate the amount of any premium required to be paid and any information required to be reported (''premium-related information'') under this part and part 4006 of this chapter and under PBGC's premium filing instructions. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that support and demonstrate the calculation of unfunded vested benefits.

* * * * *

(4) *Records.* (i) Records that must be retained pursuant to paragraph (a)(1) of this section include, but are not limited to, records prepared by the plan administrator, a plan sponsor, an employer required to contribute to the plan with respect to its employees, an enrolled actuary performing services for the plan, or an insurance carrier issuing any contract to pay benefits under the plan.

(ii) For purposes of this section, ''records'' include, but are not limited to, plan documents; participant data records; personnel and payroll records; actuarial tables, worksheets, and reports; records of computations, projections, and estimates; benefit statements, disclosures, and applications; financial and tax records; insurance contracts; records of plan procedures and practices; and any other records, whether in written, electronic, or other format, that are relevant to the determination of the amount of any premium required to be paid or any premium-related information required to be reported.

(iii) When a record to be produced for PBGC inspection and copying exists in more than one format, it must be produced in the format specified by PBGC.

(b) *PBGC audit*—(1) *In general.* In order to determine the correctness of any premium paid or premium-related information reported or to determine the amount of any premium required to be paid or any premium-related information required to be reported, PBGC may—

(i) Audit any premium filing,

(ii) Inspect and copy any records that are relevant to the determination of the amount of any premium required to be paid and any premium-related information required to be reported, including (without limitation) the records described in paragraph (a) of this section, and

(iii) Require disclosure of any manual or automated system or process used to determine any premium paid or premium-related information reported, and demonstration of its operation in order to permit PBGC to determine the effectiveness of the system or process and the reliability of information produced by the system or process.

(2) *Deficiencies found on audit.* If, upon audit, PBGC determines that a premium due under this part was underpaid, late payment interest and penalty charges will apply as provided for in this part. If, upon audit, PBGC determines that required information was not timely and accurately reported, a penalty may be assessed under ERISA section 4071.

(3) *Insufficient records.* In determining the premium due, if, in the judgment of PBGC, a plan's records fail to establish the participant count or (for a single-employer plan) the plan's unfunded vested benefits for any premium payment year, PBGC may rely on data it obtains from other sources (including the IRS and the Department of Labor) for presumptively establishing the participant count and/or unfunded vested benefits for premium computation purposes.

(c) *Providing record information*—(1) *In general.* A designated recordkeeper must make the records retained pursuant to paragraph (a) of this section available to PBGC promptly upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location). If PBGC requests in writing that records retained pursuant to paragraph (a) of this section, or information in such records, be submitted to PBGC, the designated recordkeeper must submit the requested materials to PBGC either electronically or by hand, mail, or commercial delivery service within 45 days of the date of PBGC's request therefor, or by a different time specified in the request.

* * * * *

■ 13. In § 4007.11, paragraphs (a), (b), and (c) are revised to read as follows:

§ 4007.11 Due dates.

(a) *In general.* For flat-rate and variable-rate premiums, the premium filing due date for small plans is prescribed in paragraph (a)(1) of this section, the premium filing due date for mid-size plans is prescribed in paragraph (a)(2) of this section, and the premium filing due dates for large plans are prescribed in paragraph (a)(3) of this section.

(1) *Small plans.* If the plan had fewer than 100 participants for whom flat-rate premiums were payable for the plan year preceding the premium payment year, the due date is the last day of the sixteenth full calendar month following the end of the plan year preceding the premium payment year.

(2) *Mid-size plans.* If the plan had 100 or more but fewer than 500 participants for whom flat-rate premiums were payable for the plan year preceding the premium payment year:

(i) The due date is the fifteenth day of the tenth full calendar month following the end of the plan year preceding the premium payment year.

(ii) If the premium funding target is not known by the date specified in paragraph (a)(2)(i) of this section, a reconciliation filing and any required variable-rate premium payment must be made by the last day of the sixteenth full calendar month following the end of the plan year preceding the premium payment year.

(3) *Large plans.* If the plan had 500 or more participants for whom flat-rate premiums were payable for the plan year preceding the premium payment year:

(i) The due date for the flat-rate premium required by § 4006.3(a) of this chapter is the last day of the second full calendar month following the close of the plan year preceding the premium payment year.

(ii) The due date for the variable-rate premium required by § 4006.3(b) of this chapter for single-employer plans is the fifteenth day of the tenth full calendar month following the end of the plan year preceding the premium payment year.

(iii) If the participant count is not known by the date specified in paragraph (a)(3)(i) of this section, a reconciliation filing and any required flat-rate premium payment must be made by the date specified in paragraph (a)(3)(ii) of this section.

(iv) If the premium funding target is not known by the date specified in paragraph (a)(3)(ii) of this section, a reconciliation filing and any required variable-rate premium payment must be made by the last day of the sixteenth full calendar month following the end of the plan year preceding the premium payment year.

(b) *Due dates for plans that change plan years.* For any plan that changes its plan year, the due date or due dates for the flat-rate premium and any variable-rate premium for the short plan year are as specified in paragraph (a)(1), (a)(2), (a)(3), or (c) of this section (whichever applies). For the plan year that follows a short plan year, each due date is the later of—

(i) The applicable due date specified in paragraph (a)(1), (a)(2), or (a)(3) of this section, or

(ii) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *Due dates for new and newly covered plans.* Notwithstanding paragraph (a) of this section, the due date for the flat-rate premium and any variable-rate premium for the first plan year of coverage of any new plan or newly covered plan is the latest of—

(1) The last day of the sixteenth full calendar month that began on or after the first day of the premium payment year (the effective date, in the case of a new plan), or

(2) 90 days after the date of the plan's adoption.

* * * * *

Issued in Washington, DC, this 17th day of March 2008.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E8–5712 Filed 3–20–08; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF THE TREASURY

Office of International Investment

31 CFR Part 800

Regulations Pertaining to Mergers, Acquisitions and Takeovers

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This final regulation amends regulations in part 800 of 31 CFR that implement section 721 of the Defense Production Act of 1950. The regulation amends a provision that pertains to the circumstances under which the Committee on Foreign Investment in the United States completes action following an investigation of a notified transaction, consistent with the amendments to section 721 made by the Foreign Investment and National Security Act of 2007 (''FINSA'').

DATES: Effective date: March 21, 2008.

FOR FURTHER INFORMATION CONTACT: Nova Daly, Deputy Assistant Secretary, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220; telephone: (202) 622–2752; or e-mail: *Nova.Daly@do.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 26, 2007, President Bush signed into law the Foreign Investment and National Security Act of 2007 (''FINSA'') (Pub. L. 110–49), which amends section 721 of the Defense Production Act of 1950 (50 U.S.C. App. 2170 *et seq.*) (''section 721''), to codify the structure, role, process, and responsibilities of the Committee on Foreign Investment in the United States (''CFIUS''). Section 721 requires that, upon receipt by Treasury of written notification of a ''covered transaction'' (*i.e.*, a merger, acquisition, or takeover by or with any foreign person that could result in foreign control of any person engaged in interstate commerce in the United States), the President, acting through CFIUS, shall review the transaction within 30 days to determine its effects on national security, based on any relevant factors, including several new factors FINSA added to an illustrative list contained in section 721. If, during its review, CFIUS determines that (1) the transaction threatens to impair U.S. national security and the threat has not yet been mitigated, (2) the lead agency recommends an investigation and CFIUS concurs, (3) the transaction would result in foreign government control, or (4) the transaction would result in the control of any U.S. critical infrastructure that could impair U.S. national security and the threat has not yet been mitigated, then CFIUS must conduct and complete within 45 days an investigation of the transaction. (The latter two grounds for an investigation do not mandate an investigation if the Secretary or Deputy Secretary of the Treasury and the equivalent lead agency counterparts jointly determine that the transaction will not impair U.S. national security.)

FINSA does not require CFIUS, upon completion or termination of an investigation, to refer a transaction to the President for a final decision. On January 23, 2008, President Bush signed Executive Order 13456 (further amending Executive Order 11858) that sets forth the circumstances under which a transaction shall be referred to the President for a final decision. Specifically, Section 6(c) of Executive Order 11858, as amended, provides that CFIUS ''shall send a report to the President requesting the President's decision with respect to a review or investigation of a transaction in the following circumstances:

(i) The Committee recommends that the President suspend or prohibit the transaction;

(ii) The Committee is unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction; or

(iii) The Committee requests that the President make a determination with regard to the transaction.''

The current regulations, by contrast, require CFIUS, upon completion or termination of any investigation, to report to the President and include a recommendation for action. This final regulation conforms the regulations to FINSA and Executive Order 11858, as amended, by removing the requirement to report to the President following completion or termination of an investigation, except in the circumstances set forth in Executive Order 11858.

Procedural Matters: It has been determined that this rule is not a significant regulatory action as defined in Executive Order 12866; therefore, a regulatory assessment is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to 5 U.S.C. 553(a)(1), this final rule relates to a foreign affairs function of the United States, and therefore is not subject to the delayed effective date provisions of the Administrative Procedures Act.

Section 709 of the Defense Production Act (DPA) (50 U.S.C. App. 2159) states that any regulation issued under the DPA shall be published in the **Federal Register** and opportunity for public comment shall be provided for not less than 30 days. In addition, FINSA requires regulations that carry out section 721 to be promulgated subject to notice and comment. However, this regulation is not being issued pursuant to the DPA or FINSA. Consequently, the

Department is amending this regulation without prior notice and comment. This final rule merely removes an internal CFIUS procedural requirement that was neither required by the DPA nor by any subsequent amendment, and brings the regulations in line with the newly amended Executive Order. The procedural change will affect only CFIUS in its processing of cases and will not affect parties to notified transactions. Accordingly, the Department finds that this final rule is not subject to the notice and comment provision of the DPA or FINSA.

List of Subjects in 31 CFR Part 800

Foreign investments in United States, Investigations, National defense, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 800 as follows:

PART 800—REGULATIONS PERTAINING TO MERGERS, ACQUISITIONS AND TAKEOVERS BY FOREIGN PERSONS

■ 1. The authority citation for part 800 is revised to read as follows:

Authority: Section 721 of Pub. L. 100–418, 102 Stat. 1107, made permanent law by section 8 of Pub. L. 102–99, 105 Stat. 487 (50 U.S.C. App. 2170) and amended by section 837 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, 106 Stat. 2315, 2463 and Pub. L. 110–49, 121 Stat 246; E.O. 11858, as amended by E.O. 12661, and further amended by Executive Order 13456.

■ 2. Amend § 800.504 by revising paragraph (b) to read as follows:

§ 800.504 Completion or termination of investigation and report to the President.

* * * * *

(b) In circumstances when the Committee sends a report to the President requesting the President's decision upon completion or termination of an investigation, such report shall include information relevant to subparagraph (d)(4) of section 721, and shall present the Committee's recommendation. If the Committee is unable to reach a decision to present a single recommendation to the President, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for decision.

Dated: March 7, 2008.

Clay Lowery,

Assistant Secretary for International Affairs.

[FR Doc. E8–5707 Filed 3–20–08; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 3

[USCG–2008–0073]

RIN 1625–ZA15

Sector Anchorage Western Alaska Marine Inspection and Captain of the Port Zones; Technical Amendment

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes a technical change in the boundary description of the Western Alaska Marine Inspection and Captain of the Port Zones, within the Seventeenth Coast Guard District's Sector Anchorage. This rule will have no substantive effect on the regulated public.

DATES: This final rule is effective March 21, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0073 and are available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Commander Todd Styrwold, Coast Guard, telephone 202–372–2687. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), the Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements because this change involves agency organization, and good cause exists for not publishing an NPRM because the change made is non-substantive. This rule only aligns regulatory language with existing Coast Guard internal documents that establish the boundaries of the affected zones. The change will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

In the **Federal Register** of July 2, 2007 (72 FR 36318), the Coast Guard issued a final rule to align various regulations with internal documents establishing a new system of sector commands. The regulation describing the boundaries of the Western Alaska Marine Inspection and Captain of the Port Zones, within the Seventeenth Coast Guard District's Sector Anchorage, contained an error. Due to the length of time since the erroneous description was issued, the Coast Guard is issuing a technical amendment, instead of a correction notice, to correct the description. The correction is informational and will have no substantive effect on the regulated public.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. As this rule involves internal agency organization and non-substantive changes, it will not impose any costs on the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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. This rule does not require a general NPRM and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this 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 concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a) and (b), of the Instruction from further environmental documentation because this rule involves editorial, procedural, and internal agency functions. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 3 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, SECTORS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

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

Authority: 14 U.S.C. 92; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1, para. 2(23).

■ 2. Amend § 3.85–15 by revising paragraph (a) to read as follows:

§ 3.85–15 Sector Anchorage: Western Alaska Marine Inspection Zone and Captain of the Port Zones; Marine Safety Unit Valdez: Prince William Sound Marine Inspection and Captain of the Port Zones.

* * * * *

(a) Sector Anchorage's Western Alaska Marine Inspection and Captain of the Port Zones start near the Canadian border on the EEZ at latitude 60°18′24″ N, longitude 141°00′00″ W, proceeding southwest to latitude 60°01′18″ N, longitude 142°00′00″ W; thence south to the outermost extent of the EEZ at latitude 56°14′50″ N, longitude 142°00′00″ W; thence southwest along the outermost extent of the EEZ to latitude 51°22′15″ N, longitude 167°38′28″ E; thence northeast along the outermost extent of the EEZ to latitude 65°30′00″ N, longitude 168°58′37″ W; thence north along the outermost extent of the EEZ to latitude 72°46′29″ N, longitude 168°58′37″ W; thence northeast along the outermost extent of the EEZ to latitude 74°42′35″ N, longitude 156°28′30″ W; thence southeast along the outermost extent of the EEZ to latitude 72°56′49″ N, longitude 137°34′08″ W; thence south along the outermost extent of the EEZ to the coast near the Canadian border at latitude 69°38′48.88″ N, longitude 140°59′52.7″ W; thence south along the United States-Canadian boundary to the point of origin; and in addition, all the area described in paragraph (b) of this section.

* * * * *

Dated: March 18, 2008.

Steve Venckus,

Chief, Office of Regulations and Administrative Law (CG–0943).

[FR Doc. E8–5775 Filed 3–20–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0879; FRL–8533–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). On September 7, 2006, Ohio requested approval of revisions to its open burning standards. In order to clarify the open burning rules, Ohio added requirements for specific types of burning that were previously not addressed. The state also added or refined some of the definitions and slightly changed some of the existing rules. The revisions were made to increase clarity of Ohio's open burning rules. EPA finds that the revisions are consistent with the CAA.

DATES: This direct final rule will be effective May 20, 2008, unless EPA receives adverse comments by April 21, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0879, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0879. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

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

I. What Is EPA Approving?
II. What Is the Background for This Action?
III. What Is EPA's Analysis of the State Submission?
IV. What Action Is EPA Taking?
V. Statutory and Executive Order Reviews

I. What Is EPA Approving?

EPA is approving the Ohio SIP revisions submitted on September 7, 2006, which change its open burning standards. Standards for new open burning purposes were added to Ohio Administrative Code (OAC) 3745–19. The rules were added for emergency burning, recreational fires, hazardous material disposal, and firefighting training. The conditions under which open burning of storm debris is allowed are stated. A definition for emergency burning was added. Minor revisions to some other definitions and to notification requirements were made to enhance clarity. Specifically, EPA is approving revisions to OAC 3745–19 Sections 1, 2, 3 (including Appendix), 4, and 5.

II. What Is the Background for this Action?

Ohio conducted a periodic review of its open burning standards, OAC 3745–19. The state determined that rewording portions of the rules and adding language for new types of burning would clarify the rules. Questions from the regulated community and field staff led to the revisions. The standards the state added explicitly list the requirements for each type of burning.

III. What Is EPA's Analysis of the State Submission?

Ohio made revisions to its open burning rules with the intent to improve rule clarity. It added a definition of emergency burning that lists six distinct disaster types. This sufficiently limits the types of events that could lead to emergency burning. Ohio also declared the conditions for special approvals for the open burning of storm debris.

The state also added requirements for new burning types. The new requirements provide restrictions that are appropriate for the type of burning being conducted. Requirements were added for recreational fires such as campfires, emergency disposal of hazardous materials, fire extinguisher training, fire department training burns, and for emergency burning. The specific requirements for certain types of burning clarify the standards that apply to those burns.

The emergency burning situations that do not need a permit or that only

need oral permission are clearly stated. Under the rules, written permission will follow oral permission, but the burning can proceed prior to the written permission being issued. This allows for emergency burning that protects public health and welfare to proceed without unnecessary delay. The strict definition of emergency burning should prevent an overly broad application of the emergency burning provisions. The revised rules make it clear when a burning permit is not required and what restrictions apply to several types of burning. This should improve compliance and aid enforcement of Ohio's open burning standards.

IV. What Action Is EPA Taking?

EPA is approving revisions to the Ohio SIP. The revisions were submitted on September 7, 2006. Specifically, EPA is approving the revisions to OAC Chapter 3745–19, Sections 1 through 5 including the Section 3 Appendix. The changes to Ohio's open burning regulations were made to increase the clarity of regulations particularly for select types of burning. Specific regulations were added for emergency burning, recreational fires, hazardous material disposal, and firefighting training.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and do not anticipate adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective May 20, 2008 without further notice unless we receive relevant adverse written comments by April 21, 2008. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective May 20, 2008.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13132: Federalism

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

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

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

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 20, 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 in 40 CFR Part 52

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

Dated: February 15, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.

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

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(143) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(143) On September 7, 2006, Ohio submitted revisions to Ohio Administrative Code Chapter 3745–19, Rules 3745–19–01 through 3745–19–05 including the 3754–19–03 Appendix. The revisions update Ohio's open burning regulations. Ohio added requirements for specific types of burning: emergency burning, recreational fires, hazardous material disposal, and firefighting training. The State also added or refined some of the definitions.

(i) Incorporation by reference.

(A) Ohio Administrative Code Chapter 3745: Ohio Environmental Protection Agency, Chapter 19: Open Burning Standards, Rule 3745–19–01: Definitions, Rule 3745–19–02: Relations to Other Prohibitions, Rule 3745–19–03: Open Burning in Restricted Areas with Appendix ''Open Burning of Storm Debris Conditions'', Rule 3745–19–04: Open Burning in Unrestricted Areas, and Rule 3745–19–05: Permission to Individuals and Notification to the Ohio EPA. The rules were effective on July 7, 2006.

(B) June 27, 2006, ''Director's Final Findings and Orders'', signed by Joseph P. Koncelik, Director, Ohio Environmental Protection Agency, adopting rules 3745–19–01, 3745–19–02, 3745–19–03, 3745–19–04, and 3745–19–05.

[FR Doc. E8–5667 Filed 3–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2006–0546; FRL–8534–4]

Approval and Promulgation of Ohio SO2 Air Quality Implementation Plans and Designation of Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving an assortment of rules, submitted by Ohio on May 16, 2006, as amended on December 10, 2007, setting limits on sulfur dioxide (SO2) emissions. Most significantly, EPA is approving rules for Franklin, Stark, and Summit Counties and for one source in Sandusky County, rules that supersede regulations that EPA promulgated in 1976 as a Federal Implementation Plan (FIP). This action provides that the entire FIP for SO2 in Ohio will now be superseded by approved State limits. Consequently, EPA is rescinding the entire FIP. EPA is also approving several substantive rule revisions and approving numerous Ohio rules that update various company names and unit identifications. Finally, since this rulemaking resolves the issues, which led a court to remand the designation for a portion of Summit County to EPA for reconsideration, EPA is promulgating a designation of attainment for the presently undesignated portion of this county.

DATES: This final rule is effective on April 21, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0546. 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 telephone John Summerhays, Environmental Scientist, at (312) 886–6067 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. Background for This Action
A. Summary of Ohio's Submittal
B. Summary of EPA's Proposed Rulemaking
C. Comments on EPA's Proposal
II. What Action Is EPA Taking?
III. Statutory and Executive Order Reviews.

I. Background for This Action

A. Summary of Ohio's Submittal

On May 16, 2006, Ohio EPA submitted 4 amended general SO2 rules and 40 county-specific SO2 rules. The county-specific rules include 4 rules that were submitted to supersede remaining FIP rules, 4 rules that include substantive revisions to the limits, and 32 rules, which only change company names or unit identifications or make other such administrative changes.

On July 24, 2007, Ohio submitted a letter identifying an error, noted by the company, in its SO2 limit for the facility in Stark County owned by the Canton Drop Forging and Manufacturing Company. On December 10, 2007, Ohio submitted rule revisions correcting this error. The correction of this error makes the Stark County rules consistent with Ohio's attainment demonstration for this county and fully approvable.

B. Summary of EPA's Proposed Rulemaking

EPA proposed action on this submittal on May 1, 2007. The notice of proposed rulemaking provided a summary of the full history of the regulation of SO2 emissions in the State of Ohio. Most notably, because Ohio withdrew its original SO2 rules from EPA consideration, EPA promulgated a FIP for SO2 on August 27, 1976, with numerous subsequent amendments. On September 12, 1979, Ohio submitted a plan with limits for SO2 in all 88 Ohio counties. For many of the counties, EPA approved Ohio's rules and provided that the approved rules would supersede the

corresponding federally promulgated rules. For other counties, EPA had concerns about the 1979 rules that Ohio addressed with subsequent submittals. With its May 2006 submittal, Ohio completed the process of submitting State rules to address all 88 counties in the state and to entirely supersede the FIP for SO2 in Ohio.

EPA's May 2007 proposed rulemaking included three components. First, EPA addressed the state rules that Ohio submitted. EPA proposed to approve all of the submitted rules. Second, EPA addressed the FIP rules that the state rules supersede. Since the submitted rules, along with rules approved previously, would complete the process of superseding the entire FIP, EPA proposed to rescind the entire FIP. Third, EPA addressed the designation of portions of Summit County, Ohio. Portions of this county have been undesignated as a result of a lawsuit that led the Court of Appeals for the Sixth Circuit to remand the designation to EPA pending resolution of modeling issues as to what emission limits are necessary to attain the standard. EPA believes that these issues are resolved by the modeling underlying Ohio's Summit County SO2 limits, and so EPA proposed to establish a designation of attainment for this county.

EPA's proposed rulemaking was based on EPA's belief that Ohio's rules were fully consistent with the attainment demonstrations for the applicable counties. Although Ohio's letter of July 25, 2007, indicates that this was not the case for one boiler at one source in Stark County, the revised rules that Ohio submitted on December 10, 2007, remove this discrepancy. As a result, EPA believes that Ohio's limits are now consistent with the applicable attainment demonstrations and are fully approvable.

C. Comments on EPA's Proposal

EPA received no comments on its proposed rulemaking.

II. What Action Is EPA Taking?

EPA believes that the SO2 rules submitted by Ohio meet applicable requirements, most notably by assuring attainment in the applicable areas. Therefore, EPA is approving the rules that Ohio submitted on May 16, 2006, as amended in the rule submitted on December 10, 2007. Specifically, EPA is fully approving 44 rules for SO2 in Ohio, including 4 general rules, 4 county-specific rules that replace FIP rules, 4 county-specific rules that incorporate substantive changes in limits, and 32 county-specific rules that reflect only administrative changes such as updating company names.

This action provides that state rules now supersede the last remaining portions of the FIP that was promulgated in 1976 et seq. Therefore, the FIP may be removed from the Code of Federal Regulations (CFR). Even after the FIP is removed, EPA may continue to take enforcement action against violations of the FIP limits discovered to have occurred during the time the FIP was in effect. Accordingly, EPA is rescinding the entirety of 40 CFR 52.1881(b) (including general provisions and county-specific limits) and of 40 CFR 52.1882 (providing FIP compliance schedules). Since EPA has now approved rules for the entire State, EPA is rescinding the sections of 40 CFR 52.1881(a) that identify counties for which EPA has taken no action or has disapproved the state's plan. EPA is replacing the listing of counties having approved rules with a rule-by-rule listing of approved rules.

Finally, EPA is also establishing a designation of attainment for the portion of Summit County that is presently undesignated. For simplicity, EPA is combining the designations into a single designation for the entire county rather than have separate designations for four subdivisions of the county. EPA is also rescinding the footnote that was inadvertently applied to the designation of Trumbull County.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action approves State rules regulating emissions of SO_2. The present action does not establish any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This action merely approves state rules regulating SO_2 emissions and imposes no additional requirements beyond those imposed by state rules. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for

which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any one year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. This action merely approves state rules regulating SO_2 emissions and imposes no additional requirements beyond those imposed by state rules. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because the state emission limitations being approved apply to industrial facilities, not to any small government.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This action merely approves state rules regulating SO2 emissions and imposes no additional requirements beyond those imposed by state rules. This action will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This action does not have ''Tribal implications'' as specified in Executive Order 13175. This action merely approves state rules regulating SO2 emissions in a state with no federally recognized tribes. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action merely approves state rules regulating SO2 emissions and imposes no additional requirements beyond those imposed by state rules. This action is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children.

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

This action is not subject to Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

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

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action approves emission limitations that are equivalent or more stringent than current SIP limitations, and so this rule will not have adverse effects on any population.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The 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). This action will be effective April 21, 2008.

L. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *May 20, 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, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Sulfur dioxide, Wilderness areas.

Dated: February 21, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, parts 52 and 81, chapter I, 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 K—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(136) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(136) On May 16, 2006, Ohio submitted numerous regulations for sulfur dioxide. These regulations were submitted to replace the remaining federally promulgated regulations, to make selected revisions to applicable limits, and to update company names and make other similar administrative changes. On December 10, 2007, Ohio submitted a corrected rule for Stark County.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rules 3745–18–01 ''Definitions and incorporation by reference.'', 3745–18–02 ''Ambient air quality standards; sulfur dioxide.'', 3745–18–03 ''Attainment dates and compliance time schedules.'', 3745–18–06 ''General emission limit provisions.'', 3745–18–10 ''Ashtabula County emission limits.'', 3745–18–11 ''Athens County emission limits.'', 3745–18–12 ''Auglaize County emission limits.'', 3745–18–17 ''Champaign County emission limits.'', 3745–18–18 ''Clark County emission limits.'', 3745–18–28 ''Erie County emission limits.'', 3745–18–29 ''Fairfield County emission limits.'', 3745–18–31 ''Franklin County emission limits.'', 3745–18–34 ''Geauga County emission limits.'', 3745–18–35 ''Greene County emission limits.'', 3745–18–37 ''Hamilton County emission limits.'', 3745–18–38 ''Hancock County emission limits.'', 3745–18–49 ''Lake County emission limits.'', 3745–18–50 ''Lawrence County emission limits.'', 3745–18–53 ''Lorain County emission limits.'', 3745–18–57 ''Marion County emission limits.'', 3745–18–61 ''Miami County emission limits.'', 3745–18–63 ''Montgomery County emission limits.'', 3745–18–66 ''Muskingum County emission limits.'', 3745–18–68 ''Ottawa County emission limits.'', 3745–18–69 ''Paulding County emission limits.'', 3745–18–72 ''Pike County emission limits.'', 3745–18–76 ''Richland County emission limits.'', 3745–18–77 ''Ross County emission limits.'', 3745–18–78 ''Sandusky County emission limits.'', 3745–18–79 ''Scioto County emission limits.'', 3745–18–80 ''Seneca County emission limits.'', 3745–18–81 ''Shelby County emission limits.'', 3745–18–83 ''Summit County emission limits.'', 3745–18–84 ''Trumbull County emission limits.'', 3745–18–85 ''Tuscarawas County emission limits.'', 3745–18–87 ''Van Wert County emission limits.'', 3745–18–90 ''Washington County emission limits.'', 3745–18–91 ''Wayne County emission limits.'', and 3745–18–93 ''Wood County emission limits.'', adopted on January 13, 2006, effective January 23, 2006.

(B) January 13, 2006, ''Director's Final Findings and Orders'', signed by Joseph P. Koncelik, Director, Ohio Environmental Protection Agency, adopting the rules identified in paragraph (A) above.

(C) Ohio Administrative Code Rules 3745–18–08 ''Allen County emission limits.'', 3745–18–15 ''Butler County emission limits.'', 3745–18–24 ''Cuyahoga County emission limits.'', and 3745–18–54 ''Lucas County emission limits.'', adopted on March 16, 2006, effective March 27, 2006.

(D) March 16, 2006, ''Director's Final Findings and Orders'', signed by Joseph P. Koncelik, Director, Ohio Environmental Protection Agency, adopting rules 3745–18–08, 3745–18–15, 3745–18–24, and 3745–18–54.

(E) Ohio Administrative Code Rule 3745–18–82 ''Stark County emission limits.'', adopted on November 28, 2007, effective December 8, 2007.

(F) November 28, 2007, ''Director's Final Findings and Orders'', signed by Chris Korleski, Director, Ohio Environmental Protection Agency, adopting rule 3745–18–82.

* * * * *

■ 3. Section 52.1881 is amended as follows:

■ a. By revising paragraph (a)(4).

■ b. By removing and reserving paragraphs (a)(7), (a)(8), and (b).

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

(a) * * *

(4) Notwithstanding the portions of Ohio's sulfur dioxide rules identified in this section that EPA has either disapproved or taken no action on, EPA has approved a complete plan addressing all counties in the State of Ohio. EPA has approved the following rules, supplemented by any additional approved rules specified in 40 CFR 52.1870:

(i) Rules as effective in Ohio on December 28, 1979: OAC 3745–18–04(A), (B), (C), (D)(1), (D)(4), (E)(1), and (H) (measurement methods), OAC 3745–18–05 (ambient monitoring), OAC 3745–18–09 (Ashland County), OAC 3745–18–13 (Belmont), OAC 3745–18–14 (Brown), OAC 3745–18–16 (Carroll), OAC 3745–18–19 (Clermont)—except for one paragraph approved later (CG&E Beckjord), OAC 3745–18–20 (Clinton), OAC 3745–18–21 (Columbiana), OAC 3745–18–23 (Crawford), OAC 3745–18–25 (Darke), OAC 3745–18–26 (Defiance), OAC 3745–18–27 (Delaware), OAC 3745–18–30 (Fayette), OAC 3745–18–32 (Fulton), OAC 3745–18–36 (Guernsey), OAC 3745–18–39 (Hardin), OAC 3745–18–40 (Harrison), OAC 3745–18–41 (Henry), OAC 3745–18–42 (Highland),

OAC 3745–18–43 (Hocking), OAC 3745–18–44 (Holmes), OAC 3745–18–45 (Huron), OAC 3745–18–46 (Jackson), OAC 3745–18–48 (Knox), OAC 3745–18–51 (Licking), OAC 3745–18–52 (Logan), OAC 3745–18–55 (Madison), OAC 3745–18–58 (Medina), OAC 3745–18–59 (Meigs), OAC 3745–18–60 (Mercer), OAC 3745–18–62 (Monroe), OAC 3745–18–64 (Morgan)—except for one paragraph approved later (OP Muskingum River), OAC 3745–18–65 (Morrow), OAC 3745–18–67 (Noble), OAC 3745–18–70 (Perry), OAC 3745–18–73 (Portage), OAC 3745–18–74 (Preble), OAC 3745–18–75 (Putnam), OAC 3745–18–86 (Union), OAC 3745–18–88 (Vinton), OAC 3745–18–89 (Warren), OAC 3745–18–92 (Williams), and OAC 3745–18–94 (Wyandot);

(ii) Rules as effective in Ohio on October 1, 1982: OAC 3745–18–64 (B) (OP Muskingum River in Morgan County);

(iii) Rules as effective in Ohio on May 11, 1987: OAC 3745–18–19(B) (CG&E Beckjord);

(iv) Rules as effective in Ohio on October 31, 1991: OAC 3745–18–04 (D)(7), (D)(8)(a) to (D)(8)(e), (E)(5), (E)(6)(a), (E)(6)(b), (F), and (I) (measurement methods);

(v) Rules as effective in Ohio on July 25, 1996: OAC 3745–18–47 (Jefferson);

(vi) Rules as effective in Ohio on March 21, 2000: OAC 3745–18–04(D)(8), (D)(9), and (E)(7) (measurement methods), OAC 3745–18–22 (Coshocton), OAC 3745–18–33 (Gallia), and OAC 3745–18–71 (Pickaway);

(vii) Rules as effective in Ohio on September 1, 2003: OAC 3745–18–04(F) and (J) (measurement methods), and OAC 3745–18–56 (Mahoning);

(viii) Rules as effective in Ohio on January 23, 2006: OAC 3745–18–01 (definitions), OAC 3745–18–02 (air quality standards), OAC 3745–18–03 (compliance dates), OAC 3745–18–06 (general provisions), OAC 3745–18–07 (Adams), OAC 3745–18–10 (Ashtabula), OAC 3745–18–11 (Athens), OAC 3745–18–12 (Auglaize), OAC 3745–18–17 (Champaign), OAC 3745–18–18 (Clark), OAC 3745–18–28 (Erie), OAC 3745–18–29 (Fairfield), OAC 3745–18–31 (Franklin), OAC 3745–18–34 (Geauga), OAC 3745–18–35 (Greene), OAC 3745–18–37 (Hamilton), OAC 3745–18–38 (Hancock), OAC 3745–18–49 (Lake), OAC 3745–18–50 (Lawrence), OAC 3745–18–53 (Lorain), OAC 3745–18–57 (Marion), OAC 3745–18–61 (Miami), OAC 3745–18–63 (Montgomery), OAC 3745–18–66 (Muskingum), OAC 3745–18–68 (Ottawa), OAC 3745–18–69 (Paulding), OAC 3745–18–72 (Pike), OAC 3745–18–76 (Richland), OAC 3745–18–77 (Ross), OAC 3745–18–78 (Sandusky), OAC 3745–18–79 (Scioto), OAC 3745–18–80 (Seneca), OAC 3745–18–81 (Shelby), OAC 3745–18–83 (Summit), OAC 3745–18–84 (Trumbull), OAC 3745–18–85 (Tuscarawas), OAC 3745–18–87 (Van Wert), OAC 3745–18–90 (Washington), OAC 3745–18–91 (Wayne), and OAC 3745–18–93 (Wood);

(ix) Rules as effective in Ohio on March 27, 2006: OAC 3745–18–08 (Allen), OAC 3745–18–15 (Butler), OAC 3745–18–24 (Cuyahoga), and OAC 3745–18–54 (Lucas); and

(x) Rule as effective in Ohio on December 8, 2007: OAC 3745–18–82 (Stark).

* * * * *

§ 52.1882 [Removed and Reserved]

■ 4. Section 52.1882 is removed and reserved.

PART 81—[AMENDED]

■ 5. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 6. The table in § 81.336 entitled ''Ohio—SO_2'' is amended by removing the three footnotes and revising the entries for Summit and Trumbull Counties to read as follows:

§ 81.336 Ohio.

OHIO.—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * *	*		*	*
Summit County				X
Trumbull County				X
* * * *	*		*	*

* * * * *

[FR Doc. E8–5666 Filed 3–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R06–OAR–2007–0967; FRL–8544–6]

Determination of Nonattainment and Reclassification of the Baton Rouge 8-Hour Ozone Nonattainment Area; State of Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing its finding that the Baton Rouge ''marginal'' 8-hour ozone nonattainment area (hereinafter referred to as the Baton Rouge area) did not attain the 8-hour ozone national ambient air quality standard (NAAQS or standard) by June 15, 2007, the attainment deadline set forth in the Clean Air Act (CAA or the Act) and Code of Federal Regulations (CFR) for ''marginal'' nonattainment areas. By operation of law, the Baton Rouge area is to be reclassified from a ''marginal'' to a ''moderate'' 8-hour ozone nonattainment area on the effective date of this rule. The new attainment deadline for the reclassified Baton Rouge nonattainment area is ''as expeditiously as practicable'' but no later than June 15, 2010. In addition, EPA is requiring Louisiana to submit State Implementation Plan (SIP) revisions addressing the CAA's pollution control requirements for ''moderate'' 8-hour ozone nonattainment areas no later than January 1, 2009.

DATES: This final rule is effective on *April 21, 2008.*

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2007–0967. 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 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 Air Planning Section (6PD–L), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Louisiana Department of Environmental Quality (LDEQ), the Galvez Building, 602 N. Fifth Street, Baton Rouge, Louisiana 70802.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section, (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7367.

SUPPLEMENTARY INFORMATION:

Background

A complete description of the 8-hour designation process for the Baton Rouge area can be found in the proposal for this rulemaking at 72 FR 61315, October 30, 2007. In addition, under § 51.908 of the Code of Federal Regulations, states containing areas classified as ''marginal'' non-attainment for the 8-hour ozone standard were not required to submit attainment demonstration SIPs. However, states were required to submit other SIP elements, as required by Subpart 2 of the Act, that included the following: submitting an emission inventory within two years and periodic inventories every three years thereafter, reasonably available control technology corrections, and retaining a vehicle inspection and maintenance program that may have previously been in place. Baton Rouge has met these requirements for a ''marginal'' nonattainment area under the 8-hour standard and the 1-hour standard.

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I. What Does This Action Do?

On October 30, 2007, EPA proposed its finding that the Baton Rouge ozone nonattainment area did not attain the 8-hour NAAQS by the applicable attainment date (72 FR 61315). The proposed finding was based upon ambient air quality data from the years 2004–2006. These data showed that the 8-hour NAAQS of 0.08 ppm (i.e., 0.084 ppm when rounding is considered) had been exceeded based on the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration and that the area did not qualify for an attainment date extension under section 181(a)(5) of the Act. We also proposed to determine that the appropriate reclassification of the area was to ''moderate.''

This action finalizes our finding that the Baton Rouge area did not attain the 8-hour ozone NAAQS by June 15, 2007, as prescribed in section 181 of the Act, and as detailed in EPA's final designations rule published on April 30, 2004 (69 FR 23857). It also fulfills EPA's duty pursuant to section 181(b)(2) of the Act. In addition, this action sets the dates by which Louisiana must submit SIP revisions addressing the CAA's pollution control requirements for ''moderate'' ozone nonattainment areas and attain the 8-hour NAAQS for ozone. EPA's rulemaking actions are to be effective [30] days from publication in the **Federal Register**.

II. What Does the CAA Say About Determination of Nonattainment and Reclassification, and How Does it Apply to the Baton Rouge Area?

Under sections 107(d)(1)(c) and 181(a) of the Act, the Baton Rouge area was designated nonattainment for the 8-hour ozone NAAQS and classified as ''marginal'' based on its design value of 0.086 ppm in 2004. These nonattainment designations and classifications are codified in 40 CFR Part 81 (See 69 FR 23857, April 30, 2004). In addition, states containing areas that were classified as ''marginal'' nonattainment were required to submit SIPs to provide for certain controls and submit emission inventories. The Baton Rouge area met these requirements by submitting an updated emission inventory. As a ''severe'' nonattainment area under the 1-hour standard, the area was already implementing ''marginal'' area requirements in Subpart 2 of the Act. No attainment demonstrations were required, but attainment of the standard was required to be achieved by June 15, 2007.

Section 181(b)(2)(A) of the Act specifies that:

Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme areas, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

a. The next higher classification for the area, or

b. The classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

Furthermore, section 181(b)(2)(B) of the Act provides that:

The Administrator shall publish a notice in the **Federal Register** no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

On October 30, 2007, EPA proposed its finding that the Baton Rouge area did not attain the 8-hour ozone standard by the applicable date (72 FR 61315). The proposed finding was based upon ambient ozone concentration data for the period 2004–2006, from monitoring sites in the Baton Rouge area that recorded a 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration that exceeded the standard. You may refer to the proposal to review these values which are presented in ''Table 1.—Baton Rouge Area Fourth Highest 8-Hour Ozone Concentrations and Design Values (ppm).''

The air quality data in Table 1 were available for comment in our October 30, 2007, proposed finding of the area's failure to attain the ozone NAAQS. We

received no comments pertaining to these data. Therefore, pursuant to section 181(b)(2)(B) of the CAA, we hereby finalize our determination that the Baton Rouge area did not attain the 8-hour standard by the June 15, 2007, attainment date.

III. What Is The Area's New Classification?

Section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification be the higher of either the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. Section 181(b)(2)(B) requires EPA to publish in the **Federal Register** a notice identifying the appropriate reclassification for the area in accordance with section 181(b)(2)(A). The classification that would be applicable to the Baton Rouge area's design value at the time of today's final rule is ''marginal'' because the area's 2006 calculated design value, based on quality-assured ozone monitoring data from 2004–2006, is 0.091 ppm. By contrast, the next higher classification for the Baton Rouge area is ''moderate.'' As EPA explained in the proposal, because ''moderate'' is a higher classification than ''marginal'' under the CAA statutory scheme, upon the effective date of this final rulemaking, the Baton Rouge area is reclassified by operation of law as ''moderate.''

IV. What is the New Attainment Date for the Baton Rouge Area?

Under section 181(a)(1) of the Act, the new attainment deadline for ''marginal'' ozone nonattainment areas, reclassified to ''moderate'' under section 181(b)(2), would generally be as ''expeditious as practicable'' but no later than the date applicable to the new classification, i.e., June 15, 2010. The ''as expeditiously as practicable'' attainment date will be determined as part of the action on the required SIP submittal demonstrating attainment of the 8-hour ozone standard.

V. When Must Louisiana Submit SIP Revisions Fulfilling the Requirements for 8-Hour Ozone Nonattainment Areas?

Under section 181(a)(1) of the Act, the attainment deadline for ''marginal'' ozone nonattainment areas reclassified to ''moderate'' under section 181(b)(2) is as ''expeditiously as practicable'' but no later than June 15, 2010. Under section 182(i) of the Act, such areas are required to submit SIP revisions addressing the ''moderate'' area requirements for 8-hour ozone NAAQS. Pursuant to 40 CFR 51.908(d), for each nonattainment area, a state must provide for the implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case 2009 (40 CFR 51.900(g)). The ozone season is the ozone monitoring season defined in 40 CFR Part 58, Appendix D, section 4.1, Table D–3 (71 FR 61236, October 17, 2006). For the purpose of reclassification of the Baton Rouge nonattainment area, January 1, 2009, is the beginning of the ozone monitoring season. As a result, EPA is requiring that the required SIP revisions be submitted by Louisiana as ''expeditiously as practicable,'' but no later than January 1, 2009. This timeline also calls for implementation of applicable controls no later than January 1, 2009. (See 72 FR 61318).

The area was previously required to submit the requirements for ''marginal'' areas and under section 182(b) of the Act, remains required to meet them, and now must meet the requirements for ''moderate'' areas as well.

A revised SIP must include, among other things, the following ''moderate'' area requirements: (1) An attainment demonstration (40 CFR 51.908), (2) provisions for reasonably available control technology and reasonably available control measures (40 CFR 51.912), (3) reasonable further progress reductions in volatile organic compound (VOC) and nitrogen oxide (NO_X) emissions (40 CFR 51.910), (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9)). See also the requirements for ''moderate'' ozone nonattainment areas set forth in CAA section 182(b). Since the Baton Rouge area also is a 1-hour ozone nonattainment area, the anti-backsliding requirements of the 8-hour ozone implementation rule at 40 CFR 51.900 and 51.905 apply too. See also *S. Coast Air Quality Management District* v. *Environmental Protection Agency,* 472 F.3d 882 (DC Cir. 2006), *reh'g denied,* 489 F.3d 1245 (DC Cir. 2007).

VI. What Comments Were Received on the Proposed Rule?

EPA received no comments from the public on the Notice of Proposed Rulemaking published on October 30, 2007 (72 FR 61315), Determination of Nonattainment and Reclassification of the Baton Rouge 8-Hour Ozone Nonattainment Area; State of Louisiana.

VII. Final Action

Pursuant to CAA section 181(b)(2), EPA is making a final determination that the Baton Rouge ''marginal'' 8-hour ozone nonattainment area failed to attain the 8-hour ozone NAAQS by June 15, 2007. Upon the effective date of this rule, the Baton Rouge ''marginal'' 8-hour ozone nonattainment area will be reclassified by operation of law as a ''moderate'' 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA, EPA is establishing the schedule for submittal of the SIP revisions required for ''moderate'' areas once the area is reclassified. The required SIP revision for Baton Rouge must be submitted as ''expeditiously as practicable,'' but no later than January 1, 2009.

VIII. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order. The Agency has determined that the finding of nonattainment would result in none of the effects identified in the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. This action to reclassify the Baton Rouge area as a ''moderate'' ozone nonattainment area and to adjust applicable deadlines does not establish any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources;

complete and review the collection of information; and transmit or otherwise disclose the information. 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 Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (see, 13 CFR part 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. After considering the economic impacts of today's action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, sections 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of $100 million or more in any one year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. Also, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and therefore, is not subject to the requirements of sections 203. EPA believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, this action merely determines that the Baton Rouge area had not attained by its applicable attainment date, and to reclassify the Baton Rouge area as a ''moderate'' ozone nonattainment area and to adjust applicable deadlines. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''A Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure a meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. This action does not have Tribal implications as specified in Executive Order 13175. This action merely determines that the Baton Rouge area has not attained by its applicable attainment date, and to reclassify the Baton Rouge area as a ''moderate'' ozone nonattainment area and to adjust applicable deadlines. The CAA and the Tribal Authority Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If

the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. This action merely determines that the Baton Rouge area has not attained by its applicable attainment date, and to reclassify the Baton Rouge area as a ''moderate'' ozone nonattainment area and to adjust applicable deadlines.

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

This action is not subject to Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action merely determines that the Baton Rouge area has not attained by its applicable attainment date, and to reclassify the Baton Rouge ''marginal'' Nonattainment Area as a ''moderate'' ozone nonattainment area and to adjust applicable deadlines. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action merely determines that the Baton Rouge area has not attained by its applicable attainment date, and to reclassify the Baton Rouge area as a ''moderate'' ozone nonattainment area and to adjust applicable deadlines.

K. Congressional Review Act

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *May 20, 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 to reclassify the Baton Rouge area as a ''moderate'' ozone nonattainment area and to adjust applicable deadlines may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: March 7, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

■ Part 81, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.319 the table entitled ''Louisiana—Ozone (8–Hour Standard)'' is amended by revising the entry for the Baton Rouge area to read as follows:

§ 81.319. Louisiana.

* * * * *

LOUISIANA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge Area:				
Ascension Parish		Nonattainment	4/21/08	Subpart 2/Moderate.
East Baton Rouge Parish		Nonattainment	4/21/08	Subpart 2/Moderate.
Iberville Parish		Nonattainment	4/21/08	Subpart 2/Moderate.
Livingston Parish		Nonattainment	4/21/08	Subpart 2/Moderate.
West Baton Rouge Parish		Nonattainment	4/21/08	Subpart 2/Moderate.

LOUISIANA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. E8–5663 Filed 3–20–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2007–0039]

RIN 1625–AB23

2008 Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Interim rule.

SUMMARY: As required by statute, the Coast Guard has reviewed and is updating the rates for pilotage service on the Great Lakes for the 2008 navigation season. We are increasing pilotage rates an average 8.17% over the last ratemaking that was completed in September 2007. This rulemaking promotes the Coast Guard strategic goals of maritime safety, protection of natural resources, maritime security, and maritime mobility.

DATES: This interim rule is effective March 21, 2008. Comments and related material must reach the Docket Management Facility on or before April 21, 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 interim rule, please call Mr. Paul Wasserman, Chief, Great Lakes Pilotage Branch, Commandant (CG–54122), U.S. Coast Guard, at 202–372–1535, by fax 202–372–1929, or by e-mail at *Paul.M.Wasserman@uscg.mil.* For questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Dockets Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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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. 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 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. Enter the docket number for this rulemaking (USCG–2007–0039) in the Search box, and click ''Go >>.'' 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. 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.*

D. Public Meeting

We do not now 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**.

II. Effective Date

This interim rule takes effect upon publication in the **Federal Register**. Under 5 U.S.C. 553(d), the Coast Guard finds good cause for this interim rule to take effect less than 30 days after

publication. Congress mandates that Great Lakes pilotage rates be reviewed and adjusted annually by March 1. This interim rule cannot be issued until some time after that date, but we expect it to be issued close to the beginning of the 2008 Great Lakes shipping season in late March. If the interim rule takes effect upon publication, the Congressional intent for rate adjustments before the shipping season opens will essentially be met. Although the public comments received in response to our notice of proposed rulemaking (NPRM; 73 FR 6085, Feb. 1, 2008) raised several substantive issues that will require some additional time for the Coast Guard to review and to properly address in a final rule, several comments pointed to the need for early rate adjustment, and there is no question that a rate adjustment at least as large as that proposed in the NPRM is fully justified. Therefore, to delay implementation of a rate adjustment that is unquestionably justified, and that Congress intended the Coast Guard to make in time for the annual resumption of Great Lakes shipping is both unnecessary and contrary to the public interest, and the Coast Guard finds good cause under 5 U.S.C. 553(d) for this interim rule to take effect upon its publication in the **Federal Register**.

III. Background and Purpose

The Great Lakes Pilotage Act of 1960, codified in Title 46, Chapter 93, of the United States Code (U.S.C.), requires foreign-flag vessels and U.S.-flag vessels in foreign trade to use Federal Great Lakes registered pilots while transiting the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. 9302, 9308. The Coast Guard is responsible for administering this pilotage program, which includes setting rates for pilotage service. 46 U.S.C. 9303.

The Coast Guard pilotage regulations require annual reviews of pilotage rates and the creation of a new rate at least once every five years, or sooner, if annual reviews show a need. 46 CFR part 404. Annual reviews ensure that sufficient revenues are generated to cover the annual projected allowable expenses, target pilot compensation, and returns on investment of the pilot associations. 46 U.S.C. 9303(f) requires that we conduct these reviews and make appropriate rate adjustments by March 1 of every shipping season.

To assist in calculating pilotage rates, the three Great Lakes 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 full ratemaking, the Coast Guard contracts with an independent accounting firm to conduct audits of the accounts and records of the pilotage associations and to 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 46 CFR Part 404, and adjusts rates as appropriate.

The last ratemaking was completed by publication of a final rule in the **Federal Register** on September 18, 2007 (72 FR 53158). The annual review following the 2007 ratemaking showed a need to adjust rates for the 2008 Great Lakes shipping season. That adjustment was the subject of the NPRM published in the **Federal Register** on February 1, 2008.

IV. Discussion of Comments

The Coast Guard received six comments in response to the NPRM. The comments raised several issues that we considered substantive and which will require the Coast Guard to conduct additional review to properly address.

Public comments on the NPRM suggested that:

- We should revise our monthly multiplier from 49.5 to 54.5 days;
- We should apply the AMO wage rate and health insurance adjustments that are in effect on August 1, 2008;
- The projected bridge hours for Areas 2, 4, and 5 are too high when compared to their 2007 actual bridge hours experience;
- We need to address the Riker Report on Great Lakes pilotage ratemaking and revise the bridge hours standards;
- We should increase our calculations for the length of the navigation season from 270 days to 284 days;
- We should raise our weighting factor for smaller vessels from 1.0 to 1.15 in order to align with the Canadians current system of weighting factors;
- We should further justify our proposal for clarifying the duty of compliance with lawful orders; and
- We should place supporting financial and contract documents in the public docket.

At the same time, commenters also commended the Coast Guard for acting to put new rates in place early in the 2008 shipping season and urged us to implement the rate adjustment as soon as possible. We agree that action as close to the beginning of the shipping season as possible is very important, and we acknowledge that Congress has set a March 1 deadline for taking that action.

Although the comments on the NPRM indicate a possible need for further rate adjustments in 2008, there is no question that a rate increase at least as large as that proposed in the NPRM is fully justified. Therefore, we are issuing this interim rule in order to make the presently justified rate adjustments as close as possible to the beginning of the 2008 Great Lakes navigation season. Other issues raised by the public in their comments will be addressed in a subsequent final rule which we hope to issue by this summer.

V. Discussion of the Interim Rule

This interim rule puts into place, without modification, the rate changes that were proposed in the NPRM. Because we are implementing this portion of the NPRM proposals without modification, we will not repeat the extended discussion of these changes that appears in the NPRM. We are increasing pilotage rates in accordance with the methodology outlined in Appendix C to 46 CFR Part 404. The rate changes for each individual pilotage Area are shown in Table 1. They average 8.17% across all Areas. For a full discussion of how rate changes were calculated, see pages 6087 through 6094 of the NPRM.

Based upon comments received, we are withholding implementation of the amendments proposed to 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. Upon final review, we will determine whether these amendments should be implemented.

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

VI. Regulatory Evaluation

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes or executive orders.

A. Regulatory Analysis

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

The changes proposed in the February 1, 2008 NPRM have not been modified for this interim rule. The cost and population data contained in the NPRM analysis is also unchanged for this interim rule. Consequently, we adopt the analysis from the NPRM for this interim rule. This rule puts into place the 8.17 percent average rate adjustment for the Great Lakes system over the rate adjustment found in the 2007 final rule. The annual cost of the rate adjustment in this rule to shippers is approximately $1.0 million (non-discounted). The total five-year present value cost estimate (2008–2012) of this 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. We use a five-year cost estimate because the Coast Guard is required to determine and, if necessary, perform a full adjustment of Great Lakes pilotage rates every five years.

B. Small Entities

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

The analysis of the impact to small entities in the NPRM resulted in a finding that the proposed changes would not have a significant impact on a substantial number of small entities. Since we received no comments pertaining to small entities and the analysis has not changed, we adopt the NPRM's analysis for this interim rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of U.S. small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Paul Wasserman, Great Lakes Pilotage Branch, (CG–54122), U.S. Coast Guard, telephone 202–372–1535, or send him e-mail at *Paul.M.Wasserman@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).

D. Collection of Information

Under the Paperwork Reduction Act of 1995, (44 U.S.C. 3501–3520), the Office of Management and Budget (OMB) reviews each rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, record keeping, notification, and other similar requirements.

This rule calls for no new collection of information under the Paperwork Reduction Act. This rule does not change the burden in the collection currently approved by the Office of Management and Budget under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

E. 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.

F. 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 economic impact of this rule elsewhere in this preamble.

G. Taking of Private Property

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

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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). We have concluded that this action is not likely to have a significant effect on the human environment and 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 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. A final ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

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 amends 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), including the footnote to Table (a), 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]
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), including the footnote to Table (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 Cap	Any 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''.

Dated: March 18, 2008.

James Watson,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Marine Safety, Security and Stewardship.

[FR Doc. 08–1063 Filed 3–18–08; 4:02 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XG52

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands Management Area

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 Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access fishery. This action is necessary to fully use the 2008 A season total allowable catch (TAC) of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 18, 2008, through 1200 hrs, A.l.t., March 20, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., April 2, 2008.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XG52, 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.

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 BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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 Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea on January 20, 2008 (73 FR 4494, January 25, 2008).

NMFS has determined that approximately 159 mt of the 2008 A season Atka mackerel TAC for vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2008 A season TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery, NMFS is terminating the previous closure and is reopening directed fishing for Atka mackerel by vessels participating in the BSAI trawl limited access fishery in the Eastern Aleutian District and the Bering Sea subarea. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for the 2008 A season TAC of Atka mackerel in these areas specified for vessels participating in the BSAI trawl limited access fishery effective 1200 hrs, A.l.t., March 20, 2008.

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 a 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 Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 17, 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 Atka mackerel fishery in the Eastern Aleutian District and the Bering Sea subarea for vessels participating in the BSAI trawl limited access fishery 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 April 2, 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: March 18, 2008.

Alan D. Risenhoover

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 08–1061 Filed 3–18–08; 3:31 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 56
Friday, March 21, 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.

GOVERNMENT ACCOUNTABILITY OFFICE

4 CFR Part 21

Government Accountability Office, Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts

AGENCY: Government Accountability Office.

ACTION: Proposed rule.

SUMMARY: The Government Accountability Office (GAO) is proposing to amend its Bid Protest Regulations, promulgated in accordance with the Competition in Contracting Act of 1984 (CICA), to implement the requirements in sec. 326 of the National Defense Authorization Act for Fiscal Year 2008, enacted on January 28, 2008, and to make certain administrative changes. Regarding sec. 326 of the National Defense Authorization Act for Fiscal Year 2008, the proposed amendments to GAO's Bid Protest Regulations implement the legislation's provisions related to the bid protest process concerning Office of Management and Budget (OMB) Circular A–76, as revised on May 29, 2003. In this regard, the legislation expands the protest rights of Federal employees in an A–76 competition to grant ''any one individual'' who represents the majority of affected employees the status of an ''interested party'' to file a protest at GAO or the status of an intervenor to participate in a protest filed at GAO, to remove the current restriction limiting protests of A–76 competitions to those competitions affecting 65 or more full-time equivalent employees of a Federal agency, and to allow a protest of a decision to convert a function performed by Federal employees to private sector performance without a competition. At this time, GAO believes that these proposed revisions are the only regulatory changes necessary to implement the statutory requirements expanding the protest rights of Federal employees in an A–76 competition. Regarding administrative changes, the proposed amendments to GAO's Bid Protest Regulations are to reflect current practice and to streamline the bid protest process. GAO welcomes comments on these proposed revisions.

DATES: Comments must be submitted on or before April 21, 2008.

ADDRESSES: Comments may be submitted by e-mail at *bidprotestregs@gao.gov* or by facsimile at 202–512–9749. Due to delivery delays, submission by regular mail is discouraged. Comments may be sent by Federal Express or United Parcel Service addressed to: Ralph O. White, Assistant General Counsel, Government Accountability Office, 441 G Street, NW., Washington, DC 20548. GAO intends to make all comments filed available to the public, including names and other identifying information. Information in a submission that the sender does not believe should be released should be clearly marked.

FOR FURTHER INFORMATION CONTACT: Michael R. Golden (Managing Associate General Counsel), Ralph O. White (Assistant General Counsel) or Jonathan L. Kang (Senior Attorney), 202–512–3315.

SUPPLEMENTARY INFORMATION:

Comments Invited

GAO is not subject to the Administrative Procedures Act and accordingly is not required by law to seek comments before issuing a final rule. However, GAO has decided to invite interested persons to participate in this rulemaking by submitting written comments regarding the proposed revisions. Application of the Administrative Procedures Act to GAO is not to be inferred from this invitation for comments.

GAO will consider all comments received on or before the closing date for comments. GAO may change the proposed revisions based on the comments received.

Background

GAO determined to undertake these revisions to GAO's Bid Protest Regulations as the result of statutory changes in GAO's bid protest jurisdiction in the Department of Homeland Security Appropriations Act, 2008 (enacted as Division E of the Consolidated Appropriation Act, 2008, Pub. L. 110–161, 121 Stat. 1844, on December 26, 2007), and the National Defense Authorization Act for Fiscal Year 2008. Section 568 of the Department of Homeland Security Appropriations Act, 2008, made the Transportation Security Administration (TSA) subject to the Federal Acquisition Regulation such that, as of the June 23, 2008 effective date, GAO has protest jurisdiction over TSA procurements. Section 326 of the National Defense Authorization Act for Fiscal Year 2008 expands the protest rights of Federal employees in an A–76 competition or non-competitive decision to convert a function performed by Federal employees to private sector performance. Section 843 of the National Defense Authorization Act for Fiscal Year 2008 amends GAO's jurisdiction under 10 U.S.C. 2304c(e) and 41 U.S.C. 253j(e) to authorize GAO to hear protests of the award or proposed award of certain task and delivery orders under certain indefinite-delivery/indefinite-quantity contracts.

After careful consideration, GAO concluded that no change in GAO's Bid Protest Regulations is necessary in order to effectuate the provisions of sec. 568 of the Department of Homeland Security Appropriations Act, 2008, with respect to TSA procurements, or to effectuate the provisions of sec. 843 of the National Defense Authorization Act for Fiscal Year 2008, with respect to task or delivery orders. The proposed revisions to GAO's Bid Protest Regulations to implement sec. 326 of the National Defense Authorization Act for Fiscal Year 2008 and to make certain administrative changes are set forth below:

Interested Party

In accordance with sec. 326 of the National Defense Authorization Act for 2008, GAO proposes to revise paragraph (a)(2) and to add new paragraphs (a)(2)(A) and (a)(2)(B) to 4 CFR 21.0, to expand the definition of an interested party to include, in any public-private competition conducted under OMB Circular A–76 regarding performance of an activity or function of a Federal agency, or any decision to convert a function performed by Federal employees to private sector performance without a competition under OMB Circular A–76, the official who submitted the agency tender in any such

competition and any one individual designated as the representative of the majority of affected Federal employees, and to delete the current restrictions on protests of competitions concerning fewer than 65 full time equivalent employees of a Federal agency.

Intervenor

In accordance with sec. 326 of the National Defense Authorization Act for 2008, GAO proposes to revise paragraph (b)(2) of 4 CFR 21.0, to expand the definition of an intervenor to include, in any public-private competition conducted under OMB Circular A–76 regarding performance of an activity or function of a Federal agency, or any decision to convert a function performed by Federal employees to private sector performance without a competition under OMB Circular A–76, any one individual designated as the representative of the majority of affected Federal employees, and to delete the current restrictions on protests of competitions concerning fewer than 65 full time equivalent employees of a Federal agency.

Contracting Agency

For administrative purposes, GAO proposes to delete the definition of ''contracting agency'' at paragraph (d) of 4 CFR 21.0, and to replace the term ''contracting agency'' with the term ''agency'' throughout 4 CFR 21. GAO also proposes to revise paragraph (c) of 4 CFR 21.0 to clarify that the definition of ''federal agency'' also applies to the general term ''agency.'' It is the opinion of GAO that these administrative changes will clarify and simplify GAO's Bid Protest Regulations.

Filing of Documents

It has been GAO's experience that bid protest documents are occasionally directed to GAO departments unrelated to GAO's bid protest process. To clarify how a document is ''filed'' under GAO's Bid Protest Regulations, GAO proposes to revise paragraph (g) of 4 CFR 21.0, newly redesignated as paragraph (f), to provide GAO's designated facsimile transmission number and email address for bid protests, and to advise parties to check GAO's Web site to ensure that the contact information is current. GAO also proposes to remove a provision in 4 CFR 21.0 regarding electronic filing to conform with current practice and to coordinate with changes to paragraph (b) of 4 CFR 21.4, which are discussed below.

Disclosure of Protest Materials

The GAO bid protest process is covered by the GAO disclosure of materials regulations in 4 CFR part 81, subject to the restrictions of our protective order process. To ensure that the practice of the GAO bid protest process is consistent with the GAO disclosure of materials regulations and to advise that the GAO will not generally provide filed materials to the public while a protest is pending, GAO proposes to revise paragraph (g) of 4 CFR 21.1 to reflect that GAO will disclose protest materials submitted by any party after issuing a decision on the protest, in accordance with GAO's rules at 4 CFR part 81 and the protective order process.

Document Requests to Agencies

In cases in which the protester has filed a request for specific documents, GAO's Bid Protest Regulations currently require that the agency provide, at least 5 days prior to the filing of its report, a list of the documents or portions of documents which the agency has released to the protester or intends to produce in its report and of the documents or portions of documents requested that it intends to withhold, and the reasons for the proposed withholding. It is GAO's experience that the index of documents provided by agencies is often not sufficient to answer specific document requests and does not identify what is being withheld and why. In order to clarify what GAO requires from agencies in response to specific document requests, GAO proposes to revise paragraph (c) of 4 CFR 21.3 to require that an agency's response to a document request identify, at a minimum, whether requested documents exist, which of the documents or portions of documents the agency intends to produce, which of the documents or portions of documents the agency intends to withhold, and the basis for withholding any of the requested documents. GAO understands that this proposed revision may be perceived by agencies as an additional requirement; however, the language of the proposed revision tracks closely to the original intent of GAO in 4 CFR 21.3(c).

Document Requests to Other Parties

GAO's Bid Protest Regulations currently limit document requests to those made by the protester to the agency, and in certain circumstances, by the agency to the protester. Due to GAO's statutory requirement to complete bid protests within 100 days, and in the interest of fairness, there may be circumstances in which documents held by a party that are not in the possession of the agency are necessary for the swift resolution of a bid protest. To permit parties to make document requests of another party, GAO proposes to revise paragraph (d) of 4 CFR 21.3, to state that, in appropriate circumstances, one party may request that another party produce documents that are not in the agency's possession and not currently in the record. GAO does not expect these requests to arise often, and retains the discretion to determine the appropriateness of granting such requests.

Additional Statements

To reflect GAO practice, GAO proposes to revise paragraph (j) of 4 CFR 21.3 to clarify that parties must seek GAO's prior approval before submitting additional statements and that GAO reserves the right to disregard statements that are submitted without prior approval.

Electronic Transmissions

The current admonition in paragraph (b) of 4 CFR 21.4 against the electronic transmission of documents in bid protests subject to a protective order is inconsistent with GAO's protective order admission notice, which permits the electronic transmission of documents unless a party has objected. To reconcile GAO's Bid Protest Regulations with current practice, GAO proposes to delete the last sentence of paragraph (b) of 4 CFR 21.4 to remove the admonition against the electronic transmission of documents in bid protests subject to a protective order.

Sanctions

In the protest of *Network Security Technologies, Inc.*, B–290741.2, November 13, 2002, 2002 CPD ¶ 193, GAO gave notice that the dismissal of a protest was a potential sanction for the violation of a GAO protective order. In the protest of *PWC Logistics Services Co. KSC(c)*, B–310559, January 11, 2008, 2008 CPD ¶ 25, GAO employed that sanction for the first time, dismissing the protest as the direct result of the protester's counsel's violation of the GAO protective order in the protest. GAO views its authority to impose dismissal and other sanctions as inherent to its authority to issue and administer protective orders. To clearly advise that dismissal of a protest is a potential sanction for violation of a GAO protective order, GAO proposes to revise paragraph (d) of 4 CFR 21.4 to reflect that dismissal is among the sanctions that GAO will consider in response to violation of a GAO protective order, as is prohibition from participation in the remainder of a protest as an intervenor, which is another sanction GAO has used in the

past to address a protective order violation.

Small Business Administration

Standard industrial classification codes have been replaced by the North American Industry Classification System standards. For administrative purposes, GAO proposes to revise paragraph (b) of 4 CFR 21.5 to replace the term ''standard industrial classification'' with the term ''North American Industry Classification System.''

Statutory Stays

31 U.S.C. 3553(c) and (d) address agencies' requirements to withhold contract award or suspend contract performance when a protest is filed at GAO. Although a protest to GAO is the triggering event under these statutory authorities, the authorities provide no role for GAO in this process. GAO proposes to revise 4 CFR 21.6, to clarify that GAO has no role in administering the statutory requirements to withhold contract award or suspend contract performance.

Notification to Agency

GAO is required under 31 U.S.C. 3554(d) to provide notice to the parties in a protest. GAO proposes to simplify the list of agency contacts in paragraph (a) of 4 CFR 21.12 to reflect GAO's current practice in meeting its statutory obligations.

Reconsideration

Certain grounds for requesting reconsideration of a protest decision, such as the repetition of arguments previously made, do not merit reconsideration by GAO. Requests for reconsideration are required to be filed within 10 days of the issuance of a protest decision. GAO can see no reason to reconsider arguments so recently considered here, and will therefore dismiss requests for reconsideration based on such arguments without development or further consideration. To clarify the requirements of a request for reconsideration and to emphasize that repetitive arguments will be summarily dismissed, GAO proposes to revise paragraph (c) of 4 CFR 21.14, to state that a request for reconsideration must show that the prior decision contains errors of fact or law, or must present information not previously considered that warrants reversal or modification of the prior decision, and to state that GAO will not consider requests based on the repetition of arguments previously raised.

Additionally, GAO proposes to delete language in paragraph (c) of 4 CFR 21.14 regarding agencies' obligation to withhold award and suspend performance in the event of a request for reconsideration because, as discussed above, GAO has no role in this process. By deleting this provision, however, GAO does not express any view regarding agencies' obligations under 31 U.S.C. 3553(c) and (d).

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Appeals, Bid protest regulations, Government contracts.

For the reasons set out in the preamble, Title 4, Chapter I, Subchapter B, Part 21 of the Code of Federal Regulations is proposed to be amended as follows:

PART 21—BID PROTEST REGULATIONS

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

Authority: 31 U.S.C. 3551–3556.

2. In part 21, remove the words ''a contracting agency'' and ''the contracting agency'' wherever they appear and add in their place the words ''an agency'' or ''the agency,'' respectively.

3. Amend § 21.0 by revising paragraphs (a)(2), (b)(2), and (c); removing paragraph (d); and redesignating paragraph (e) as paragraph (d), redesignating paragraph (f) as paragraph (e), redesignating paragraph (g) as paragraph (f) and revising it, and redesignating paragraph (h) as paragraph (g).

The revisions read as follows:

§ 21.0 Definitions.

(a)(1) * * *

(2) In a public-private competition conducted under Office of Management and Budget Circular A–76 regarding performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under OMB Circular A–76, *interested party* also means

(A) the official responsible for submitting the Federal agency tender, and

(B) any one individual, designated as an agent by a majority of the employees performing that activity or function, who represents the affected employees.

(b)(1) * * *

(2) If an interested party files a protest in connection with a public-private competition conducted under OMB Circular A–76 regarding an activity or function of a Federal agency, the official responsible for submitting the Federal agency tender, or the agent representing the Federal employees as described in paragraph (a)(2)(B) of this section, or both, may also be *intervenors*.

(c) *Federal agency* or *agency* means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

* * * * *

(f) A document is *filed* on a particular day when it is received by GAO by 5:30 p.m., eastern time, on that day. Protests and other documents may be filed by hand delivery, mail, commercial carrier, facsimile transmission (202–512–9749), or e-mail (*protests@gao.gov*). Please check GAO's Web site (*http://www.gao.gov/legal/bidprotest.html*) for current filing information. Hand delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt at GAO.

* * * * *

4. Amend § 21.1 by revising paragraph (g) to read as follows:

§ 21.1 Filing a protest.

* * * * *

(g) Unless precluded by law, GAO will not withhold material submitted by a protester from any party outside the government after issuing a decision on the protest, in accordance with GAO's rules at 4 CFR part 81. If the protester believes that the protest contains information which should be withheld, a statement advising of this fact must be on the front page of the submission. This information must be identified wherever it appears, and the protester must file a redacted copy of the protest which omits the information with GAO and the agency within 1 day after the filing of its protest with GAO.

* * * * *

5. Amend § 21.3 by revising paragraphs (c), (d), and (j) to read as follows:

§ 21.3 Notice of protest, submission of agency report, and time for filing of comments on report.

* * * * *

(c) The contracting agency shall file a report on the protest with GAO within 30 days after the telephone notice of the protest from GAO. The report provided to the parties need not contain documents which the agency has

previously furnished or otherwise made available to the parties in response to the protest. At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the agency shall respond to the request for documents in writing. The agency's response shall, at a minimum, identify whether the requested documents exist, which of the requested documents or portions thereof the agency intends to produce, which of the requested documents or portions thereof the agency intends to withhold, and the basis for not producing any of the requested documents or portions thereof. Any objection to the scope of the agency's proposed disclosure or nondisclosure of documents must be filed with GAO and the other parties within 2 days of receipt of this list.

(d) The report shall include the contracting officer's statement of the relevant facts, including a best estimate of the contract value, a memorandum of law, and a list and a copy of all relevant documents, or portions of documents, not previously produced, including, as appropriate: the protest; the bid or proposal submitted by the protester; the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested; all evaluation documents; the solicitation, including the specifications; the abstract of bids or offers; and any other relevant documents. In appropriate cases, a party may request that another party produce relevant documents, or portions of documents, that are not in the agency's possession.

* * * * *

(j) GAO may request or permit the submission of additional statements by the parties and by other parties participating in the protest as may be necessary for the fair resolution of the protest. The agency and other parties must receive GAO's approval before submitting any additional statements. GAO reserves the right to disregard material submitted without prior approval.

6. Amend § 21.4 by revising paragraphs (b) and (d) to read as follows:

§ 21.4 Protective orders.

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(b) If no protective order has been issued, the agency may withhold from the parties those portions of its report that would ordinarily be subject to a protective order. GAO will review in camera all information not released to the parties.

* * * * *

(d) Any violation of the terms of a protective order may result in the imposition of such sanctions as GAO deems appropriate, including referral to appropriate bar associations or other disciplinary bodies, restricting the individual's practice before GAO, prohibition from participation in the remainder of the protest, or dismissal of the protest.

7. Amend § 21.5 by revising paragraph (b)(1) to read as follows:

§ 21.5 Protest issues not for consideration.

* * * * *

(b) *Small Business Administration issues.* (1) Small business size standards and North American Industry Classification System (NAICS) standards. Challenges of established size standards or the size status of particular firms, and challenges of the selected NAICS code may be reviewed solely by the Small Business Administration. 15 U.S.C. 637(b)(6).

* * * * *

8. Revise § 21.6 to read as follows:

§ 21.6 Withholding of award and suspension of contract performance.

Where a protest is filed with GAO, the contracting agency may be required to withhold award and to suspend contract performance. The requirements for the withholding of award and the suspension of contract performance are set forth in 31 U.S.C. 3553(c) and (d); GAO does not administer the requirements to stay award or suspend contract performance under CICA at 31 U.S.C. 3553(c) and (d).

9. Amend § 21.12 by revising paragraph (a) to read as follows:

§ 21.12 Distribution of decisions.

(a) Unless it contains protected information, a copy of a decision shall be provided to the protester, any intervenors, and the agency involved; a copy shall also be made available to the public. A copy of a decision containing protected information shall be provided only to the agency and to individuals admitted to any protective order issued in the protest. A public version omitting the protected information shall be prepared wherever possible.

* * * * *

10. Amend § 21.14 by revising paragraph (c) to read as follows:

§ 21.14 Request for reconsideration.

* * * * *

(c) GAO will summarily dismiss any request for reconsideration that fails to state a valid basis for reconsideration or is untimely. To obtain reconsideration, the requesting party must show that our prior decision contains errors of either fact or law, or must present information not previously considered that warrants reversal or modification of our decision; GAO will not consider a request for reconsideration based on repetition of arguments previously raised.

Gary L. Kepplinger,

General Counsel, United States Government Accountability Office.

[FR Doc. E8–5621 Filed 3–20–08; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[REG–110136–07]

RIN 1545–BG48

Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual

AGENCY: Internal Revenue Service (IRS), Department of the Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide guidance relating to the application of section 4980F of the Internal Revenue Code to a plan amendment that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date. These regulations would also reflect certain amendments made to section 4980F by the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780). These proposed regulations would affect sponsors, administrators, participants, and beneficiaries of pension plans. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by June 19, 2008. Outlines of topics to be discussed at the public hearing scheduled for July 10, 2008, at 10 a.m. must be received by June 20, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–110136–07), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC, 20044. Submissions may be hand-delivered Monday through Friday, between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–110136–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, 20224 or sent via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–

110136–07). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela R. Kinard, at (202) 622–6060; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst, *Richard.A.Hurst@irscounsel.treas.gov*, or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information referenced in this notice of proposed rulemaking were previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1780, in conjunction with the Treasury Decision (TD 9052), relating to Notice of Significant Reduction in the Rate of Future Benefit Accrual, published on April 9, 2003 in the **Federal Register** (68 FR 17277). There are no proposals for substantive changes to this collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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

Background

Overview

This document contains proposed amendments to 26 CFR parts 1 and 54 under section 4980F of the Internal Revenue Code (Code). Section 4980F sets forth the requirements for providing notice to certain affected persons when a plan significantly reduces future benefit accruals. A notice required under section 4980F of the Code or the parallel rules in section 204(h) of the Employee Retirement Income Security Act of 1974 (ERISA) is referred to as a ''section 204(h) notice.'' These proposed regulations would set forth timing rules for providing a section 204(h) notice for a plan amendment that is permitted to be effective before the applicable amendment date. In addition, the regulations provide guidance relating to changes made in section 4980F by the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780) (PPA '06).

Section 411(d)(6) Protected Benefits

Section 411(d)(6)(A) provides that a plan is treated as not satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by an amendment of the plan. There are certain exceptions to this general rule. For example, amendments described in section 412(d)(2) (section 412(c)(8) for plan years beginning before January 1, 2008) of the Code or section 4281 of ERISA. Section 204(g) of ERISA contains parallel rules to section 411(d)(6) of the Code.

Notice Requirements for Significant Reduction in the Rate of Future Benefit Accruals

Section 4980F imposes an excise tax when a plan administrator fails to provide timely notice of a plan amendment that provides for a significant reduction in the rate of future benefit accrual. For this purpose, the elimination or reduction of an early retirement benefit or retirement-type subsidy is treated as having the effect of reducing the rate of future benefit accrual. Section 4980F(e)(3) provides that, except as provided in regulations, the notice must be provided within a ''reasonable time'' before the effective date of the plan amendment. Section 204(h) of ERISA contains parallel rules to section 4980F of the Code.

For both section 204(g) and section 204(h) of ERISA, the Secretary of the Treasury has interpretive authority over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Pursuant to section 101(a) of Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury generally has the authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA, including section 204(g) and (h) of ERISA. Thus, these proposed Treasury regulations under section 4980F of the Code would apply as well for purposes of section 204(h) of ERISA.

Notice Requirements Relating to Plan Amendments Affecting Benefits for Prior Service

Section 412(d)(2) of the Code (section 412(c)(8) for plan years beginning before January 1, 2008) provides special rules relating to retroactive plan amendments. Rev. Proc. 94–42 (1994–1 CB 717), see § 601.601(d)(2)(ii)(*b*), sets forth procedures under which a plan sponsor may file notice with and obtain approval from the Secretary of the Treasury for a retroactive amendment described in section 412(d)(2) that reduces accrued benefits. Section 4 of Rev. Proc. 94–42 provides guidance relating to the written notice that must be provided to affected parties regarding the application for approval of a retroactive plan amendment to reduce accrued benefits under section 412(d)(2) (a ''section 412(d)(2) written notice''). The content requirements of a section 412(d)(2) written notice include a description of the plan amendment and its effect, including the range in reduction of accrued benefits of participants, beneficiaries, and alternate payees.

Section 212(a) of PPA '06 added section 432 of the Code, which provides rules relating to multiemployer plans that are in endangered or critical status. Under certain circumstances, a plan may adopt a plan amendment that reduces previously accrued benefits. Section 432(e)(8)(C) requires a plan to provide notice of the plan amendment to affected parties at least 30 days before the general effective date of the reduction. The notice must include information that is sufficient for participants and beneficiaries to understand the effect of any reduction on their benefits and a description of the possible rights and remedies of plan participants and beneficiaries.

Section 113(a)(1)(B) of PPA '06 added Code section 436, providing rules limiting benefits and benefit accruals for single-employer plans with certain funding shortfalls. Section 101(j) of ERISA generally requires the plan administrator to provide a written notice to plan participants and beneficiaries within 30 days after the plan becomes subject to this benefit limitation.

Section 4244A of ERISA provides that a multiemployer plan in reorganization is permitted to adopt an amendment reducing or eliminating certain accrued benefits (increases adopted within the prior 5 years) attributable to employer contributions under the plan. Under section 4244A(b)(2) of ERISA, an amendment is not permitted to reduce or eliminate benefits unless notice is given to plan participants, beneficiaries, and other affected persons at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted. The notice must include certain information, including explaining the rights and remedies of participants and beneficiaries under the plan and informing the recipients that if contributions under the plan are not increased, accrued benefits under the plan for certain participants and beneficiaries will be reduced or an

excise tax will be imposed on employers.

Section 4245 of ERISA provides rules relating to suspension of benefits under insolvent multiemployer plans. If benefit payments under the plan exceed the resource benefit level for the plan year, the payment of benefits must be suspended to the extent necessary to reduce such payments to the greater of the resource benefit level or the level of basic benefits. Section 4245(e) of ERISA provides that certain plans in reorganization must provide notice to plan participants and beneficiaries that certain non-basic benefit payments will be suspended.

Section 4281 of ERISA provides rules relating to benefits under certain multiemployer terminated plans. Section 4281(c) of ERISA provides that if the value of nonforfeitable benefits exceeds the value of the plan assets, the plan must be amended to reduce benefits in excess of nonforfeitable benefits arising from increases adopted within the prior 5 years, or the level that can be provided by plan assets, if greater. The regulations at 29 CFR 4281.32 provide that a plan sponsor must notify the Pension Benefit Guaranty Corporation (PBGC) and plan participants and beneficiaries of a plan amendment reducing benefits pursuant to section 4281(c) of ERISA. The notice must be provided no later than the earlier of 45 days after the amendment reducing benefits is adopted or the date of the first reduced benefit payment. Paragraph (e) of 29 CFR 4281.32 sets forth the content requirements applicable to a notice of benefit reduction.

Additional Provisions of Pension Protection Act of 2006

Section 402 of PPA '06 provides special funding rules for plans maintained by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline. Section 402(h)(4) of PPA '06 provides that in the case of a plan amendment adopted in order to comply with the rules in section 402 of PPA '06, any notice required under section 4980F(e) of the Code (or section 204(h) of ERISA) must be provided within 15 days of the effective date of the plan amendment. Section 402 of PPA '06 generally applies to amendments made pursuant to section 402 of PPA '06 for plan years ending after the date of enactment of PPA '06 (August 17, 2006).

Section 502(c) of PPA '06 amended section 4980F(e)(1) of the Code (and section 204(h) of ERISA) to add as a recipient of a section 204(h) notice any employer that has an obligation to contribute to the plan. This new disclosure requirement is effective for plan years beginning after December 31, 2007.

Section 1107 of PPA '06 provides that any plan amendment made pursuant to any PPA '06 change may be retroactively effective, and, except as provided by the Secretary of the Treasury, does not violate the anti-cutback rules of section 411(d)(6) of the Code (or section 204(g) of ERISA) if, in addition to satisfying the conditions specified in section 1107(b)(2) of PPA '06, the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011, with respect to governmental plans).

Explanation of Provisions

PPA '06 Rules

These proposed regulations would add contributing employers to the list of persons to whom a section 204(h) notice must be provided. A contributing employer is defined in the proposed regulations as an employer that has an obligation to contribute to a plan (within the meaning of section 4212(a) of ERISA). This requirement to give section 204(h) notice to contributing employers was added to reflect section 502(c)(2) of PPA '06. This requirement would only apply to amendments adopted in plan years beginning after December 31, 2007.

The regulations would also add a special timing rule to reflect section 402 of PPA '06. For certain plans maintained by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline, section 204(h) notice must be provided at least 15 days before the effective date of the amendment.[1]

Plan Amendments Reflecting a Change in Statutorily Mandated Minimum Present Value Rules

Section 417(e)(3) provides that, in distributing the present value of an accrued benefit to a plan participant, the present value of the benefit is not permitted to be less than the present value using the applicable mortality table and the applicable interest rate, as defined in section 417(e)(3)(B) and (C), respectively. Section 302(b) of PPA '06 amended section 417(e)(3) to provide new actuarial assumptions for calculating the minimum present value of a participant's accrued benefit. Plan sponsors have asked whether a plan amendment to reflect the change in these section 417(e)(3) statutory actuarial assumptions would trigger the requirement to provide a section 204(h) notice. Revenue Ruling 2007–67 (2007–48 IRB 1047), see § 601.601(d)(2)(ii)(*b*), which includes guidance on plan amendments regarding the new interest rate and mortality table under section 417(e)(3), states that certain amendments to reflect the new interest rate or mortality table for an annuity starting date in 2008 or later would not violate the anti-cutback rules of section 411(d)(6). The proposed regulations would provide that a reduced single-sum distribution resulting from an amendment to a traditional defined benefit plan to substitute the prescribed actuarial assumptions under section 417(e)(3), as amended by PPA '06, for the pre-PPA '06 actuarial assumptions under section 417(e)(3) does not require a section 204(h) notice.

Interaction of the Section 204(h) Notice Timing Rules With Plan Amendments That Have a Retroactive Effective Date

Section 1.411(d)–3(a)(1) generally provides that a plan is not a qualified plan if a plan amendment decreases the accrued benefit of any plan participant. These rules are generally based on the applicable amendment date, which is defined in § 1.411(d)–3(g)(4) as the later of the effective date of the amendment or the date the amendment is adopted. While the general rule under § 1.411(d)–3(a)(1) prohibits plan amendments that reduce a plan participant's accrued benefit, certain exceptions exist. These exceptions include amendments permitted under sections 412(d)(2), 418D, and 418E of the Code, section 4281 of ERISA, and section 1107 of PPA '06. The proposed regulations would provide a conforming amendment to § 1.411(d)–3(a)(1) to reference the rules at section 1107 of PPA '06.

The proposed regulations generally state that the effective date of an amendment that is permitted to be adopted retroactively is the date the amendment is put into effect on an operational basis, so that a section 204(h) notice must nevertheless generally be provided at least 45 days before the date the amendment is effective (15 days for multiemployer plans). The proposed regulations would add special timing rules for when a section 204(h) notice must be provided

[1] This timing rule is consistent with the Joint Committee on Taxation's Technical Explanation to section 402 of PPA '06, which states that the section 204(h) notice must be provided at least 15 days before the effective date of the plan amendment. *See* Joint Committee on Taxation, Technical Explanation of H.R. 4, the ''Pension Protection Act of 2006'' (JCX–38–06), August 3, 2006, 109th Cong., 2nd Sess. 87 (2006).

to recipients with respect to a section 204(h) amendment [2] that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date. Specifically, for purposes of section 1107(b)(2)(A) of PPA '06, the proposed regulations would clarify that the date on which such a plan amendment is effective is the first day that the plan is operated as if the amendment were in effect. Thus, a section 204(h) notice must generally be provided at least 45 days (15 days for a multiemployer plan) before the amendment is effective (even though the amendment is not adopted until a later date). Except to the extent a special timing rule is set forth in these regulations, a determination of whether a section 204(h) notice is required in connection with an amendment made pursuant to section 1107 of PPA '06 should be made in accordance with the general standards set forth in § 54.4980F–1, Q&As–5, 6, 7, and 8.

The proposed regulations provide a special timing rule for section 204(h) amendments to an applicable defined benefit plan as defined in section 411(a)(13)(C)(i). The regulations provide that for any section 204(h) notice that is required to be provided in connection with an amendment to an applicable defined benefit plan within the meaning of section 411(a)(13)(C)(i) that is first effective before January 1, 2009, and that limits the amount of the distribution to the account balance as permitted under section 411(a)(13)(A), the notice will not fail to be timely if provided at least 30 days before the date the amendment is first effective. This special timing rule reflects the 30-day timing rule described in Notice 2007–6 (2007–3 IRB 272), see § 601.601(d)(2)(ii)(*b*), which provides transitional guidance on the requirements of sections 411(a)(13) and 411(b)(5) of the Code.[3] The proposed regulations would permit a plan amendment to an applicable defined benefit plan within the meaning of section 411(a)(13)(C)(i) to use this special timing rule through the end of 2008. Thereafter, the general 45-day timing rule would apply to such amendments.

[2] A section 204(h) amendment is defined in Q&A–4(b) of § 54.4980F–1 of the Treasury Regulations as an amendment for which section 204(h) notice is required.

[3] Section B.4 of Notice 2007–6 provides that, in the case of a plan amendment that is permitted to reduce benefit accruals, a section 204(h) notice must be provided at least 30 days before the amendment is effective. This rule would require the notice to be provided at least 30 days before the earliest date on which the plan is operated in accordance with the amendment.

Interaction of Section 204(h) Notice Requirements With Other Notice Requirements Relating to Plan Amendments

As explained earlier in this preamble, under the heading ''Notice Requirements Relating to Plan Amendments Affecting Benefits for Prior Service,'' both the Code and ERISA include a number of notice requirements for plan amendments that are permitted to reduce or eliminate accrued benefits. These notice requirements are in addition to the notice requirements under section 4980F of the Code and section 204(h) of ERISA. To eliminate the need for a plan to provide multiple notices with substantially the same function and information to affected persons, these proposed regulations would provide that if a plan provides one of these notices in accordance with the applicable standards for such notices, the plan will be treated as having complied with the requirement to provide a section 204(h) notice with respect to a section 204(h) amendment. Under the proposed regulations, this treatment would apply to the following notices:

- A notice required under Rev. Proc. 94–42 relating to retroactive plan amendments that reduce accrued benefits described in section 412(d)(2);
- A notice required under section 101(j) of ERISA if an amendment is adopted to comply with the benefit limitation requirements of section 436 of the Code (section 206(g) of ERISA);
- A notice required under 4244A(b) of ERISA for an amendment that reduces or eliminates accrued benefits attributable to employer contributions with respect to a multiemployer plan in reorganization;
- A notice required under section 4245(e) of ERISA, relating to the effects of the insolvency status for a multiemployer plan; and
- A notice required under section 4281 of ERISA and 29 CFR 4281.32 for an amendment of a multiemployer plan reducing benefits pursuant to section 4281(c) of ERISA.

Timing and Content Rules for Multiemployer Plans in Endangered or Critical Status

Section 432, relating to multiemployer plans that are in endangered or critical status (as defined in section 432(b)), permits a plan amendment to be adopted that reduces prior accruals under certain circumstances. With respect to any such amendment for a plan that is in critical status, section 432(e)(8)(C) requires notice of the plan amendment. Notice under section 432(e)(8)(C) must be provided at least 30 days before the general effective date of the reduction. Section 432(e)(8)(C) requires the notice to include information that is sufficient for participants and beneficiaries to understand the effect of any reduction on their benefits and a description of the possible rights and remedies of participants and beneficiaries, including contact information for the Department of Labor for further assistance and information where appropriate.

As discussed in this preamble under the heading ''Interaction of the Section 204(h) Timing Rules with Plan Amendments that Have a Retroactive Effective Date,'' PPA '06 requires that notice be given 30 days before the general effective date for an amendment to a plan in critical status under section 432(e)(8)(C). Q&A–9(c) of § 54.4980F–1 of the Treasury Regulations provides that a section 204(h) amendment made in the case of a multiemployer plan must be provided at least 15 days before the effective date of the amendment. Compliance with the 30-day timing rule of section 432(e)(8)(C) notice would thus also satisfy this 15-day timing rule. These proposed regulations also include a rule under which the content of a notice under 432(e)(8)(C) would also satisfy the content requirements for a section 204(h) notice. As a result, under these proposed regulations, any notice for a multiemployer plan in critical status that satisfies the timing and content requirements under section 432(e)(8)(C) would be treated as satisfying the timing and content requirements of a section 204(h) notice.

However, in the case of an amendment to which section 432 applies for a multiemployer plan in endangered status, the normal timing and content rules for a section 204(h) notice under section 4980F would apply (so that any required section 204(h) notice must be provided at least 15 days before the effective date).

Delegation of Authority to the Commissioner

The proposed regulations would also delegate to the Commissioner of the Internal Revenue Service the authority to publish revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) under section 4980F of the Code (which would also apply to section 204(h) of ERISA) that the Commissioner determines to be necessary or appropriate with respect to a section 204(h) amendment that applies with respect to benefits accrued before the

applicable amendment date but that does not violate section 411(d)(6) of the Code. This delegation of authority provides the Commissioner with greater flexibility to develop special rules to address the limited circumstances in which Congress permits a plan to be amended to reduce benefits accrued before the adoption date of the plan amendment. This delegation of authority also extends to circumstances in which a section 204(h) amendment may require another notice in addition to a section 204(h) notice, regardless of whether that amendment reduces benefits accrued before the adoption date of the amendment. Often these notices must provide content requirements similar to a section 204(h) notice. This delegation would permit the Commissioner to treat plans providing these other notices as having complied with the requirement to provide a section 204(h) notice, thus eliminating unnecessary overlap in the administration of plans.

Proposed Effective Dates

These regulations are generally proposed to be applicable to section 204(h) amendments that are effective on or after January 1, 2008. However, for any section 204(h) amendment that is adopted after the effective date of the amendment, the clarification of the effective date of the amendment in these proposed regulations is applicable to those amendments on or after July 1, 2008. In addition, for any amendment to which the proposed regulations would otherwise apply, no inference is intended as to when a section 204(h) notice must be provided if the amendment is effective before July 1, 2008.

As described in this preamble under the heading ''Interaction of the Section 204(h) Notice Timing Rules with Plan Amendments that Have a Retroactive Effective Date,'' with respect to any section 204(h) amendment to a lump sum-based benefit formula (or any other amendment adopted pursuant to section 701 of PPA '06), the special rules under the proposed regulations relating to an amendment that applies with respect to benefits accrued before the applicable amendment date apply to amendments adopted after December 21, 2006 (the date on which Notice 2007–6 was published). However, the special 30-day timing rule for providing a section 204(h) notice applies to such amendments effective on or after December 21, 2006, and not later than December 31, 2008. With respect to the rule relating to adding contributing employers to the list of section 204(h) recipients, the effective date is proposed to apply to section 204(h) amendments adopted in plan years beginning after December 31, 2007.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. It is hereby certified that the collection of information in this regulation would not have a significant impact on a substantial number of small entities. This certification is based on the fact that this regulation only provides guidance on how to satisfy existing collection of information requirements. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and IRS request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 10, 2008, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by June 19, 2008 and an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by June 20, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 54 are proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.411(d)–3 is amended by revising the first sentence of paragraph (a)(1) to read as follows:

The revision reads as follows:

§ 1.411(d)–3 Section 411(d)(6) protected benefits.

(a) *Protection of accrued benefits*—(1) *General rule.* Under section 411(d)(6)(A), a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, except as provided in section 412(d)(2) (section 412(c)(8) for plan years beginning before January 1, 2008), section 4281 of the Employee Retirement Income Security Act of 1974 as amended (ERISA), or other applicable law (see, for example, sections 418D and 418E of the Internal Revenue Code, and section 1107 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780, 1063)). * * *

* * * * *

PART 54—PENSION EXCISE TAXES

Par. 3. The authority citation for part 54 continues to read in part as follows:

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

Section 54.4980F–1 also issued under 26 U.S.C. 4980F and section 1107 of the Pension Protection Act of 2006, Public Law 109–780 (120 Stat. 780). * * *

Par. 4. Section 54.4980F–1 is amended by:

1. Revising the second sentence of A–1(a).
2. Redesignating A–8(d) as A–8(e) and adding new A–8(d).
3. Revising the first sentence of A–9(a), A–9(b), and A–9(c), and revising A–9(d)(1).
4. Adding A–9(f) and A–9(g).
5. Revising the first sentence of A–10(a).
6. Revising A–11(a)(1) and adding A–11(a)(7).
7. Adding A–18(a)(4) and A–18(a)(5).
8. Revising A–18(b)(1) and adding (b)(3)(i), (b)(3)(ii), and (b)(3)(iii).

These additions and revisions read as follows:

§ 54.4980F–1 Notice requirements for certain pension plan amendments significantly reducing the rate of future benefit accrual.

* * * * *

A–1. (a) *Requirements of Internal Revenue Code section 4980F(e) and ERISA section 204(h).* * * * The notice is required to be provided to plan participants and alternate payees who are applicable individuals (as defined in Q&A–10 of this section), to certain employee organizations, and to contributing employers (as described in Q&A–10 of this section).

* * * * *

A–8. * * *

(d) *Plan amendments reflecting a change in statutorily mandated minimum present value rules.* If a defined benefit plan offers a distribution to which the minimum present value rules of section 417(e)(3) apply (other than a payment to which section 411(a)(13)(A) applies), and the plan is amended to reflect the changes to the applicable interest and mortality assumptions in section 417(e)(3) made by PPA '06 (and no change is made in the dates on which the payment will be made), no section 204(h) notice is required to be provided.

* * * * *

A–9. (a) *45-day general rule.* Except as otherwise provided in this Q&A–9, section 204(h) notice must be provided at least 45 days before the effective date of any section 204(h) amendment. * * *

(b) *15-day rule for small plans.* Except for amendments described in paragraphs (d)(2) and (g) of this Q&A–9, section 204(h) notice must be provided at least 15 days before the effective date of any section 204(h) amendment in the case of a small plan. * * *

(c) *15-day rule for multiemployer plans.* Except for amendments described in paragraphs (d)(2) and (g) of this Q&A–9, section 204(h) notice must be provided at least 15 days before the effective date of any section 204(h) amendment in the case of a multiemployer plan. * * *

(d) *Special timing rule for business transactions*—(1) *15-day rule for section 204(h) amendment in connection with an acquisition or disposition.* Except for amendments described in paragraphs (d)(2) and (g) of this Q&A–9, if a section 204(h) amendment is adopted in connection with an acquisition or disposition, section 204(h) notice must be provided at least 15 days before the effective date of the section 204(h) amendment.

* * * * *

(f) *Special timing rule for certain plans maintained by commercial airlines.* See section 402 of the Pension Protection Act of 2006, Public Law 109–780 (120 Stat. 780) (PPA '06) for a special rule that applies to certain plans maintained by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline. Under this special rule, section 204(h) notice must be provided at least 15 days before the effective date of the amendment.

(g) *Special timing rules relating to certain section 411(d)(6) plan amendments*—(1) *Plan amendments permitted to reduce prior accruals.* This paragraph (g) generally provides special rules with respect to a plan amendment that would not violate section 411(d)(6) even if the amendment applies with respect to benefits accrued before the applicable amendment date. Thus, for example, this paragraph (g) applies to amendments that are permitted to be effective retroactively under section 412(d)(2) (section 412(c)(8) for plan years beginning before January 1, 2008), 418D, or 418E of the Code, section 4281 of ERISA, or section 1107 of PPA '06. See, generally, § 1.411(d)–3(a)(1).

(2) *General timing rule for amendments to which this paragraph (g) applies.* For an amendment to which this paragraph (g) applies, the amendment is effective on the first date on which the plan is operated as if the amendment were in effect. Thus, except as otherwise provided in this paragraph (g), a section 204(h) notice for an amendment to which paragraph (a) of this section applies that is adopted after the effective date of the amendment must be provided, with respect to any applicable individual, at least 45 days before (or such other date as may apply under paragraphs (b), (c), (d), or (f) of this Q&A–9) the date the amendment is effective.

(3) *Special rules for section 204(h) notices provided in connection with other disclosure requirements*—(i) *In general.* Notwithstanding the requirements in this Q&A–9 and Q&A–11 of this section, if a plan provides one of the notices in paragraph (g)(3)(ii) of this Q&A–9 in accordance with the applicable timing and content rules for such notice, the plan is treated as providing a section 204(h) notice with respect to a section 204(h) amendment and is treated as satisfying the timing rules of this Q&A–9 and the content rules of paragraphs (a)(3), (4), and (6) of Q&A–11 of this section.

(ii) *Notice requirements.* The notices in this paragraph (g)(3)(ii) are—

(A) A notice required under any revenue ruling, notice, or other guidance published under the authority of the Commissioner in the Internal Revenue Bulletin to affected parties in connection with a retroactive plan amendment described in section 412(d)(2) (section 412(c)(8) for plan years beginning before January 1, 2008);

(B) A notice required under section 101(j) of ERISA if an amendment is adopted to comply with the benefit limitation requirements of section 206(g) of ERISA (section 436 of the Code);

(C) A notice required under 4244A(b) of ERISA for an amendment that reduces or eliminates accrued benefits attributable to employer contributions with respect to a multiemployer plan in reorganization;

(D) A notice required under section 4245(e) of ERISA, relating to the effects of the insolvency status for a multiemployer plan; and

(E) A notice required under section 4281 of ERISA for an amendment of a multiemployer plan reducing benefits pursuant to section 4281(c) of ERISA.

(4) *Delegation of authority to Commissioner.* The Commissioner may provide special rules under section 4980F, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter), that the Commissioner determines to be necessary or appropriate with respect to a section 204(h) amendment—

(i) That applies to benefits accrued before the applicable amendment date but that does not violate section 411(d)(6) or

(ii) For which there is a required notice with timing and content

requirements similar to a section 204(h) notice.

* * * * *

A–10. (a) *In general.* Section 204(h) notice must be provided to each applicable individual, to each employee organization representing participants who are applicable individuals, and, for plan years beginning after December 31, 2007, to each employer that has an obligation to contribute (within the meaning of section 4212(a) of ERISA) to the plan. * * *

* * * * *

A–11. (a) *Explanation of notice requirement*—(1) *In general.* Section 204(h) notice must include sufficient information to allow applicable individuals to understand the effect of the plan amendment. In order to satisfy this rule, a plan administrator providing section 204(h) notice must generally satisfy paragraphs (a)(2), (3), (4), (5), and (6) of this Q&A–11. See paragraph (a)(7) of this Q&A–11 for a special rule relating to section 204(h) notices provided in connection with a notice required under section 432(e)(8)(C). See paragraph (g)(3) of Q&A–9 of this section for special rules relating to section 204(h) notices provided in connection with certain other written notices. See also paragraph (g)(4) of Q&A–9 of this section for a delegation of authority to the Commissioner to provide special rules.

* * * * *

(7) *Information in section 204(h) notice provided in connection with a notice required under section 432(e)(8)(C).* The information required in a notice under section 432(e)(8)(C) is treated as satisfying the content requirements of paragraphs (a)(3), (4), and (6) of this Q&A–11 for a section 204(h) notice.

* * * * *

A–18. (a) * * *

(4) *Special effective date for certain section 204(h) amendments made by plans of commercial airlines.* Section 402 of PPA '06 applies to section 204(h) amendments adopted in plan years ending after August 17, 2006.

(5) *Special effective date for rule relating to contributing employers.* Section 502 of PPA '06, which amended section 4980F(e)(1) of the Code, applies to section 204(h) amendments adopted in plan years beginning after December 31, 2007.

(b) *Regulatory effective date*—(1) *General effective date.* Except as otherwise provided in this paragraph (b), section 4980F and section 204(h) of ERISA, as amended by EGTRRA, apply to plan amendments taking effect on or after June 7, 2001 (statutory effective date), which is the date of enactment of EGTRRA.

* * * * *

(3) *Effective dates for Q&A–9(g)(1), (g)(3), and (g)(4) and Q&A–11(a)(7)*—(i) *General effective date.* Except as provided in Q&A–18(b)(3)(ii) or (b)(3)(iii) of this section, the rules in Q&A–9(g)(1), (g)(3), and (g)(4) and Q&A–11(a)(7) of this section apply to amendments that are effective on or after January 1, 2008.

(ii) *Effective date for Q&A–9(g)(2).* Except as provided in Q&A–18(b)(3)(iii) of this section, the rules in Q&A–9(g)(2) of this section apply to amendments that are effective on or after July 1, 2008.

(iii) *Special rules for section 204(h) amendments to applicable defined benefit plan.* Notwithstanding paragraph (b)(3)(i) or (b)(3)(ii) of this Q&A–18, with respect to any section 204(h) notice provided in connection with a section 204(h) amendment to an applicable defined benefit plan within the meaning of section 411(a)(13)(C)(i) to limit distributions as permitted under section 411(a)(13)(A) for distributions made after August 17, 2006, that is made pursuant to section 701 of PPA '06, the special rules in paragraphs (g)(1) and (2) of Q&A–9 of this section apply to amendments made effective after December 21, 2006. For such an amendment that is effective not later than December 31, 2008, section 204(h) notice does not fail to be timely if the notice is provided at least 30 days, rather than 45 days, before the date that the amendment is first effective.

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–5625 Filed 3–20–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–143468–07]

RIN 1545–BH23

Classification of Certain Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary and final regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes. The regulations are needed to make the Federal tax classification of Bulgarian public limited liability companies consistent with the Federal tax classification of public limited liability companies organized in other countries of the European Economic Area. They will affect persons owning an interest in a Bulgarian aktsionerno druzhestvo on or after January 1, 2007. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by June 19, 2008.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–143468–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–143468–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–143468–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, S. James Hawes, (202) 622–3860; concerning submissions of comments, Kelly Banks, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the **Federal Register** amend and revise 26 CFR part 301 relating to section 7701 of the Internal Revenue Code. The temporary regulations add certain business entities to the list of foreign business entities that are always classified as corporations for Federal tax purposes. The preamble to the temporary regulations explains both the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5

U.S.C. Chapter 5) does not apply to this regulation. Because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply, either. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the Internal Revenue Service (IRS). The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Proposed Effective Date

The regulations proposed in this document would be applicable for entities existing on or after March 21, 2008.

Drafting Information

The principal author of these proposed regulations is S. James Hawes of the Office of Associate Chief Counsel (International); however, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.7701–2 is amended by revising paragraphs (b)(8)(vi) and (e)(7) to read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(vi) [The text of the proposed amendment to § 301.7701–2(b)(8)(vi) is the same as the text of § 301.7701–2T(b)(8)(vi) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(e) * * *

(7) [The text of the proposed amendment to § 301.7701–2(e)(7) is the same as the text of § 301.7701–2T(e)(7) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–5687 Filed 3–20–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–0154]

RIN 1625–AA08

Special Local Regulations for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations for the ''William I. Koch International Sea Scout Cup'', a sailboat regatta to be held on the waters of the Severn River, Annapolis, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Severn River adjacent to the U.S. Naval Academy, Annapolis, Maryland during the sailboat regatta.

DATES: Comments and related material must reach the Coast Guard on or before April 21, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0154 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: If you have questions on this proposed rule, call Dennis Sens, Project Manager, Fifth Coast Guard District, Inspections and Compliance Branch, at (757) 398–6204. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0154), 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. 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.

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. Enter the docket number for this rulemaking (USCG–2008–0154) in the Search box, and click ''Go >>.'' You may also visit either 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; or the Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704–5004, Room 416 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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.*

Public Meeting

We do not now 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**.

Background and Purpose

On July 13 through July 19, 2008, the U.S. Naval Academy, Annapolis, MD will host the ''William I. Koch International Sea Scout Cup'', sailboat regatta on the waters of the Severn River. This youth sailing regatta is comprised of young men and women between the ages of 14 and 21 who are actively registered in the Sea Scout program. The five-day event will be held at the Naval Academy's Sailing Center. Teams from the United States and 20 countries will test their seamanship skills as they sail 14′ sloop rigged boats. The event will consist of approximately 80 fourteen-foot sailboats racing about several marked courses on the Severn River. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, support vessels, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters on the Severn River adjacent to the U.S. Naval Academy, Annapolis, Maryland. This rule would be enforced from 8:30 a.m. to 7:30 p.m. on July 14, 15, 16, 17, and 18, 2008, and would restrict general navigation in the regulated area during the sail boat regatta. The Coast Guard, at its discretion, when practical would allow the passage of vessels when races are not taking place. If the event's daily activities should conclude prior to 7:30 p.m., enforcement of this proposed regulation may be terminated for that day at the discretion of the Patrol Commander. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel would be allowed to enter or remain in the regulated area during the enforcement period.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this proposed regulation would prevent traffic from transiting a portion of the Severn River adjacent to U.S. Naval Academy, Annapolis, Maryland during the event, the effects of this regulation would not be significant due to the limited duration that the regulated area would be in effect. Extensive advance notifications would be made to the maritime community via Local Notice to Mariners, marine information broadcast, area newspapers and radio stations, so mariners can adjust their plans accordingly. Vessel traffic would be able to transit the regulated area between races, when the Coast Guard Patrol Commander deems it is safe to do so.

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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of the Severn River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only a short period, from 8:30 a.m. to 7:30 p.m. on July 14, 15, 16, 17, and 18, 2008. The regulated area will apply to a segment of the Severn River adjacent to the U.S. Naval Academy waterfront. Marine traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels will be required to proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we would publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcasts so mariners can adjust their plans accordingly. Information regarding the International Sea Scout Cup will be disseminated by local community news papers and radio stations.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that

they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard at the number listed under **FOR FURTHER INFORMATION CONTACT**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 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.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed 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 this action is not likely to have a significant effect on the human environment.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add temporary § 100.35–T05–017 to read as follows:

§ 100.35–T05–017 Severn River, Annapolis, MD

(a) *Regulated area.* The regulated area is established for the waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′38.9″ N, longitude 076°31′05.2″ W thence to the north shoreline at latitude 39°00′54.7″ N, longitude 076°30′44.8″ W, this line is approximately 1300 yards northwest of the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from the Naval Academy Light at latitude 38°58′39.5″ N, longitude 076°28′49″ W thence southeast to a point 700 yards east of Chinks Point, MD at latitude 38°58′1.9″ N, longitude 076°28′1.7″ W thence northeast to Greenbury Point at latitude 38°58′29″ N, longitude 076°27′16″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section but may not block a navigable channel.

(d) *Enforcement period.* (1) This section will be enforced from 8:30 a.m. to 7:30 p.m. on July 14, 15, 16, 17, and 18, 2008 and if the event's daily activities should conclude prior to 6 p.m., enforcement of this proposed regulation may be terminated for that day at the discretion of the Patrol Commander.

(2) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

Dated: March 10, 2008.

Fred M. Rosa, Jr.,

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

[FR Doc. E8–5776 Filed 3–20–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0879; FRL–8533–9]

Approval and Promulgation of Air Quality Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Ohio State Implementation Plan (SIP). On September 7, 2006, Ohio requested approval of revisions to its open burning standards. The revisions were made to clarify the open burning rules. Ohio added requirements for specific types of burning that were previously not addressed. The state also added or refined some of the definitions and slightly changed some of the existing rules. The revisions were made to increase clarity of Ohio's open burning rules.

DATES: Comments must be received on or before April 21, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0879, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.

2. *E-mail: mooney.john@epa.gov.*

3. *Fax:* (312) 886–5824.

4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: February 15, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E8–5668 Filed 3–20–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070717341–8250–01]

RIN 0648–AV41

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2008

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures for the 2008 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Comments must be received by 5 p.m. local time, on April 21, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648–AV41, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- Mail and hand delivery: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on 2008 Summer Flounder, Scup, and Black Sea Bass Recreational Measures.''
- Fax: (978) 281–9135. Send the fax to the attention of the Sustainable Fisheries Division. Include ''Comments on 2008 Summer Flounder, Scup, and Black Sea Bass Recreational Measures'' prominently on the fax.

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.

Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the specifications are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. These documents are also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing U.S. fisheries also appear at 50 CFR part 600. States manage summer flounder within 3 nautical miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the exclusive economic zone (EEZ), as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The FMP established Monitoring Committees (Committees) for the three fisheries, consisting of representatives from the Commission; the Mid-Atlantic, New England, and South Atlantic Councils; and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures necessary to achieve the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits these measures to minimum fish size, possession limit, and fishing season.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the Committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council then reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP.

Quota specifications for the 2008 summer flounder, scup, and black sea bass fisheries were published on December 31, 2007 (72 FR 74197). Based on these specifications, the 2008 coastwide recreational harvest limits are 6,215,800 lb (2,819 mt) for summer flounder, 1,830,920 lb (830 mt) for scup, and 2,108,447 lb (956 mt) for black sea bass. The specification rules did not establish recreational measures, since final recreational catch data for 2007 were not available when the Council made its recreational harvest limit recommendation to NMFS.

All minimum fish sizes discussed hereafter are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person.

Summer Flounder

Recreational landings for 2007 were estimated to have been 9.30 million lb (4,218 mt). This exceeded, by approximately 38 percent, the 2007 recreational harvest limit of 6.69 million lb (3,034 mt). All states except MA and VA are projected to have exceeded their state harvest limits established under the conservation equivalency system utilized to manage the 2007 recreational summer flounder fishery. The magnitude of the overages ranged from a low of 16 percent for CT to a high of 49 percent for MD.

The 2008 coastwide harvest limit is 6,215,800 lb (2,819 mt), a 9.2-percent decrease from the 2007 harvest limit of 6,689,004 lb (3,034 mt). Given the 2007 overages and reduction in available harvest for 2008, landings must be reduced by 33.2-percent coastwide from the 2007 levels to ensure that the 2008 harvest limit is not exceeded. The Council is recommending conservation equivalency, described as follows, that would require individual states to reduce summer flounder landings (measured in number of fish) to achieve the necessary recreational harvest reductions for 2008.

NMFS implemented Framework Adjustment 2 to the FMP (Framework Adjustment 2) on July 29, 2001 (66 FR 36208), which established a process that makes conservation equivalency an option for the summer flounder recreational fishery. Conservation equivalency allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the overall recreational harvest limit, if implemented by all of the states.

The Council and Board recommend annually that either state-specific recreational measures be developed (conservation equivalency) or coastwide management measures be implemented by all states to ensure that the recreational harvest limit will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of coastwide measures that would apply if conservation equivalency is not approved.

If conservation equivalency is recommended, and following confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the

permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ would then be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

In addition, the Council and the Board must recommend precautionary default measures. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee (Technical Committee), or that submits measures that are determined not to achieve the required level of reduction for that state. The precautionary default measures are defined as the set of measures that would achieve at least the highest percent reduction for any state on a coastwide basis.

In December 2007, the Council and Board voted to recommend conservation equivalency to achieve the 2008 recreational harvest limit. The Commission's conservation equivalency guidelines require the states to determine and implement appropriate state-specific management measures (i.e., possession limits, fish size limits, and fishing seasons) to achieve state-specific harvest limits. States' may also form voluntary regions wherein the member states' measures must achieve the overall reduction required for the region in question.

For 2008, at the request of NMFS, and under the direction of the Council and Commission, the Technical Committee developed additional guidance for states to utilize to improve the effectiveness of conservation equivalency in 2008. The Technical Committee assessed the performance, as measured by the effectiveness of state measures in constraining landings to the annual recreational harvest limits, for each state's conservation equivalency measures during the period of 2001 through 2007. Based on the average individual state overage during the 2001–2007 time frame, the Technical Committee crafted a performance-based adjustment to be applied to further increase the percent reduction some states must achieve in 2008. States assigned this additional reduction had an average net overage relative to their respective harvest targets for the 2001–2007 time frame.

Under the conservation equivalent approach, each state may implement unique management measures appropriate to that state, so long as these measures are determined by the Commission to provide equivalent conservation as would Federal coastwide measures. For 2008, the Commission is requiring that states also reduce landings by an additional performance-based adjustment, as developed by the Technical Committee, to achieve the overall recreational harvest limit in an effort to ensure that recreational overages will not occur in 2008. According to the conservation equivalency procedures established in Framework Adjustment 2, each state except MA would be required to reduce 2008 landings by the percentages shown in Table 1. In addition, the states of RI, CT, NY, NJ, and VA are required by the Commission to further reduce landings by the Technical Committee's performance-based adjustment factor shown in Table 1, resulting in a final higher total level of reduction for 2008. MA may submit more liberal management measures, provided that they are sufficient to ensure its 2008 state harvest limit is not exceeded. ME and NH have no recreational summer flounder harvest limit and are not required to submit management measures to the Commission.

TABLE 1. 2008 CONSERVATION EQUIVALENCY STATE-SPECIFIC HARVEST TARGETS (THOUSANDS OF FISH), INITIAL PERCENT REDUCTIONS, COMMISSION REQUIRED PERFORMANCE-BASED ADJUSTMENTS, AND FINAL PERCENT REDUCTIONS.

State	2008 Target (X '000 fish)	Initial Percent Reduction Required under Framework Adjustment 2 to the FMP	Commission Performance Based Reduction Factor	Final Percent Reduction Required by Commission
MA	113	0	0	0
RI	116	47.5	7.8	51.6
CT	77	28.7	1.9	30.1
NY	361	45.9	33.6	64.0
NJ	801	39.2	4.3	41.8
DE	64	41.8	0.0	41.8
MD	61	56.7	0.0	56.7
VA	342	13.9	8.9	21.5
NC	115	34.3	0.0	34.2

The Board required that each state submit its conservation equivalency proposals to the Commission by late January 2008. The Technical Committee then evaluated the proposals and advised the Board of each proposal's consistency with respect to achieving the coastwide recreational harvest limit. The Commission invited public participation in its review process by allowing public comment on the state proposals at the Technical Committee meeting held on January 29, 2008. The Board met on February 7, 2008, and approved a range of management proposals for each state designed to attain conservation equivalency. Once the states select and submit their final summer flounder management measures to the Commission, the Commission will notify NMFS as to which individual state proposals have been approved or disapproved. NMFS retains the final authority either to approve or to disapprove using conservation equivalency in place of the coastwide measures and will publish its determination as a final rule in the **Federal Register** to establish the 2008 recreational measures for these fisheries.

States that do not submit conservation equivalency proposals, or whose proposals are disapproved by the Commission, will be required by the Commission to adopt the precautionary default measures. In the case of states that are initially assigned precautionary default measures, but subsequently receive Commission approval of revised state measures, NMFS will publish a notice in the **Federal Register** announcing a waiver of the permit condition at § 648.4(b). The suite of state proposals for 2008, consistent with the Technical Committee's performance-based adjustment procedures, have initially been approved by the Commission. Therefore, a state would only be required to implement precautionary default measures if the measures submitted for final Commission approval are different than those preliminarily approved by the Commission or for failing to finalize conservation equivalent measures for 2008.

The precautionary default measures initially recommended by the Council and Board during their joint December 2008 meeting were for a 20.0-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season of May 23 through September 1, 2008. Since the December 2007, the Technical Committee developed the previously discussed performance-based adjustment in response to a joint Council and Commission motion designed to improve the performance of conservation equivalency. This resulted in the precautionary default measures

initially proposed by the Council and Commission to be less restrictive than measures that some states would be required to implement under the performance-based adjustment. To rectify this situation, the Board voted in February 2008 to implement a modified precautionary default consisting of a 20.0-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season of July 4 through September 1, 2008, to ensure that the necessary level of reduction for all states would occur in the event that precautionary default measures are assigned to any state for 2008. NMFS finds this modification to the precautionary default measures (i.e., reduction in fishing season) to be consistent with Framework Adjustment 2 that established the precautionary default reduction requirements, and therefore proposes to implement the modified precautionary default measures adopted by the Board and Commission: A 20.0-inch (50.80-cm) minimum fish size, a two fish possession limit, and an open season of July 4 through September 1, 2008.

As described above, for each fishing year, NMFS implements either coastwide measures or conservation equivalent measures at the final rule stage. The coastwide measures recommended by the Council and Board for 2008 are a 19-inch (48.26-cm) minimum fish size, a possession limit of three fish, and an open season from May 23 to September 1, 2008. Supplemental analysis conducted by NMFS using the upper bound of the 2007 Marine Recreational Fishery Statistics Survey (MRFSS) harvest estimates and factoring in potential diminished effectiveness of regulations based on noncompliance in 2007 demonstrates that these coastwide measures, as proposed by the Council and Board, may not effectively constrain landings to the 2008 recreational harvest limit if implemented instead of conservation equivalency. In this action, NMFS proposes to modify the Council and Board's recommended possession limit from a three fish to a two fish limit. The change in possession limit, while retaining the Council and Board recommended minimum fish size and fishing season, would be expected to constrain landings to the overall recreational harvest. These modified coastwide measures would be waived if conservation equivalency is approved in the final rule.

Scup

The 2008 scup recreational harvest limit is lb 1,830,920 lb (830 mt), roughly a 33-percent decrease from the 2007 recreational harvest limit of 2.74 million lb (1,240 mt). Fishing year 2008 is year 1 of the scup rebuilding plan implemented by Amendment 14 to the FMP (July 23, 2007; 72 FR 40077). The substantial reduction in the 2008 recreational harvest limit is largely a result of a necessary reduction in exploitation on the scup stock consistent with this recently enacted management plan designed to rebuild the scup resource from an overfished condition. Recreational landings in 2007 were estimated to have been 3.80 million lb (1,723 mt). A coastwide reduction in landings of 51.8 percent is required to achieve the 2008 recreational harvest limit for scup.

The 2008 scup recreational fishery will be managed under separate regulations for state and Federal waters; the Federal measures would apply to party/charter vessels with Federal permits and other vessels subject to the possession limit that fish in the EEZ. In Federal waters, to achieve the 2008 target, NMFS proposes coastwide management measures of a 10.5-inch (26.67-cm) minimum fish size, a 15-fish possession limit, and open seasons of January 1 through February 29, and October 1 through October 31, as recommended by the Council.

As has occurred in the past 6 years, the scup fishery in state waters will be managed under a regional conservation equivalency system developed through the Commission. Addendum XI to the Interstate FMP (Addendum XI), approved by the Board at the January 2004 Council/Commission meeting, requires that the states of MA through NY each develop state-specific management measures to constrain their landings to an annual harvest level for this region in number of fish (approximately 1.7 million fish for 2008), through a combination of minimum fish size, possession limits, and seasonal closures. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures under Addendum XI, the Federal and state recreational scup management measures will differ for 2008.

At the February 7, 2008, meeting, the Board approved a regional management proposal for MA through NY that would allow different minimum fish sizes, possession limits, and fishing seasons for private vessels/shore based anglers and party/charter vessels. For this northern conservation equivalency area, the Board retained a minimum fish size of 10.5 inches (26.7 cm), a common possession limit (10 fish), and a May 24 through September 26 fishing season for private vessels and shore-based anglers; party and charter vessels may take scup for up to 126 days under two distinct seasons with separate minimum fish sizes, possession limits and seasons. One charter/party season, designated as ''bonus fishery'' has a minimum fish size of 11.0 inches (27.94 cm), a 45-fish possession limit, and is constrained to a 45-day period within May 15 through October 15. The second party/charter season designation is the ''non-bonus fishery'' which carries an 11.0-inch (27.94 cm) minimum fish size, a 10-fish possession limit, and is 81 days in duration either prior to or following the dates of the open season. Due to low scup landings in NJ through NC, the Board approved the retention of status quo management measures for those states, i.e., a 10-inch (25.40-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 29 and September 18 through November 30.

Black Sea Bass

Recreational landings in 2007 were estimated to have been 1.97 million lb (890 mt)—20 percent below the 2007 target of 2.47 million lb (1,120 mt) and 7 percent below the 2008 target of 2.11 million lb (957 mt). The 2008 recreational harvest limit of 2.11 million lb (957 mt) is a 14.6-percent decrease from the 2007 target. Based on 2007 landings, no reduction in landings is necessary to achieve the 2008 target.

For Federal waters, the Council and Board have approved measures that would maintain the 25-fish possession limit, the 12-inch (30.48-cm) minimum size, and open season of January 1 through December 31. NMFS proposes to maintain these measures, which are expected to constrain recreational black sea bass landings to the 2008 target.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the RFA. 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 of the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of the complete IRFA is available from the Council (see **ADDRESSES**).

This proposed rule does not duplicate, overlap, or conflict with other Federal rules. The proposed action could affect any recreational angler who fishes for summer flounder, scup, or black sea bass in the EEZ or on a party/charter vessel issued a Federal permit for summer flounder, scup, and/or black sea bass. However, the IRFA focuses upon the impacts on party/charter vessels issued a Federal permit for summer flounder, scup, and/or black sea bass because these vessels are considered small business entities for the purposes of the RFA, i.e., businesses in the recreational fishery with gross revenues of up to $6.5 million. These small entities can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters. Although individual recreational anglers are likely to be impacted, they are not considered small entities under the RFA. Also, there is no permit requirement to participate in these fisheries; thus, it would be difficult to quantify any impacts on recreational anglers in general.

The Council estimated that the proposed measures could affect any of the 919 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2006, the most recent year for which complete permit data are available. However, only 369 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2006.

In the IRFA, the no-action alternative (i.e., maintenance of the regulations as codified) is defined as implementation of the following: (1) For summer flounder, coastwide measures of a 19-inch (48.26-cm) minimum fish size, a 2-fish possession limit, and a season from May 23 through September 1, i.e., the Federal regulatory measure that would be implemented if conservation equivalency is not implemented in the final rule; (2) for scup, a 10-inch (25.40-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 18 through November 30; and (3) for black sea bass, a 12-inch (30.48-cm) minimum size, a 25-fish possession limit, and an open season of January 1 through December 31.

The no-action alternative for black sea bass is the same (status quo) set of measures being proposed for 2008. Landings of black sea bass in 2007 was less than the 2008 target and the status quo measures are expected to constrain landings to the 2008 target. As such, since there is no regulatory change being proposed for black sea bass, there is no further discussion of the economic impacts within this section.

The impacts of the proposed action on small entities (i.e., federally permitted party/charter vessels in each state in the Northeast region) was analyzed, assessing potential changes in gross revenues for all 18 combinations of alternatives proposed. Although NMFS's RFA guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using changes in party/charter vessel revenues as a proxy for profitability. This is because reliable cost and revenue information are not available for charter/party vessels at this time. Without reliable cost and revenue data, profits cannot be discriminated from gross revenues. As reliable cost data become available, impacts to profitability can be more accurately forecast. Similarly, changes to long-term solvency were not assessed due both to the absence of cost data and because the recreational management measures change annually according to the specification-setting process. Effects of the various management measures were analyzed by employing quantitative approaches, to the extent possible. Where quantitative data were not available, the qualitative analyses were utilized.

Management measures proposed under the summer flounder conservation equivalency alternative (Summer Flounder Alternative 1) have yet to be adopted; therefore, potential losses under this alternative could not be analyzed in conjunction with various alternatives proposed for scup and black sea bass. Since conservation equivalency allows each state to tailor specific recreational fishing measures to the needs of that state, while still achieving conservation goals, it is likely that the measures developed under this alternative, when considered in combination with the measures proposed for scup and black sea bass, would have fewer overall adverse effects than any of the other combinations that were analyzed.

Impacts for other combinations of alternatives were examined by first estimating the number of angler trips aboard party/charter vessels in each state in 2007 that would have been affected by the proposed 2008 management measures. All 2007 party/charter fishing trips that would have been constrained by the proposed 2008 measures in each state were considered to be affected trips. MRFSS data indicate that anglers took 38.70 million fishing trips in 2007 in the Northeastern U.S., and that party/charter anglers accounted for 4.7 percent of the angler fishing trips, private/rental boat trips accounted for 52.5 percent of angler fishing trips, and shore trips accounted for 42.8 percent of recreational angler fishing trips. The number of party/charter trips in each state ranged from 23,542 in DE to 508,259 in NJ.

There is very little empirical evidence available to estimate how the party/charter vessel anglers might be affected by the proposed fishing regulations. If the proposed measures discourage trip-taking behavior among some of the affected anglers, economic losses may accrue to the party/charter vessel industry in the form of reduced access fees. On the other hand, if the proposed measures do not have a negative impact on the value or satisfaction the affected anglers derive from their fishing trips, party/charter revenues would remain unaffected by this action. In an attempt to estimate the potential changes in gross revenues to the party/charter vessel industry in each state, two hypothetical scenarios were considered: A 25-percent reduction, and a 50-percent reduction, in the number of fishing trips that are predicted to be affected by implementation of the management measures in the northeast (ME through NC) in 2008.

Total economic losses to party/charter vessels were then estimated by multiplying the number of potentially affected trips in each state in 2008, under the two hypothetical scenarios, by the estimated average access fee of $41.32[1] paid by party/charter anglers in the northeast in 2007. Finally, total economic losses were divided by the number of federally permitted party/charter vessels that participated in the summer flounder fisheries in 2006 in each state (according to homeport state in the Northeast Region Permit Database) to obtain an estimate of the average projected gross revenue loss per party/charter vessel in 2008. The analysis assumed that angler effort and catch rates in 2008 will be similar to 2007.

The Council noted that this method is likely to overestimate the potential revenue losses that would result from implementation of the proposed coastwide measures in these three fisheries for several reasons. First, the

[1] 1998 party/charter average expenditure estimate adjusted to 2007 equivalent using Bureau of Labor's Consumer Price Index.

analysis likely overestimates the potential revenue impacts of these measures because some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings. Also, some anglers may engage in catch and release fishing and/or target other species. It was not possible to estimate the sensitivity of anglers to specific management measures. Second, the universe of party/charter vessels that participate in the fisheries is likely to be even larger than presented in these analyses, as party/charter vessels that do not possess a Federal summer flounder, scup, or black sea bass permit because they fish only in state waters are not represented in the analyses. Considering the large proportion of landings from state waters (e.g., more than 91 percent of summer flounder and 94 percent of scup landings in 2006, respectively), it is probable that some party/charter vessels fish only in state waters and, thus, do not hold Federal permits for these fisheries. Third, economic losses are estimated under two hypothetical scenarios: (1) A 25 percent and (2) a 50 percent reduction in the number of fishing trips that are predicted to be affected by implementation of the management measures in the Northeast in 2008. Reductions in fishing effort of this magnitude in 2008 are not likely to occur given the fact that the proposed measures do not prohibit anglers from keeping at least some of the fish they catch or the fact that there are alternative species to harvest. Again, it is likely that at least some of the potentially affected anglers would not reduce their effort when faced with the proposed landings restrictions, thereby contributing to the potential overestimation of potential impacts for 2008.

Impacts of Summer Flounder Alternatives

The proposed action for the summer flounder recreational fishery would limit coastwide catch to 6.21 million lb (2,817 mt) by imposing coastwide Federal measures throughout the EEZ. As described earlier, upon confirmation that the proposed state measures would achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires federally permitted vessels to comply with the more restrictive management measures when state and Federal measures differ. Federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ then would be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

The impact of the proposed summer flounder conservation equivalency alternative (in Summer Flounder Alternative 1) among states is likely to be similar to the level of landings reductions that are required of each state. As indicated above, each state except MA would be required to reduce summer flounder landings in 2008, relative to state 2007 landings, by the percentages shown in Table 1 of the preamble of this proposed rule. If the preferred conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes adverse economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice, it is expected that the states would adopt conservation equivalent measures that result in fewer adverse economic impacts than the more restrictive Commission adopted, NMFS proposed precautionary default measures (i.e., 20.0-inch (50.80-cm) minimum fish size, a possession limit of two fish, and an open season of July 4 through September 1). Under the precautionary default measures, impacted trips are defined as trips taken in 2007 that landed at least two summer flounder smaller than 20.0 inches (50.80 cm) or landed summer flounder during closed seasons. The analysis concluded that implementation of precautionary default measures could affect 4.28 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

The impacts of the NMFS proposed summer flounder coastwide alternative, i.e., a 19-inch (48.26-cm) minimum fish size, a two-fish possession limit, and a fishing season from May 23 through September 1, were evaluated using the quantitative method described above. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2007 that landed at least one summer flounder smaller than 19 inches (48.26 cm), that landed more than 2 summer flounder, or landed summer flounder during closed seasons. The analysis concluded that the measures would affect 1.34 percent of the party/charter vessel trips in the Northeast, including those trips where no summer flounder were caught.

Continuation of the current regulatory summer flounder coastwide management measures (i.e., an 18.5-inch (46.99-cm) minimum fish size, 4-fish possession limit, and year-round season) is not expected to constrain 2008 landings to the recreational harvest limit; therefore, continuation of those measures would be inconsistent with the summer flounder rebuilding program, the FMP, and the Magnuson-Stevens Act.

Impacts of Scup Alternatives

The proposed action for the scup recreational fishery would limit coastwide catch to 1.83 million lb (830 mt) by imposing coastwide Federal measures throughout the EEZ. As described earlier in the preamble, a conservation equivalent program is utilized by the Commission to manage state waters. Federally permitted charter/party permit holders and recreational vessels fishing for summer flounder in the EEZ then would be subject to the recreational fishing measures implemented by NMFS; charter/party vessels participating solely in state waters would be subject to the provisions adopted by the Commission; vessels participating in both state and Federal waters would be subject to the most restrictive of the two measures implemented to manage the 2008 scup recreational fishery.

The impact of the Council and Commission preferred scup alternative (Scup Alternative 1; a 10.5-inch (26.67-cm) minimum fish size, a 15-fish per person possession limit, and open seasons of January 1 through February 29 and October 1 through October 31) would reduce scup landings in 2008 by 53.2 percent from 2007 levels. Impacted trips were defined as trips taken in 2007 that landed at least one scup smaller than 10.5 inches (26.67 cm), landed more than 15 scup during the closed seasons (March 1 through September 30 and November 1 through December 31). Analysis concluded that 3.95 percent of Federally permitted party/charter vessel trips could be impacted by this alternative.

The impacts of the non-preferred scup coastwide alternative (Scup Alternative 2; 10.5-inch (26.67-cm) minimum fish size, 15-fish per person possession limit, and open seasons of January 1 through February 29 and October 1 through October 15) would reduce landings in 2008 by 60.5 percent from 2007 levels. Impacted trips were defined as trips taken in 2007 that landed at least one scup smaller than the minimum fish size, more than the possession limit, or during the closed season. The analysis concluded that this alternative could impact 4.13 percent of Federally permitted party/charter vessel trips in 2008, if implemented.

Scup Alternative 3 (status quo) measures are not expected to constrain landings to the 2008 recreational harvest limit and are therefore, inconsistent

with the current scup rebuilding plan, the FMP, and the goals and objectives of the Magnuson-Stevens Act.

Combined Impacts of Summer Flounder, Scup, and Black Sea Bass Alternatives

Since the state-specific management measures under Summer Flounder Alternative 1 (i.e., conservation equivalency) have yet to be adopted, the effort effects of this alternative could not be analyzed in conjunction with the alternatives proposed for scup and black sea bass. The percent of total party/charter boat trips in the northeast that are estimated to be affected by the proposed actions ranges from a low of 4.59 percent for the combination of measures proposed under summer flounder alternative 2, scup alternative 3, and black sea bass alternative 2 (Table 45 Initial Specifications) to 8.90 percent for the measures proposed under the NMFS summer flounder precautionary default combined with scup alternative 2 and black sea bass alternative 3.

Regionally, Federally permitted party/charter revenue losses in 2008 range from $2.90 million to $5.14 million in sales, $1.06 million to $1.88 million in income, and between 28 and 50 jobs if a 25-percent reduction in the number of affected trips occurs. The estimated losses are approximately twice as high if a 50-percent reduction in affected trips is assumed to occur.

Potential revenue losses in 2008 could differ for Federally permitted party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. All 18 potential combinations of management alternatives for summer flounder, scup, and black sea bass are predicted to affect party/charter vessel revenues to some extent in all of the northeastern coastal states. Although potential losses were estimated for party/charter vessels operating out of Maine and New Hampshire, these results are suppressed for confidentiality purposes. Average party/charter losses for federally permitted vessels operating in the remaining states are estimated to vary across the 18 combinations of alternatives. For example, in North Carolina, average losses are predicted to range from a high of $14,330 per vessel under the combined effects of summer flounder precautionary default measures (considered under alternative 1), Scup Alternatives 1 or 2, and Black Sea Bass Alternatives 1 or 3 management measures, to a low of $7,734 per vessel under the combined effects of Summer Flounder Alternative 2, Scup Alternative 3, and Black Sea Bass Alternative 2 management measures, assuming a 25-percent reduction in effort, as described above. Average gross revenue losses per vessel under each of the 36 combinations of alternatives were generally highest in North Carolina followed by Massachusetts, New York, New Jersey, Rhode Island, Virginia, Connecticut, Maryland and then Delaware.

Summary

The recreational harvest limits for summer flounder, scup, and black sea bass are 7.2-, 33.6-, and 14.6-percent lower than the adjusted recreational harvest limits for year 2007. In addition, the 2007 summer flounder recreational fishery exceeded the recreational harvest limit by 37.8 percent. As a result, the proposed recreational management measures for summer flounder are likely to be more restrictive for 2008 (i.e., either larger minimum fish size, lower possession limits, and/or shorter fishing seasons) under the proposed conservation equivalency system (Summer Flounder Alternative 1) than those in place in 2007 given the combined effects of a reduced TAL and exceeding the previous year recreational harvest limit. The proposed measures for scup are more restrictive than the measures in place for 2008. The proposed black sea bass measures are status quo, despite decreases to the overall 2008 black sea bass TAL. The proposed management measures, or management system in the case of conservation equivalency, were chosen because they allow for the maximum level of recreational landings, while allowing the NMFS to meet its legal requirements under the Magnuson-Stevens Act while achieving the objectives of the FMP. Summer flounder conservation equivalency permits states to implement management measures tailored, to some degree, to meet the needs of their individual recreational fishery participants, provided the level of reduction is equal to the overall reduction needed coastwide, consistent with Framework Adjustment 2 to the FMP. The scup management measures were selected as they are projected to permit the maximum amount of landings under the 2008 recreational harvest limit that complies with the fishing mortality objective outlined in the scup rebuilding plan of Amendment 14 to the FMP. As no reduction in landing levels from 2007 levels is required for black sea bass, the status quo measures are proposed for 2008.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 17, 2008

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.102, the first sentence is revised to read as follows:

§ 648.102 Time restrictions.

Unless otherwise specified pursuant to § 648.107, vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and fishermen subject to the possession limit may fish for summer flounder from May 23 through September 1. * * *

* * * * *

3. In § 648.103, paragraph (b) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(b) Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 19-inch (48.26-cm) TL for all vessels that do not qualify for a moratorium permit, and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

* * * * *

4. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

* * * * *

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than two summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. * * *

* * * * *

5. In § 648.107, paragraph (a) introductory text and paragraph (b) are revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2008 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103(b) and 648.105(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season-July 4 through September 1; minimum size-20.0 inches (50.80 cm); and possession limit-two fish.

6. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Season and area restrictions.

* * * * *

(g) *Time restrictions*. Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through the last day of February, and from October 1 through October 31. This time period may be adjusted pursuant to the procedures in § 648.120.

7. In § 648.124, paragraph (b) is revised to read as follows:

§ 648.124 Minimum fish sizes.

* * * * *

(b) The minimum size for scup is 10.5 inches (26.67 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

* * * * *

8. In § 648.125, the introductory text of paragraph (a) is revised to read as follows:

§ 648.125 Possession limit.

(a) No person shall possess more than 15 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. * * *

* * * * *

[FR Doc. E8–5785 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

RIN 0648–AW45

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to require the Secretary of Commerce (Secretary) to approve the Bering Sea/Aleutian Islands (BSAI) Crab Rationalization Program (Program). The Program allocates BSAI crab resources among harvesters, processors, and coastal communities. Amendment 26 would modify the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner crabs (FMP) and the Program to Amendment 26 to the FMP would exempt quota share issued to crew members, and the annual harvest privileges derived from that quota share, from requirements for: delivery to specific processors; delivery within specific geographic regions; and participation in an arbitration system to resolve price disputes. This action is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, and other applicable laws.

DATES: Comments on the amendment must be received by May 20, 2008.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–AW45, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the FederaleRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 26, the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA) for this action, and the Environmental Impact Statement (EIS) prepared for the Crab Rationalization Program may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at *http://www.fakr.noaa.gov/sustainablefisheries.htm*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228, *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The king and Tanner crab fisheries in the exclusive economic zone of the BSAI are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act as amended by the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). Amendments 18 and 19 to the FMP amended the FMP to include the Program. Regulations

implementing these amendments were published on March 2, 2005 (70 FR 10174) and are located at 50 CFR part 680.

The Council submitted Amendment 26 to the FMP for Secretarial review, which would make minor changes to the FMP necessary for the management of quota share (QS), which is a long-term harvest privilege, and individual fishing quota (IFQ), which is the annual allocation of a specific amount of crab issued to a person based on the amount of QS they hold.

Under the Program, NMFS issued QS to persons based on their qualifying harvest histories in BSAI crab fisheries during a specific period of time as defined under the Program. Four types of QS were issued under the Program. The first two types of QS were issued to holders of license limitation program (LLP) licenses endorsed for a crab fishery. Catcher/processor LLP license holders were allocated catcher/processor vessel owner (CPO) QS based on the catch history of catcher processors using an LLP license; catcher vessel LLP license holders were issued catcher vessel (CVO) QS based on the catch history of catcher vessels using an LLP license. Under the Program, 97 percent of the QS was initially issued as CVO and CPO QS. The remaining three percent of the QS was initially issued to vessel captains and crew as ''C shares'', based on their harvest histories as crew members onboard crab fishing vessels. Captains onboard catcher/processor vessels were issued catcher/processor crew (CPC) QS; captains and crew onboard catcher vessels were issued catcher vessel crew (CVC) QS.

The Program also established specific requirements for the use of QS and IFQ. Specifically, the Program requires that CVO QS/IFQ and CVC QS/IFQ is subject to: (1) Delivery requirements to a specific onshore processor or stationary floating crab processor; (2) delivery within specific geographic regions, also known as regionalization; and (3) requirements to participate in a binding arbitration system. These provisions were designed to provide stability to specific processors and communities with historic participation in the fisheries by ensuring that harvesters did not deliver catch without some degree of coordination and compensation to these traditional participants. The arbitration system established by the Program seeks to guarantee that price disputes arising among harvesters and processors can be fairly and equitably resolved.

The Program exempts CVC QS/IFQ from these requirements for the first three years of the Program, which expires on June 30, 2008. The Program did not apply these restrictions to CVC QS/IFQ due to the limited amount of CVC QS/IFQ issued relative to all other quota types, and the potential logistical complexities and additional costs these requirements could impose on CVC QS/IFQ holders. The three year grace period was intended to provide participants time to adapt to the Program. In addition, the Council recommended that this specific provision be reviewed after 18 months and an FMP amendment be developed if subsequent analysis indicated that revisions were appropriate.

If approved, Amendment 26 to the FMP would modify CVC QS and IFQ so that a person holding CVC QS/IFQ would not be subject to delivery, regionalization, or arbitration system requirements after June 30, 2008. As described in greater detail in the draft RIR/IRFA prepared for this action, based on the additional costs and complexity that will result to CVC QS/IFQ holders and the very limited benefits that may accrue to some processors and communities if the permanent exemption were not granted, the Council has recommended this FMP amendment to relive these requirements. Currently, CVC QS/IFQ holders are not subject to these requirements, and this proposed rule would merely extend the existing exemption.

Public comments are being solicited on proposed Amendment 26 through the end of the comment period (see **DATES**). NMFS intends to publish a proposed rule that would implement Amendment 26 in the **Federal Register** for public comment, following NMFS(evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendment 26 to be considered in the approval/disapproval decision on Amendment 26. All comments received by the end of the comment period on Amendment 26, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received—not just postmarked or otherwise transmitted—by the close of business on the last day of the comment period.

Dated: March 17, 2008.

Emily H. Menashes

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–5789 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 73, No. 56
Friday, March 21, 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

March 17, 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) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: RUS Electric Loan Application and Related Reporting Burdens.

OMB Control Number: 0572–0032.

Summary of Collection: The Rural Utilities Service (RUS) was established in 1994 by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 stat. 3178, 7 U.S.C. 6941 *et seq.*) as successor to the Rural Electrification Administration (REA) with respect to certain programs, including the electric loan and loan guarantee program authorized under the Rural Electrification Act (RE Act) of 1936. The RE Act authorizes and empowers the Administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. These loans are amortized over a period of up to 35 years and secured by the borrower's electric assets. RUS will collect information including studies and reports to support borrower loan applications.

Need and Use of the Information: RUS will collect information to determine the eligibility of applicants for loans and loan guarantees under the RE Act; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; ensure that borrowers use loan funds for purposes consistent with the statutory goals of the RE Act; and obtain information on the progress of rural electrification and evaluate the success of RUS program activities.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 675.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 59,306.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–5711 Filed 3–20–08; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket # AMS–FV–08–0007; FV08–378]

Notice of Request for a New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for a new information collection survey of customers, related to the delivery of services by AMS under the Perishable Agricultural Commodities Act, 1930, as amended (PACA). This voluntary survey would give customers of the PACA program an opportunity to provide feedback to AMS on the quality of the service they receive via the PACA Customer Service Line. It would also give them an opportunity to indicate what new PACA services, if any, that they would like to receive.

DATES: Comments received by May 20, 2008 will be considered.

ADDRESSES: You may submit written or electronic comments to:

(1) PACA Customer Service Line Comments, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue, SW., Room 2095–S, Stop 0242, Washington, DC 20250–0242.

(2) Fax: 202–690–4413.

(3) E-mail comments to *dexter.thomas@usda.gov.*

(4) Internet: *http://www.regulations.gov.*

Instructions: All comments will become a matter of public record and should be identified as PACA Customer Service Line Comments. Comments will be available for public inspection from AMS at the above address or over the AMS Web site at *www.ams.usda.gov/fv.* Web site questions can be addressed to the PACA Webmaster, *dexter.thomas@usda.gov.*

SUPPLEMENTARY INFORMATION: The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and

vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. AMS administers and enforces the PACA.

The law provides a forum for resolving contract disputes, and a mechanism for the collection of damages from any licensee (or one subject to license) who fails to meet contractual obligations. In addition, the PACA provides for prompt payment to fruit and vegetable sellers and for revocation of licenses and sanctions against firms or principals found to have violated the law's standards of fair business practices. The PACA also imposes a statutory trust that attaches to perishable agricultural commodities received by regulated entities, products derived from the commodities, and any receivables or proceeds from the sale of the commodities. The trust exists for the benefit of produce suppliers, sellers, or agents that have not been paid, and continues until they have been paid in full.

The PACA is enforced and financed through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the PACA must be licensed; however, growers that sell produce of their own raising only are not required to obtain a license. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

There are approximately 14,500 firms licensed under the PACA to operate in the produce industry. These customers are located nationwide and include fruit and vegetable growers, dealers, brokers and commission merchants who buy, sell, and negotiate to buy or sell fresh and frozen fruits and vegetables in interstate and/or foreign commerce. These customers may request services from the PACA Branch's headquarters and/or field offices.

To better facilitate the delivery of services to the fruit and vegetable industry, AMS in early Fiscal Year 2007 launched the PACA Branch's Customer Service Line, a fast and easy way for fruit and vegetable industry members to get answers to their questions on a wide range of PACA related issues. The customer service line provides callers with immediate access to experts who can offer advice on a variety of PACA topics including contract disputes, interpretation of inspection reports, guidance regarding a good delivery issue, and license information.

The goal of AMS and the PACA Branch is to provide timely, high quality, accurate, consistent, and professional service that facilitates fair trading practices in the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. To accomplish this goal and in accordance with Executive Order 12862, AMS is seeking feedback from customers to evaluate the services provided by the PACA Customer Service Line.

Title: PACA Customer Service Line User Survey.

OMB Number: 0581–NEW.

Type of Request: New information collection.

Abstract: The collection of information using a voluntary customer service survey will provide AMS' PACA customers with an opportunity to evaluate, on a scale of one to five, the timeliness, cost-effectiveness, accuracy, consistency, and usefulness of services and results, and the professionalism of PACA Branch employees. Customers will also have an opportunity to indicate what new or existing services they would use if such services were offered or available.

AMS needs to have a more formal means of determining customers' expectations of the quality of service delivered by the PACA program. To collect this information, AMS proposes to randomly conduct, over a 3-year period, a voluntary customer survey. The survey instrument will consist of up to nine questions. The survey instrument may be changed during the 3-year period in response to information gathered from survey participants. The information collected from the survey will allow AMS to determine customers' satisfaction with existing PACA services, compare results from year to year, and determine what new services customers' desire.

Examples of the type of feedback that will be asked for on the survey include the following: ''I found the PACA Customer Service Line recording easy to use and follow;'' ''PACA personnel are courteous and professional;'' and ''PACA personnel were helpful.'' Most survey questions will be assessed using a one to five rating scale with responses ranging from ''very dissatisfied'' to ''very satisfied'' or ''no opinion.'' Some survey questions may be in the form of ''yes'' or ''no'' questions. Customers may also be asked to provide a response to the following question: ''Do you have any further comments or suggestions concerning the PACA Customer Service Line or other aspects of PACA customer service?''

By obtaining information from customers through a voluntary customer service survey, AMS will continue to improve services and service delivery provided by the PACA program to meet or exceed customer expectations.

We estimate the paperwork and time burden of the above referenced information collection to be as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes (*i.e.*, 0.083 hours) per response.

Respondents: The primary respondents will be both licensed and unlicensed PACA customers that call the toll-free PACA Customer Service Line-fruit and vegetable growers, commission merchants, dealers, and brokers.

FY 2009—Estimated Number of Respondents: 240 (i.e., 10% of 200 × 12 = 240—the average number of monthly customers using the Customer Service Line).

Frequency of Responses: 1.

FY 2010—Estimated Number of Respondents: 240 (i.e., 10% of 200 × 12 = 240—the average number of monthly customers using the Customer Service Line).

Frequency of Responses: 1.

FY 2011—Estimated Number of Respondents: 240 (i.e., 10% of 200 × 12 = 240—the average number of monthly customers using the Customer Service Line).

Frequency of Responses: 1.

Estimated Annual Burden: 19.92 hours (240 times 0.083 hours/response = 19.92 hours).

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: March 17, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–5749 Filed 3–20–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket # AMS–FV–08–0013; FV08–379]

Regulations Under the Perishable Agricultural Commodities Act, 1930; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This notice announces that the Agricultural Marketing Service (AMS) plans to review the Regulations (Other than Rules of Practice) under the Perishable Agricultural Commodities Act, 1930, as amended, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Comments received by May 20, 2008 will be considered.

ADDRESSES: Interested persons are invited to submit comments concerning this notice of review—the economic impact of the PACA Regulations on a substantial number of small businesses. You may submit written or electronic comments to:

(1) PACA 610 Review Comments, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue, SW., Room 2095–S, Stop 0242, Washington, DC 20250–0242.

(2) Fax: 202–690–4413.

(3) E-mail comments to *dexter.thomas@usda.gov.*

(4) Internet: *http://www.regulations.gov.*

Instructions: All comments will become a matter of public record and should be identified as PACA 610 Review Comments. Comments will be available for public inspection from AMS at the above address or on the AMS Web site at *www.ams.usda.gov/fv.* Web site questions can be addressed to the PACA webmaster, *dexter.thomas@usda.gov.*

SUPPLEMENTARY INFORMATION: The Perishable Agricultural Commodities Act (PACA or Act) (7 U.S.C. 499a–499t) establishes a code of fair trade practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent trade practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. AMS administers and enforces the PACA.

The law provides a forum for resolving contract disputes, and a mechanism for the collection of damages from any licensee (or one subject to license) who fails to meet contractual obligations. In addition, the PACA provides for prompt payment to fruit and vegetable sellers and for revocation of licenses and sanctions against firms or principals found to have violated the law's standards of fair business practices. The PACA also imposes a statutory trust that attaches to perishable agricultural commodities received by regulated entities, products derived from the commodities, and any receivables or proceeds from the sale of the commodities. The trust exists for the benefit of produce suppliers, sellers, or agents that have not been paid, and continues until they have been paid in full.

The PACA is enforced and financed through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the PACA must be licensed. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

There are approximately 14,500 firms that are licensed under the PACA to operate in the produce industry. PACA licensees are located nationwide and include dealers, brokers and commission merchants who buy, sell, and negotiate to buy or sell fresh and frozen fruits and vegetables in interstate and/or foreign commerce.

AMS initially published in the **Federal Register** (68 FR 48574, August 14, 2003) its plan to review certain regulations, including regulations (7 CFR part 46) under the PACA, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). An updated plan was published in the **Federal Register** on March 24, 2006 (71 FR 14827). Because many of AMS' regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not have a significant economic impact on a substantial number of small entities as required in section 610 of the RFA (5 U.S.C. 610), merit review.

The purpose of the review is to determine whether the PACA Regulations (Other than Rules of Practice) should be continued without change, or should be amended or rescinded (consistent with the objectives of the Act) to minimize any significant economic impact of the regulations upon a substantial number of small businesses. AMS will consider the following factors: (1) The continued need for the PACA regulations; (2) the nature of the complaints or comments received from the public concerning the PACA regulations; (3) the complexity of the PACA regulations; (4) the extent to which the PACA regulations overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the PACA regulations have been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the PACA regulations.

Dated: March 17, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–5750 Filed 3–20–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Emergency Food Assistance Program; Availability of Commodities for Fiscal Year 2008

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased commodities that the Department expects to make available for donation to States for use in providing nutrition assistance to the needy under the Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 2008. The commodities made available under this notice must, at the discretion of the State, be distributed to eligible recipient agencies for use in preparing meals and/or for distribution to households for home consumption.

DATES: *Effective Date:* October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION: In accordance with the provisions set forth in the Emergency Food Assistance Act of 1983 (EFAA), 7 U.S.C. 7501 note, the

Food Stamp Act of 1977, 7 U.S.C. 2011, *et seq.*, and the Consolidated Appropriations Act, 2008, the Department makes commodities and administrative funds available to States for use in providing nutrition assistance to those in need through TEFAP. In accordance with 7 CFR 251.3(h), 60 percent of each State's share of TEFAP commodities and administrative funds is based on the number of people with incomes below the poverty level within the State and 40 percent on the number of unemployed persons within the State. State officials are responsible for establishing the network through which the commodities will be used by eligible recipient agencies (ERAs) in providing nutrition assistance to those in need, and for allocating commodities and administrative funds among those agencies. States have full discretion in determining the amount of commodities that will be made available to ERAs for use in preparing meals and/or for distribution to households for home consumption.

The types of commodities the Department expects to make available to States for distribution through TEFAP in FY 2008 are described below.

Surplus Commodities

Surplus commodities donated for distribution under TEFAP are Commodity Credit Corporation (CCC) commodities purchased under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (section 416) and commodities purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (section 32). The types of commodities typically purchased under section 416 include dairy, grains, oils, and peanut products. The types of commodities purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices, and fruits.

In FY 2008, the Department anticipates that there will be sufficient quantities of cherry products, grapefruit juice, tomatoes, green beans, carrots, peas, spinach, canned beef stew, canned beef, and canned pork to support the distribution of these commodities through TEFAP. Other surplus commodities may be made available to TEFAP throughout the year. The Department would like to point out that commodity acquisitions are based on changing agricultural market conditions; therefore, the availability of commodities is subject to change.

Approximately $16.9 million in surplus commodities acquired in FY 2007 are being delivered to States in FY 2008. These commodities include canned chicken, peanut butter, instant milk, apple juice, applesauce, apricots, frozen asparagus, canned asparagus, cherry apple juice, lamb leg roast, lamb shoulder chops.

Purchased Commodities

In accordance with section 27 of the Food Stamp Act of 1977, 7 U.S.C. 2036, and the Consolidated Appropriations Act, 2008, the Secretary is directed to purchase annually, through FY 2008, $140 million worth of commodities for distribution through TEFAP. These commodities are made available to States in addition to those surplus commodities which otherwise might be provided to States for distribution under TEFAP. However, the Consolidated Appropriations Act, 2008, permits States to convert any or their entire fair share of $10 million of these funds to administrative funds to pay costs associated with the distribution of TEFAP commodities at the State and local level.

For FY 2008, the Department anticipates purchasing the following commodities for distribution through TEFAP: dehydrated potatoes, frozen ground beef, frozen whole and cut-up chicken, frozen ham, frozen turkey roast, blackeye beans, great northern beans, light kidney beans, light red kidney beans, lima beans, pinto beans, egg mix, lowfat bakery mix, egg noodles, white and yellow corn grits, macaroni, oats, peanut butter, whole grain rotini, roasted peanuts, rice, spaghetti, vegetable oil, bran flakes, corn flakes, oat cereal, rice cereal, corn cereal, and corn and rice cereal; and the following canned items: green beans, blackeye beans, refried beans, vegetarian beans, carrots, cream corn, whole kernel corn, peas, sliced potatoes, pumpkin, spaghetti sauce, spinach, sweet potatoes, tomatoes, diced tomatoes, tomato sauce, mixed vegetables, low salt tomato soup, apple juice, cherry apple juice, cranapple juice, grape juice, grapefruit juice, orange juice, tomato juice, apricots, applesauce, mixed fruit, peaches, pears, plums, beef, beef stew, chicken, pork, tuna, and turkey.

The amounts of each item purchased will depend on the prices the Department must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of commodities or the non-availability of one or more types listed above.

Dated: March 13, 2008.

Roberto Salazar,

Administrator.

[FR Doc. E8–5760 Filed 3–20–08; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; National Woodland Owner Survey

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the reinstated information collection, National Woodland Owner Survey.

DATES: Comments must be received in writing on or before May 20, 2008 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Brett Butler, USDA Forest Service, 160 Holdsworth Way, Amherst, MA 01003.

Comments also may be submitted via facsimile to (413) 545–1860 or by e-mail to *bbutler01@fs.fed.us*.

The public may inspect comments received at 160 Holdsworth Way, Room 303, Amherst, MA 01003 during normal business hours. Visitors are encouraged to call ahead to (413) 545–1387 to facilitate entry to the building. Additional comments can be viewed at *www.fia.fs.fed.us/nwos*.

FOR FURTHER INFORMATION CONTACT: Brett Butler, Northern Research Station, (413) 545–1387. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: National Woodland Owner Survey.

OMB Number: 0596–0078 (reinstatement).

Type of Request: Reinstatement.

Abstract: The Forest Service's Forest Inventory and Analysis (FIA) program conducts the National Woodland Owner Survey (NWOS) to increase our understanding of:

- Who owns the forests of the United States;
- Why they own it;
- How they have used it; and
- How they intend to use it.

This information is used by policy analysts, foresters, educators, and researchers to facilitate the planning and implementation of forest policies and programs.

The Forest Service's direction and authority to conduct the NWOS is from the Forest and Range Land Renewable Resources Planning Act of 1974 and the Forest and Range Land Renewable Resources Act of 1978. These acts assign responsibility for the inventory and assessment of forest and related renewable resources to the Forest Service. Additionally, the importance of an ownership survey in this inventory and assessment process is highlighted in Section 253(c) of the Agricultural Research, Extension, and Education Reform Act of 1998 and the recommendations of the Second Blue Ribbon Panel on the Forest Inventory and Analysis Program.

Previous iterations of the NWOS were conducted in 1978, 1993, and 2002–2006. Approval for the last iteration of the NWOS expired on December 31, 2006. Between 2002 and 2006, the NWOS was implemented on an annual basis to provide more robust and current information and to conform with the overall FIA sampling protocols. As planned, approval for the information collection was allowed to lapse after 2006, to permit a full assessment of the program that has now been completed. If reinstated, the NWOS will operate for another 5-year cycle, with federal approval being sought as necessary to cover the full survey cycle, before the next full reassessment occurs.

Information will be collected related to:

- The characteristics of the owners' landholdings;
- Ownership objectives;
- Forest use and management;
- Owners' concerns;
- Future uses of the forest land; and
- Landowner demographics.

The NWOS provides widely cited benchmarks for the number, extent, and characteristics of private forest land owners of the United States. These results have been used to assess the sustainability of forest resources at national, regional, and state levels; to implement and assess forest land owner assistance programs; and to answer a variety of questions with topics ranging from fragmentation to the economics of private timber production.

The respondents will be a statistically selected group of individuals, families, American Indian tribes, partnerships, corporations, nonprofit organizations, and other private groups that own forest land in the United States. Public records will be used to collect names and addresses for a systematic set of points identified as forest land. The number of forest-land owners to be contacted in each state will be determined by the number of private forest-land owners and the sampling intensity.

The NWOS will utilize a mixed-mode survey technique involving a self-administered mail questionnaire and telephone interviews. First, a pre-notice letter or postcard will be sent to all potential respondents describing this information collection and explaining why the information is being collected. Second, a questionnaire with a cover letter and pre-paid return envelope will be mailed to the potential respondents. The cover letter will reiterate the purpose of this information collection and provide the respondents with all legally required information. Third, a reminder will be mailed to thank the respondents and encourage the non-respondents to respond. Those who have yet to respond will be sent a new questionnaire, cover letter, and pre-paid return envelope. Telephone interviews will be used for follow-up with non-respondents.

FIA personnel will administer the mail portion of this information collection. The telephone follow-ups will be conducted by the National Agricultural Statistics Service, U.S. Department of Agriculture. Data will be compiled and edited by FIA personnel.

FIA personnel will analyze the collected data. National, regional, and state-level results will be distributed through print and/or electronic media.

This information collection will generate scientifically based, up-to-date information about private forest-land owners in the United States. The results of these efforts will provide more reliable information on this important and dynamic segment of the United States population, thus facilitating more complete assessments of the country's forest resources, and improved planning and implementation of forestry programs.

Estimate of Annual Burden: 20 minutes.

Type of Respondents: Individuals, families, American Indian Tribes, partnerships, corporations, nonprofit organizations, and other private groups that own forest land.

Estimated Annual Number of Respondents: 7,500.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: March 14, 2008.

David A. Cleaves,

Associate Deputy Chief, Research & Development.

[FR Doc. E8–5710 Filed 3–20–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Bearlodge Ranger District, WY and Northern Hills Ranger District, SD, North Zone Range 08 Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement; cancellation.

SUMMARY: On November 5, 2007, the **Federal Register** published a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the North Zone Range 08 Analysis on the Black Hills National Forest (72 FR 62428–62429). The responsible officials for this analysis have decided that the preparation of an Environmental Impact Statement is not warranted for this project. An Environmental Assessment will be prepared for the North Zone Range 08 analysis. The responsible officials will document their rationale in a Finding of No Significant Impact (FONSI) to be subsequently prepared. The FONSI will accompany the Decision Notice for this project. The Notice of Intent is hereby cancelled.

FOR FURTHER INFORMATION CONTACT: Alice Allen, Environmental Coordinator, TEAMS Enterprise, Forest

Service, 330 Mt. Rushmore Rd, Custer, SD 57730, or at 605–673–4853.

Dated: March 13, 2008.

Dennis Jaeger,

Deputy Forest Supervisor, Black Hills National Forest.

[FR Doc. E8–5611 Filed 3–20–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North San Juan Sheep and Goat EIS

AGENCY: Forest Service, Rio Grande National Forest, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This NEPA analysis began as an environmental assessment in 2006, then as Interdisciplinary Team discussions took place, it was recognized that completion of an environmental impact statement (EIS) would be more appropriate. The project is analyzing the action to continue to permit livestock (domestic sheep and goats) grazing within the North San Juan Sheep and Goat Allotments Analysis Area (hereinafter referred to as the Analysis Area) under an Adaptive Management strategy.

DATES: Comments concerning the scope of the analysis must be received by 30 days from the date of this notice. The draft environmental impact statement is expected December 31, 2008 and the final environmental impact statement is expected February 28, 2009.

ADDRESSES: Send written comments to Mr. Kelly Garcia, Team Leader, Rio Grande National Forest, Conejos Peak Ranger District, 15571 CR T.5, LaJara, CO 81140. Electronic mail (e-mail with subject, North San Juan comments) may be sent to *comments-rocky-mountain.rio-grande-conejos-peak@fs.fed.us* and a FAX may be sent to (719) 274–6301.

FOR FURTHER INFORMATION CONTACT: Same as above.

SUPPLEMENTARY INFORMATION: The Analysis area contains the Willow Mtn. Sheep and Goat (S&G) Allotment, Cornwall Mtn. S&G Allotment, Marble Mtn. S&G Allotment, Campo-Bonito S&G Allotments, Cropsy-Summit S&G Allotments, Elwood S&G Allotment, Treasure S&G Allotment, West Vega S&G Allotment, East Vega S&G Allotment, Upper Adams S&G Allotment and the North Fork-Middle Fork S&G Allotments.

Purpose and Need for Action

The purpose of this action is to provide forage for permitted domestic livestock grazing in a manner that maintains or moves conditions toward achieving Forest Plan objectives and desired conditions. There is an overall need for greater management flexibility. More specifically, the need for this action is tied to any important resource, social, or economic disparity that may be found when comparing the existing condition in the Analysis Area to the Forest Plan desired conditions, as determined by the interdisciplinary team (IDT) and authorized officer on a site-specific basis.

Proposed Action

The proposed action is to continue to permit livestock grazing within the North San Juan Sheep and Goats allotments analysis area, under an Adaptive Management strategy that would ensure meeting or moving toward the Rio Grande National Forest Land and Resource Management Plan (Forest Plan) and project-specific desired conditions. This proposal also generates the need to develop new allotment management plans (AMPs).

Responsible Official

The responsible official is the District Ranger, Rio Grande National Forest, Conejos Peak Ranger District, 15571 County Road T.5, La Jara, CO 81140.

Nature of Decision To Be Made

This EIS will disclose the environmental consequences of implementing the proposed action and alternatives to that action. A separate Record of Decision (ROD), signed by the responsible official, will explain the management and environmental reasons for selecting an alternative to be implemented. The ROD will disclose the rationale for choosing the selected alternative; discuss the rationale for rejecting other alternatives; and disclose how the decision responds to the relevant issues.

The decision that the responsible official will make in the Record of Decision is whether or not to authorize some level of livestock grazing on all, part, or none of the Analysis Area given considerations of Forest Plan desired conditions, goals and objectives, and public input. If the decision is made to authorize some level of livestock grazing, the management framework will be described (including standards, guidelines, grazing management, and monitoring) so that desired condition objectives are met or that movement occurs toward those objectives in an acceptable timeframe.

Scoping Process

The Rio Grande National Forest invited public comment and participation regarding this project through the Schedule of Proposed Actions (SOPA), public notice in the Valley Courier (January 21, 2006)—the newspaper of record and a scoping letter sent to potentially concerned public, tribal governments, State and other Federal agencies, (January 19, 2006). Comments received in these previous scoping efforts will be retained and considered in this EIS.

An additional comment period will be provided during scoping for this EIS in the form of this notice in the **Federal Register**, the Schedule of Proposed Actions (SOPA), public notice in the Valley Courier—the newspaper of record, and letters sent to potentially concerned public, tribal governments, State and other Federal agencies.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service invites written comments on the proposed action, including any issues to consider, as well as any concerns relevant to the analysis. In order to be most useful, scoping comments should be received within 30 days of publication of this Notice of Intent. Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act (FOIA), you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law, but persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their

entirety. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Comments and FS responses will be addressed and contained in the Final EIS.

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, 553 (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 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 statement 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: March 11, 2008.

Larry R. Velarde,

Acting District Ranger.

[FR Doc. E8–5742 Filed 3–20–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on April 4, 2008, at the Aspen Room, Lake Tahoe Community College, One College Drive, South Lake Tahoe, CA 96150. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: The meeting will be held April 4, 2008, beginning at 1 p.m. and ending at 4 p.m.

ADDRESSES: The meeting will be held at the Aspen Room, Lake Tahoe Community College, One College Drive, South Lake Tahoe, CA 96150.

FOR FURTHER INFORMATION CONTACT: Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include: (1) Final recommendation for the Southern Nevada Public Land Management Act (SNPLMA) Round 9 Capital projects; and, (2) Public Hearing. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the Secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: March 13, 2008.

Gina Thompson,

Acting Forest Supervisor.

[FR Doc. E8–5612 Filed 3–20–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the Collaborative Forest Restoration Program Request For Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. No. 106–393).

DATES: The meeting will be held April 21–25, 2008, beginning at 1 p.m. on Monday, April 21 and ending at approximately 4 p.m. on Friday, April 25.

ADDRESSES: The meeting will be held at the MCM Elegante Hotel, 2020 Menaul NE, Albuquerque, NM 87107, Tel. 505–884–2511. Written comments should be sent to Walter Dunn, at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102. Comments may also be sent via e-mail to *wdunn@fs.fed.us*, or via facsimile to Walter Dunn at (505) 842–3165.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, or during the Panel meeting at the MCM Elegante Hotel, 2020 Menaul NE, Albuquerque, NM 87107, Tel. 505–884–2511.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Designated Federal Official, at (505) 842–3425, or Melissa Zaksek, at (505) 842–3289, Cooperative and International Forestry Staff, USDA

Forest Service, 333 Broadway SE, Albuquerque, NM 87102.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Panel discussion is limited to Forest Service staff and Panel members. However, project proponents may respond to questions of clarification from Panel members or Forest Service staff. Persons who wish to bring Collaborative Forest Restoration Program grant proposal review matters to the attention of the Panel may file written statements with the Panel staff before or after the meeting. Public input sessions will be provided and individuals who submitted written statements prior to the public input sessions will have the opportunity to address the Panel at those sessions.

Dated: March 13, 2008.

Faye L. Krueger,

Deputy Regional Forester.

[FR Doc. E8–5610 Filed 3–20–08; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Nonprofit Agency Recordkeeping Requirements

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice; request for comments.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (The Committee) is submitting the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. This notice solicits comments on that collection of information.

DATES: The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, your comments should be received by OMB by April 20, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Committee for Purchase from People Who Are Blind or Severely Disabled, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to: *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response: ''Comment: 3037–0005 Nonprofit Agency Responsibilities.'' Persons submitting comments electronically should not submit paper copies.

FOR FURTHER INFORMATION CONTACT: Janet Yandik, Information Management Specialist, Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Highway, Jefferson Plaza 2, Suite 10800, Arlington, VA 22202–3259; phone (703) 603–2147; fax (703) 603–0655; or e-mail *rulescomment@abilityone.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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)). The Committee is submitting a request to OMB to renew its approval of the collection of information for nonprofit agency responsibilities related to recordkeeping. The Committee is requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 3037–0005.

The Javits-Wagner-O'Day (JWOD) Act of 1971 (41 U.S.C. 46–48c) is the authorizing legislation for the AbilityOne Program. (The name of the JWOD Program was changed to the AbilityOne Program on November 28, 2006, **Federal Register** Volume 71, Number 227, Page 68492–68494). The AbilityOne Program creates jobs and training opportunities for people who are blind or who have other severe disabilities. Its primary means of doing so is by requiring Government agencies to purchase selected products and services from nonprofit agencies employing such individuals. The JWOD Act, through the AbilityOne Program, is administered by the Committee. Two national, independent organizations, National Industries for the Blind (NIB) and NISH, help State and private nonprofit agencies participate in the AbilityOne Program. The implementing regulations for the JWOD Act, which are located at 41 CFR Chapter 51, detail the recordkeeping requirements imposed on nonprofit agencies participating in the AbilityOne Program. Section 51–2.4 of the regulations describes the criteria that the Committee must consider when adding a product or service to its Procurement List. One of these criteria is that a proposed addition must demonstrate a potential to generate employment for people who are blind or severely disabled. The Committee decided that evidence that employment will be generated for those individuals consists of recordkeeping that tracks direct labor and revenues for products or services sold through an AbilityOne Program contract. This recordkeeping can be done on each individual AbilityOne project or by product or service family. In addition, Section 51–4.3 of the regulations requires that nonprofit agencies keep records on direct labor hours performed by each worker and keep an individual record or file for each blind or severely disabled individual documenting that individual's disability and capabilities for competitive employment. The records that nonprofit agencies must keep in accordance with Section 51–4.3 of the regulations constitute the bulk of the hour burden associated with this OMB control number.

On December 21, 2007, the Committee published in the **Federal Register** (Volume 72, Number 245, Pages 72665–72666) a notice requesting public comment on these recordkeeping requirements for 60 days, ending February 19, 2008. By that date, the Committee received comments from 44 respondents with a total of 75 comments.

Seven comments were received opposing the request by indicating that this is a new recordkeeping requirement. There is nothing new in the Committee's request. The Committee did make a change in its recordkeeping requirements in 2002 to add recordkeeping of the direct labor hours and sales for AbilityOne projects on at least a product or service family basis. This change was approved by OMB and was renewed in 2005. There is no change to the recordkeeping requirements that the Committee is requesting OMB to approve again.

Eight comments were received questioning the necessity of the recordkeeping requirement and if it has any practical utility. The JWOD Act requires that 75% of the direct labor of all work done at a participating nonprofit agency be done by people

who are blind or severely disabled. A number of these comments also stated that this requirement does nothing to increase jobs for people with disabilities. This recordkeeping requirement is to ensure that those nonprofit agencies participating in the AbilityOne Program employ people who meet the Act's definitions. This requirement does not involve any reporting requirements by nonprofits, only that the nonprofits keep records that can be used to document their compliance with the requirements of the Act. The requirement to keep records on the direct labor hours of AbilityOne projects is to ensure that the projects are suitable to remain on the Committee's Procurement List. Without this recordkeeping requirement, the Committee would have no way of verifying that those nonprofits that participate in the AbilityOne Program were meeting the requirements of the JWOD Act.

Thirty-eight of the comments referred to the accuracy of the Committee's burden estimate. The comments included estimates of the actual burden for the recordkeeping requirement that ranged from 25 minutes per person who is blind or severely disabled to 35.6 hours per person who is blind or severely disabled.

The Committee has used a burden estimate of 5 hours per agency since 2002 and before that, 3 hours per agency since at least 1992, and has not received any prior comments as to its accuracy. However, after review, the Committee agrees that 5 hours per agency is incorrect and that the burden is much higher. The range of burden estimates is a result of the many differences between individual nonprofit agencies and a misunderstanding of the recordkeeping requirement being considered. Many of the burden estimates identified in the comments included tasks that are required to meet other requirements, such as those of the Department of Labor, or would be performed by the nonprofit agency even if they were not in the AbilityOne Program.

Based on an analysis of the information contained in the comments and discussions with several other nonprofit agencies during the comment period, the Committee believes that a reasonable burden estimate is 2.5 hours per person that is blind or severely disabled. Currently, there are over 600 nonprofit agencies participating in the AbilityOne Program with employee numbers ranging from less than 10 to more than 2,000. The average number of people who are blind or severely disabled at participating nonprofit agencies was 218 in fiscal year 2007; therefore, the current recordkeeping burden will be estimated at 550 hours annually per nonprofit agency. The Committee recognizes that the burden will be higher for some nonprofit agencies based on their size, types of disabilities served, and whether or not they provide rehabilitation functions. However, based on the information submitted, the Committee believes that, on average, 550 hours per nonprofit agency is a reasonable burden estimate of those tasks imposed directly by this recordkeeping requirement.

Sixteen comments were received with suggestions on minimizing the burden. These included making changes to the JWOD Act, adhering to the Act as promulgated and intended by Congress, abolishing the Committee, deleting requirements from the Committee regulations, not requiring annual evaluations on some disabilities, and that the Committee include the cost of meeting the recordkeeping requirements in the price of products and services on the Procurement List. The Committee has reviewed its regulations and believes that its current regulations are in keeping with its administration of the JWOD Act, and those recommendations that would require a change to the Act itself are, therefore, beyond the scope of the Committee's information collection authority. One commenter questioned the necessity for requiring annual evaluations of all people with severe disabilities. This issue had previously been addressed by the Committee and determined that the requirement exists.

Five comments were received that do not fit within the four areas about which the Committee requested comments. One commenter requested that the Committee's request be denied; one discussed the difficulties involved with meeting the requirements of different Federal and State requirements; one requested that the Committee seriously consider the comments from all nonprofit agencies; one commented that this request was perpetuating the inefficiencies which hamper the AbilityOne Program; and one comment was that the Committee had made substantive and material modifications to collection requirements after approval by OMB. The Committee believes that this recordkeeping requirement is critical for the Committee to determine if nonprofit agencies are in compliance with the JWOD Act. There has been no substantive or material modification to collection requirements since 2002, and those made in 2002 were approved by OMB in 2002 and renewed in 2005. The Committee's responsibility to administer the Act requires that certain information be available to them to ensure that the purposes of the Act are met. Reasonable requirements by participating nonprofit agencies will permit the Committee to gather data required to report the results to the President and to Congress.

Dated: March 18, 2008.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–5768 Filed 3–20–08; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and a service previously furnished by such agencies.

EFFECTIVE DATE: April 20, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov*.

SUPPLEMENTARY INFORMATION:

Additions:

On January 18 and January 25, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 3450; 4519) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products:

Paper, Copying, Xerographic—Convenience Pack

NSN: 7530–00–NIB–0814—Reamless
NSN: 7530–00–NIB–0826—Ream Wrapped
NPA: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Coverage: A—List for the total Government requirement as specified by the General Services Administration
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY

SKILCRAFT Wide Angle Broom

NSN: M.R. 1041
NPA: L.C. Industries For The Blind, Inc., Durham, NC
Coverage: C—List for the requirements of the Defense Commissary Agency, Fort Lee, VA
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, VA

Services:

Service Type/Location: Base Supply Center, Fort Irwin, CA
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: Department of the Army, National Training Center Acquisition Command, Fort Irwin, CA
Service Type/Location: Custodial Services, Border Patrol Station, Customs and Border Protection (CBP), 135 Trippany Road, Massena, NY
NPA: St. Lawrence County Chapter, NYSARC, Canton, NY
Contracting Activity: U.S. Department of Homeland Security, Washington, DC
Service Type/Location: Food Service Attendant, Naval Station Mayport (Basewide), Mayport, FL
NPA: Goodwill Industries of North Florida (GINFL) Services, Inc., Jacksonville, FL
Contracting Activity: Fleet and Industrial Supply Center—Jacksonville, Jacksonville, FL
Service Type/Location: Grounds Maintenance, Fort Jackson, Fort Jackson, SC
NPA: Employment Source, Inc., Fayetteville, NC
Contracting Activity: Army Contracting Agency, Fort Jackson, SC
Service Type/Location: Grounds Maintenance, Marine Corps Air Station, New River, Camp Geiger and Camp Johnson, Jacksonville, NC
NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC
Contracting Activity: Naval Facilities Engineering Command (NAVFAC) Mid-Atlantic, Camp Lejeune, NC
Service Type/Location: Mail Support Services, Bureau of Public Debt, 200 Third Street, Parkersburg, WV
NPA: ServiceSource, Inc., Alexandria, VA
Contracting Activity: Department of the Treasury, Bureau of Public Debt, Parkersburg, WV
Service Type/Location: Mailroom Operations, Internal Revenue Service, 300 E 8th Street & 9430 Research Blvd, Austin, TX
NPA: Austin Task, Inc., Austin, TX
NPA: ServiceSource, Inc., Alexandria, VA (PRIME CONTRACTOR)
Contracting Activity: U.S. Department of the Treasury, Internal Revenue Service Headquarters, Oxon Hill, MD

Deletions:

On January 25, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR 4519) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products:

Aloud Digital Audio Labeling System

NSN: 6515–00–NIB–0226
NPA: Central Association for the Blind & Visually Impaired, Utica, NY
Contracting Activity: Veterans Affairs National Acquisition Center, Hines, IL

PRC Deck Recoating System

NSN: 8010–00–NIB–0012
NPA: Alphapointe Association for the Blind, Kansas City, MO
Contracting Activity: Fleet and Industrial Supply Center, Bremerton, WA

Service:

Service Type/Location: Janitorial/Custodial, Social Security Administration Building, 2700 N. Knoxville Avenue, Peoria, IL
NPA: Community Workshop and Training Center, Inc., Peoria, IL
Contracting Activity: General Services Administration, Public Buildings Service, Region 5, Springfield, IL

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E8–5767 Filed 3–20–08; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

ACTION: Proposed addition to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product and services previously furnished by such agencies.

Comments Must be Received on or Before: April 20, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail: *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.
2. If approved, the action will result in authorizing small entities to furnish the product to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

USCG Service/Name Tapes

NSN: 8455–00–NIB–0016—Name Tapes.
NSN: 8455–00–NIB–0017—Service Tapes.
NPA: Lions Industries for the Blind, Inc., Kinston, NC.
Coverage: C—List for the requirements of the U.S. Coast Guard, Woodbine, NJ.
Contracting Activity: U.S. Coast Guard, Uniform Distribution Center, Woodbine, NJ.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the product and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for deletion from the Procurement List:

Product

Hydration On-the-Move System
NSN: 8465–00–NIB–0071—Bravo Woodland.
NSN: 8465–00–NIB–0072—Bravo Desert.
NSN: 8465–00–NIB–0073—Bravo Black.
NSN: 8465–00–NIB–0074—Delta Woodland.
NSN: 8465–00–NIB–0075—Delta Desert.
NSN: 8465–00–NIB–0076—Delta Black.
NSN: 8465–00–NIB–0077—Alpha Woodland.
NSN: 8465–00–NIB–0092—Warrior Woodland.
NSN: 8465–00–NIB–0093—Warrior Desert.
NSN: 8465–00–NIB–0094—Warrior Black.
NSN: 8465–00–NIB–0095—Sierra Woodland.
NSN: 8465–00–NIB–0096—Sierra Desert.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr, New York, NY.

Services

Service Type/Location: Custodial Services, Social Security Administration, 2401 Lind Street, Quincy, IL.
NPA: Transitions of Western Illinois, Inc., Quincy, IL.
Contracting Activity: General Services Administration, Public Buildings Service, Region 5, Chicago, IL.
Service Type/Location: Janitorial/Custodial Services, U.S. Federal Building and Post Office, Wenatchee, WA.
NPA: Northwest Center, Seattle, WA.
Contracting Activity: General Services Administration, Public Buildings Service, Region 10.

Kimberly M. Zeich,
Director, Program Operations.

[FR Doc. E8–5766 Filed 3–20–08; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., Blue Sky Six Ltd., Blue Airways, and Mahan Airways

In the Matter of:
Balli Group PLC, 5 Stanhope Gate, London, UK, W1K 1AH;
Balli Aviation, 5 Stanhope Gate, London, UK, W1K 1AH;
Balli Holdings, 5 Stanhope Gate, London, UK, W1K 1AH;
Vahid Alaghband, 5 Stanhope Gate, London, UK, W1K 1AH;
Hassan Alaghband, 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky One Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Two Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Three Ltd, 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Four Ltd, 5 Stanhope Gate, London, UK, W1K 1AH;

Blue Sky Five Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Sky Six Ltd., 5 Stanhope Gate, London, UK, W1K 1AH;
Blue Airways, 8/3 D Angaght Street, 376009 Yerevan, Armenia;
Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran;

Respondents

Order Temporarily Denying Export Privileges

Pursuant to Section 766.24 of the Export Administration Regulations (''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested that I issue an Order temporarily denying the export privileges under the EAR of:

(1) Balli Group PLC, 5 Stanhope Gate, London, UK, W1K 1AH.
(2) Balli Aviation, 5 Stanhope Gate, London, UK, W1K 1AH.
(3) Balli Holdings, 5 Stanhope Gate, London, UK, W1K 1AH.
(4) Vahid Alaghband, 5 Stanhope Gate, London, UK, W1K 1AH.
(5) Hassan Alaghband, 5 Stanhope Gate, London, UK, W1K 1AH.
(6) Blue Sky One Ltd., 5 Stanhope Gate, London, UK, W1K 1AH.
(7) Blue Sky Two Ltd., 5 Stanhope Gate, London, UK, W1K 1AH.
(8) Blue Sky Three Ltd., 5 Stanhope Gate, London, UK, W1K 1AH.
(9) Blue Sky Four Ltd., 5 Stanhope Gate, London, UK, W1K 1AH.
(10) Blue Sky Five Ltd., 5 Stanhope Gate, London, UK, W1K 1AH.
(11) Blue Sky Six Ltd., 5 Stanhope Gate, London, UK, W1K 1AH.
(12) Blue Airways, 8/3 D Angaght Street, 376009 Yerevan, Armenia.
(13) Mahan Airways, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran.

(hereinafter collectively referred to as ''Respondents'') for 180 days.

In its request, BIS has presented evidence that Respondents knowingly engaged in conduct prohibited by the EAR by reexporting three U.S. origin aircraft to Iran and that Respondents are preparing to reexport three additional U.S. origin aircraft to Iran without the U.S. Government authorization required by Section 746.7 of the EAR.

Additionally, Respondents have made false statements to BIS regarding the ultimate destination and end-user of the aircraft, and have failed to comply with a BIS order to return three aircraft to the U.S. False statements made to BIS directly or indirectly constitute violations of the EAR.

Specifically, BIS has produced evidence that in or about 2006 the Balli Group PLC, a United Kingdom company, and Blue Sky One Ltd., Blue Sky Two Ltd., and Blue Sky Three Ltd., all of which fall under the same parent corporation, Balli Holdings, acquired three U.S. origin aircraft, items subject to the EAR and classified under Export Control Classification Number (''ECCN'') 9A991.b. Respondents allege Blue Sky One Ltd., Blue Sky Two Ltd. and Blue Sky Three Ltd., are used as investment vehicles that each own one aircraft for long term leases to airlines. Respondents have stated to BIS that the aircraft were leased to Blue Airways, located in Armenia, and have not and would not be subleased or otherwise reexported to Mahan Air or any other Iranian entity. Multiple open sources contradict these statements and show that the aircraft, identifiable by serial number and tail number, are now controlled and/or operated by Mahan Airways, an Iranian company. No U.S. Government authorization was obtained for the reexport of these three aircraft.

Further, BIS's investigation has revealed that Respondents are attempting to divert three additional U.S. origin aircraft of the same type to Mahan Airways. The aircraft are currently located outside the United States and are owned by Blue Sky Four Ltd., Blue Sky Five Ltd. and Blue Sky Six Ltd. No U.S. Government authorization has been obtained for the reexport of these three aircraft to Iran. When questioned by BIS, Respondents claimed that the aircraft are not destined for Mahan Airways or any other Iranian entity. On February 22, 2008, BIS ordered the redelivery of these three additional aircraft to the United States in accordance with Section 758.8(b) of the EAR. The Respondents have not complied with this order and have indicated that they will not cooperate. Respondents' failure to obey this order is a violation of the EAR and is further evidence that an imminent violation is likely to occur absent the issuance of a TDO.

I find that the evidence presented by BIS demonstrates that the Respondents have knowingly violated the EAR and that such violations are significant, deliberate, covert and likely to occur again absent the issuance of a TDO. I also find that BIS has produced evidence demonstrating that additional violations are imminent in time as well. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with the Respondents in export transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the EAR.

Accordingly, I find that a TDO naming Balli Group PLC, Balli Aviation, Balli Holdings, Vahid Alaghband, Hassan Alaghband, Blue Sky One Ltd., Blue Sky Two Ltd., Blue Sky Three Ltd., Blue Sky Four Ltd., Blue Sky Five Ltd., Blue Sky Six Ltd., Blue Airways, and Mahan Airways as Respondents is necessary, in the public interest, to prevent an imminent violation of the EAR. This Order is issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation.

It is therefore ordered:

First, that the Respondents, BALLI GROUP PLC, 5 Stanhope Gate, London, UK, W1K 1AH; BALLI AVIATION, 5 Stanhope Gate, London, UK, W1K 1AH; BALLI HOLDINGS, 5 Stanhope Gate, London, UK, W1K 1AH; VAHID ALAGHBAND, 5 Stanhope Gate, London, UK, W1K 1AH; HASSAN ALAGHBAND, 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY ONE LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY TWO LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY THREE LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY FOUR LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY FIVE LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE SKY SIX LTD., 5 Stanhope Gate, London, UK, W1K 1AH; BLUE AIRWAYS, 8/3 D Angaght Street, 376009 Yerevan, Armenia; and MAHAN AIRWAYS, Mahan Tower, No. 21, Azadegan St., M.A. Jenah Exp. Way, Tehran, Iran (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Export Administration Regulations (''EAR''), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

[1] The EAR is currently codified at 15 CFR Parts 730–774 (2007). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive presidential notices, the most recent being that of August 15, 2007 (72 FR 46137 (August 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by any Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby any Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from any Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from any Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by any Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by any Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to any of the Respondents by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of Section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. The Respondents may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on the Respondents and shall be published in the **Federal Register**.

This Order is effective upon date of publication in the **Federal Register** and shall remain in effect for 180 days.

Entered this 17th day of March, 2008.

Darryl W. Jackson,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. E8–5758 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut–to-Length Carbon–Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 23, 2007, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (steel plate) from the Republic of Korea. The period of review is February 1, 2006, through January 31, 2007. We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and an examination of our calculations, we have made changes for the final results. The final weighted-average dumping margins are listed below in the ''Final Results of the Review'' section of this notice.

EFFECTIVE DATE: March 21, 2008.

FOR FURTHER INFORMATION CONTACT: Lyn Johnson or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–5287 and (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 23, 2007, the Department published *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Administrative Review in Part*, 72 FR 65701 (November 23, 2007) (*Preliminary Results*), in the **Federal Register**. The administrative review covers three producers/exporters of the subject merchandise.

We invited parties to comment on the *Preliminary Results*. On December 26, 2007, we received a case brief from Dongkuk Steel Mill Co., Ltd. (DSM), producer and importer of the subject merchandise. On January 3, 2008, we received a rebuttal brief from Nucor Corporation (Nucor), a domestic producer and interested party. No hearing was requested.

We have conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products included in the scope of the order are of rectangular, square, circular, or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel

products that meet the noted physical characteristics that are painted, varnished, or coated with plastic or other non-metallic substances are included within this scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel. Imports of steel plate are currently classified in the HTSUS under subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by the order is dispositive.

Rescission of Administrative Review in Part

In the *Preliminary Results*, we explained that DSEC Co., Ltd., a subsidiary of Daewoo Shipbuilding & Marine Engineering (DSEC), reported that it had no shipments of subject merchandise subject to this review and that our review of information from U.S. Customs and Border Protection (CBP) supported DSEC's claim. Additionally, we stated that we would rescind the review with respect to DSEC if we continued to find that DSEC did not have any shipments of subject merchandise to the United States during the period of review. See *Preliminary Results*, 72 FR at 65702. Because we have not received any information indicating that DSEC had any shipments of subject merchandise during the POR, we are rescinding the administrative review with respect to DSEC.

Use of Adverse Facts Available

We determined in the *Preliminary Results* that, because TC Steel failed to provide any information to the Department within the meaning of section 776(a)(2) of the Act, we must rely entirely on facts available. We determined further that, because TC Steel failed to cooperate to the best of its ability, in accordance with 776(b) of the Act the use of an adverse inference is warranted. See *Preliminary Results*, 72 FR at 65702.

Because we have not received any information since the *Preliminary Results* which affects our analysis of the use of facts available for TC Steel, we continue to assign the highest product-specific margin, 32.70 percent, which we have calculated in this review based on the data reported by a respondent. As we stated in the *Preliminary Results*, we selected this rate because we have never reviewed TC Steel in a prior segment of this proceeding and we do not have any additional information about this company. Moreover, this rate is sufficiently high as to reasonably assure that TC Steel does not obtain a more favorable result by failing to cooperate. Finally, given that this information was reported to the Department in the instant segment of the proceeding, there is no basis to doubt this information's reliability and relevance as applied in this segment to TC Steel. See generally the SAA at 870 (discussing the need to corroborate information used as facts available when that information was reported to the Department in a prior segment of an AD/CVD proceeding).

Analysis of Comments Received

The issues raised in the case and rebuttal briefs are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary, to David M. Spooner, Assistant Secretary, dated March 14, 2008, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memorandum and attached to this notice as an Appendix. The Decision Memorandum, which is a public document, is on file in the Central Records Unit, main Department building, Room 1117 and accessible on the Web at *http://ia.ita.doc.gov/frn/index*. html. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we revised the product-comparison section of the margin-calculation program for DSM. This revision is discussed in the Decision Memorandum at Comment 1. We also corrected a ministerial error involving the currency conversion for inventory carrying costs. Specifically, we converted the variable used for this cost from Korean won to U.S. dollars, but in the *Preliminary Results* we neglected to use the converted variable in our calculations. The correction of this ministerial error had no impact on the dumping margin. See the Final Analysis Memorandum for DSM dated March 14, 2008, for more detailed information on these changes.

Final Results of Review

As a result of our review, we determine that the following weighted-average dumping margins exist for the period February 1, 2006, through January 31, 2007:

Manufacturer/Exporter	Margin (percent)
Dongkuk Steel Mill Co., Ltd.	1.97
TC Steel	32.70

Assessment Rates

Upon issuance of these final results, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for DSM, we calculated an importer-specific assessment rate for these final results of review. We divided the total dumping margins for the reviewed sales by the

total entered value of those reviewed sales for the importer. We will instruct CBP to assess the importer-specific rate uniformly, as appropriate, on all entries of subject merchandise made by the relevant importer during the POR. See 19 CFR 351.212(b).

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the POR produced by DSM for which DSM did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of DSM-produced merchandise at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties*.

Because we are relying on total adverse facts available to establish TC Steel's dumping margin, we will instruct CBP to apply a dumping margin of 32.70 percent to all entries of subject merchandise during the POR that were produced and/or exported by TC Steel.

The Department will issue liquidation instructions to CBP 15 days after the publication of these final results of review.

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of steel plate from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash-deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 0.98 percent, the all-others rate established in the LTFV investigation,[1] adjusted for the export-subsidy rate in the companion countervailing duty investigation.[2] These deposit requirements shall remain in effect until further notice.

Notification

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 14, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

List of Issues Addressed in the Issues and Decision Memorandum

Comment 1 Product Matching

Comment 2 Offsetting Positive Margins With Negative Margins

[FR Doc. E8–5780 Filed 3–20–08; 8:45 am]

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[1] See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea*, 64 FR 73196, 73214 (December 29, 1999).

[2] See *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73176, 731818—86 (December 29, 1999), as amended in *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea*, 65 FR 6587, 6588 (February 10, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Certain Individually Quick Frozen Red Raspberries from Chile: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 21, 2008.

FOR FURTHER INFORMATION CONTACT: David Neubacher or Nancy Decker, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5823 or (202) 482–0196, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On August 24, 2007, the Department published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile, covering the period July 1, 2006, through June 30, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 48613 (August 24, 2007). The preliminary results for this administrative review are currently due no later than April 1, 2008.

Extension of Time Limits for Preliminary Results

The Department requires additional time to review and analyze the sales and cost information submitted by the respondent in this administrative review because this review involves complex cost accounting issues. Thus, it is not practicable to complete this review within the original time limit

(i.e., April 1, 2008). Therefore, the Department is extending the time limit for completion of the preliminary results to not later than July 30, 2008, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 17, 2008.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–5781 Filed 3–20–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Amended Final Results of Countervailing Duty Administrative Review: Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 11, 2008, the Department of Commerce (the Department) published the final results of the administrative review of the countervailing duty order on polyethylene terephthalate (PET) film from India for the period January 1, 2005 through December 31, 2005. *See Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 73 FR 7708 (February 11, 2008). On February 12, 2008, in accordance with 19 CFR 351.224(c)(2), we received timely filed ministerial error allegations from respondent MTZ Polyfilms, Ltd. (MTZ). No other party to the proceeding filed a ministerial error allegation or rebuttal comments. Based on our analysis of the comments, the Department has revised the countervailing duty rate for MTZ. Accordingly, we are amending our final results.

EFFECTIVE DATE: March 21, 2008.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0197, or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

For purposes of the order, the products covered are all gauges of raw, pretreated, or primed Polyethylene Terephthalate Film, Sheet and Strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Legal Authority

The statute governing the correction of ministerial errors directs the Department to establish a procedure for the correction of ministerial errors in determinations within a reasonable period of time. *See* Section 751(h) of the Tariff Act of 1930 (the Act). The regulations promulgated pursuant to the statute provide procedures for the correction of ministerial errors, which allow parties to submit comments and the Department to analyze the comments and correct any ministerial errors by amendment of the determination. *See* 19 CFR 351.224(e). The definition of a ministerial error in a countervailing duty determination is contained in section 751(h) of the Act. Specifically, the Act states that a ministerial error includes ''errors in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the {Secretary} considers ministerial.'' Thus, any issue raised by interested parties as a ministerial error which is, in fact, the result of a methodological decision by the Department will not be considered a ministerial error as it would not meet the statutory definition of the term. *See, e.g.*, *Tianjin Mach. Imp. & Exp. Corp.* v. *United States*, 353 F. Supp. 2d 1294, 1304 (CIT 2004).

Allegations of Ministerial Errors

On February 12, 2008, MTZ timely filed, pursuant to 19 CFR 351.224(c)(2), an allegation that the Department made two ministerial errors in its final results of review for MTZ. First, with respect to the Union Territories Central Sales Tax (CST) program, MTZ alleges that the Department miscalculated the benefit by using the excise tax and the Education CESS, which is an excise duty, on the excise tax paid, instead of the four percent CST not paid. We determine that this is a ministerial error that should be corrected in accordance with 19 CFR 3 5l.224(e) of the Department's regulations. In the benefit calculations for Union Territories CST program, the Department erroneously based the benefit on the excise tax and the Education CESS on the excise tax paid on MTZ's purchases of the input, instead of the four percent CST not paid on the purchases of the input. We have now revised our calculations and calculated the benefit from the Union Territories CST program by calculating four percent of the basic value, as reported to the Department. *See Memorandum to Barbara E. Tillman Through Dana Mermelstein From Elfi Blum: Analysis of Ministerial Error Allegations in Final Results of Countervailing Duty Review on Polyethylene Terephthalate Film, Sheet, and Strip from India* (March 12, 2008) (*Ministerial Error Memo*).

Second, MTZ states that, for the Duty Entitlement Passbook Scheme (DEPS/DEPB), the Department's calculation memorandum states that the benefits are conferred as of the date of exportation of the shipments for which the DEPS/DEPB credits are earned. MTZ alleges that the Department erred in calculating the benefits by including the value of credits earned on shipments made in 2004 for which the license was issued in 2005. Thus, according to MTZ, the calculation of the rate for this program does not reflect the method stated in the analysis memorandum, and therefore, constitutes a ministerial error. *See Memorandum to The File Through Dana Mermelstein From Elfi Blum: Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film from India: Revisions to the Rate Calculations for MTZ Polyfilms Ltd. (MTZ)* (February 4, 2008) (*Calculation Memo*).

MTZ correctly notes the Department's practice to treat benefits received under DEPSIDEPB as conferred as of the date of exportation of the shipment for which the relevant DEPS/DEPB credits are earned because it is at this point where the amount of the benefit in the form of an exemption is known. *See, e.g.*, *Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India*, 69 FR 26549 (May 13, 2004), and accompanying Issues and Decision Memorandum at Comment 2; and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India*, 64 FR 73131, 73140 (December 29, 1999).

However, we disagree with MTZ that our inclusion in the benefit calculation of all the DEPB credits MTZ reported constitutes a ministerial error. In the original questionnaire and in the first and second supplemental questionnaires we asked MTZ to report the date of shipment for all exports on which the benefits from its DEPS/DEPB licenses were earned, and to report such information for all credits earned during the period of review (POR). In MTZ's first supplemental response, MTZ reported the date of all licenses issued within the POR. MTZ also reported all credits earned under those licenses. However, MTZ did not report, for all of these credits, the dates of shipment for the related exports. In the second supplemental response, MTZ provided data for the DEPS/DEPB in the format requested by the Department, but did not include all previously reported licenses. At verification, MTZ noted as a minor correction and clarification, that it had erroneously omitted some licenses from the data set, and provided the verifiers with the information for those licenses identified to the Department. Although MTZ provided shipment data, including date, for some of the licenses at verification, it failed to do so for all of the licenses originally reported to the Department in its first supplemental response. Thus, there remained several licenses for which there was no shipment date reported. Based on the conclusion that MTZ reported its DEPS/DEPB licenses and credits earned as we had instructed, we considered that the credits were earned based on shipments made during the POR. Therefore, we included in our benefit calculations all of the DEPS/DEPB credits earned that MTZ reported.

During the course of the administrative review, MTZ failed to identify reported DEPS/DEPB credits that were earned outside the POR. Accordingly, without the information necessary for the Department to identify when the benefit was conferred, we appropriately relied on the date of the license to calculate the benefit. In conclusion, MTZ has not established that the Department made a ministerial error in its calculation of MTZ's DEPS/DEPB benefits. As such, no changes to the calculations for the *Final Results* are warranted. *See Ministerial Error Memo*.

In accordance with 19 CFR 351.224(e), we have amended the final results of the countervailing duty administrative review of PET Film, Sheet, and Strip from India, for the period January 1, 2005 to December 31, 2005, and the respondent MTZ, as noted above. As a result of these corrections, MTZ's rate has changed as shown below.

Manufacturer/exporter	Net subsidy rate
MTZ Polyfilms, Ltd.	31.25%.

Assessment and Cash Deposit Instructions

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of these amended final results of review to liquidate shipments of subject merchandise by MTZ entered, or withdrawn from warehouse, for consumption on or after January 1, 2005 through December 31, 2005, at 31.25 percent *ad valorem*. We will also instruct CBP to collect cash deposits of the amended estimated countervailing duties, at this rate, on shipments of the subject merchandise by MTZ entered, or withdrawn from warehouse, for consumption on or after the date of publication of these amended final results of review.

We are issuing and publishing these amended final results in accordance with 19 CFR 351.224(e) of the Department's regulations.

Dated: March 12, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–5601 Filed 3–20–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG18

Identification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing and/or Bycatch of Protected Living Marine Resources

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

ACTION: Notice; request for information.

SUMMARY: NMFS is seeking information regarding nations whose vessels are engaged in illegal, unregulated, or unreported (IUU) fishing or engaged in bycatch of protected living marine resources (PLMRs). Such information will be reviewed for the purposes of the identification of nations pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act).

DATES: Information must be received by April 21, 2008

ADDRESSES: Information must be submitted by mail to NMFS Office of International Affairs, Attn.: Laura Cimo, 1315 East-West Highway, Silver Spring, MD 20910; by E-mail to: *laura.cimo@noaa.gov*; or by fax to (301) 713–9106.

FOR FURTHER INFORMATION CONTACT: Laura Cimo, NMFS Office of International Affairs, (301) 713–9090 ext. 132, e-mail address: *laura.cimo@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Moratorium Protection Act, as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, requires the United States to strengthen international fishery management organizations and address IUU fishing and bycatch of PLMRs. Specifically, the Moratorium Protection Act requires the Secretary of Commerce to identify in a biennial report to Congress those nations whose fishing vessels are engaged, or have been engaged at any point during the preceding two years, in IUU fishing. Additionally, the Secretary of Commerce must identify in the biennial report those nations whose fishing vessels are engaged, or have been engaged during the preceding calendar year, in fishing activities either in waters beyond any national jurisdiction that result in bycatch of a PLMR, or beyond the U.S. exclusive economic zone (EEZ) that result in bycatch of a PLMR shared by the United States.

The first biennial report is due to Congress in January 2009. The Moratorium Protection Act also mandates the development of regulations that set forth the certification procedures for nations identified in the biennial report. NMFS is currently in the process of developing these regulations and will promulgate a final rule prior to issuing the first certification decisions under this statute. The public will be provided an opportunity to comment on the proposed rule when it is published at a later date.

At this time, NMFS is gathering information for the purposes of identifying nations whose fishing vessels are engaged in IUU fishing or fishing practices that result in bycatch of PLMRs for publication in the first biennial report to Congress. NMFS is soliciting from the public, other nations and international organizations,

information that is relevant to the identification of nations engaged in IUU activities and bycatch. Sources of information that NMFS may rely upon to make identifications include, but are not limited to:

- fishing vessel records;
- reports from off-loading facilities, port-side government officials, enforcement agents, military personnel, port inspectors, transshipment vessel workers and fish importers;
- government vessel registries;
- IUU vessel lists from RFMOs;
- RFMO catch documents and statistical document programs;
- appropriate catch or trade certification programs; and
- statistical data or incident reports from governments, international organizations, or nongovernmental organizations.

NMFS will consider all available information, as appropriate, when making a determination whether or not to identify a particular nation in the biennial report to Congress. In its determinations as to whether information is appropriate for use in making identifications, NMFS will consider several criteria, including, but not limited to:

- whether the information can be corroborated;
- whether multiple sources have been able to provide information in support of an identification;
- the methodology used to collect the information;
- specificity of the information provided;
- susceptibility of the information to falsification and alteration; and
- credibility of the individual or organization providing the information.

In addition, NMFS poses the following questions: What sources of information should NMFS consider in identifying nations engaged in IUU fishing activities and bycatch of protected living marine resources? Would the above sources of information be useful to NMFS in making such identifications?

In order to process and verify all information in a timely manner, NMFS will not be able to consider any information submitted after the close of the information gathering period (see **DATES**).

Dated: March 17, 2008.

Rebecca Lent

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E8–5786 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG38

International Whaling Commission; 60th Annual Meeting; Nominations

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

ACTION: Notice; request for nominations.

SUMMARY: This notice is a call for nominees for the U.S. Delegation to the June 2008 International Whaling Commission (IWC) annual meeting. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation.

DATES: The IWC is holding its 60th annual meeting from June 23–27, 2008, in Santiago, Chile. All written nominations for the U.S. Delegation to the IWC annual meeting must be received by April 18, 2008.

ADDRESSES: All nominations for the U.S. Delegation to the IWC annual meeting should be addressed to Bill Hogarth, U.S. Commissioner to the IWC, and sent via post to: Cheri McCarty, National Marine Fisheries Service, Office of International Affairs, 1315 East-West Highway, SSMC3 Room 12603, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Cheri McCarty, 301–713–9090, ext. 183.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the domestic obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. IWC Commissioner has responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other agencies. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation.

Dated: March 17, 2008.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E8–5783 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG43

Marine Mammals; Photography Permit Application No. 10133

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Zvi Livnat, P.O. Box 1209, Kealakekua, Hawaii 96750, has applied in due form for a permit to conduct commercial/educational photography of spinner dolphins (*Stenella longirostris*).

DATES: Written, telefaxed, or e-mail comments must be received on or before April 21, 2008.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is

NMFS.Pr1Comments@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: File No. 10133.

FOR FURTHER INFORMATION CONTACT: Amy Hapemen or Brandy Belmas, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of section 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a ''pilot'' application for Level B Harassment of non-listed and non-depleted marine mammals for photographic purposes.

The applicant has requested a photography permit to film human interactions with spinner dolphins in the coastal waters of Hawaii and Maui. The purpose of the filming is to produce a public service announcement to educate residents and tourists of the Hawaiian Islands about the dangers that swim-with programs pose to the species and illustrate proper dolphin watching techniques. Up to 2,710 dolphins could be harassed annually during aerial and vessel-based close approaches for filming, including underwater filming. Filming would occur from March to October of each year over a period of 4 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 17, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–5784 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG51

Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held April 7, 2008 through April 11, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Embassy Suites Hotel, 4914 Constitution Ave., Baton Rouge, LA 70808.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Council

Thursday, April 10, 2008

1 p.m.—The Council meeting will begin with a review of the agenda and minutes.

1:15 p.m.–1:20 p.m.—The Council will approve the members of the Outreach and Education Committee.

1:20 p.m.–5:30 p.m.—The Council will receive public testimony on: (a) exempted fishing permits (EFPs), if any; (b) Final Action on Reef Fish Amendment 30B; and (c) Generic Aquaculture Amendment. An Open Public Comment Period regarding any fishery issue of concern will be immediately following completion of public testimony for a maximum of 1 hour. People wishing to speak before the Council should complete a public comment card prior to the comment period.

Friday, April 11, 2008

The Council will review and discuss reports from the previous three days' committee meetings as follows:

8:30 a.m.–10:30 a.m.—Reef Fish Management;

10:30 a.m.–10:45 a.m.—Ad Hoc Allocation;

10:45 a.m.–11 a.m.—Shrimp Management;

11 a.m.–11:30 a.m.—Joint Reef Fish/Mackerel/Red Drum;

11:30 a.m.–11:45 a.m.—Habitat Protection;

11:45 a.m.–12 noon—Budget/Personnel;

12 noon–12:15 p.m.—AP Selection;

12:15 p.m.–12:30 p.m.—SSC Selection;

12:30 p.m.–12:45 p.m.—Operator Permits;

12:45 p.m.–1 p.m.—The Council will review regulations for Reef Fish Amendment 30B.

1 p.m.–1:30 p.m.—The Council will discuss Other Business item.

1:30 p.m.—The Council will conclude its meeting.

Committees

Monday, April 7, 2008—ALL CLOSED SESSIONS

1 p.m.–3 p.m.—CLOSED SESSION—Budget/Personnel Committee will interview and select a Staff Biologist. It will review the Executive Director's position description, rating sheet, and interview questions.

3 p.m.–4:30 p.m.—CLOSED SESSION—AP Selection Committee will review attendance and appoint new nominees to the AP.

4:30 p.m.–5:30 p.m.—CLOSED SESSION—SSC Selection Committee will review attendance and appoint new nominees to the SSC.

Tuesday, April 8, 2008

8 a.m.–12 noon & 1:30 p.m.–5:30 p.m.—The Reef Fish Management Committee will meet to discuss Approval of Public Hearing Draft of Reef Fish Amendment 29; Final Action on Reef Fish Amendment 30B; and a Report of Ad Hoc Recreational Red Snapper AP Meeting.

Wednesday, April 9, 2008

8:30 a.m.–10:30 a.m.—The Ad Hoc Allocation Committee will meet to discuss Organizational Issues.

10:30 a.m.–12 noon—The Operator Permits Committee will discuss an Operator Permits Options Paper.

1:30 p.m.–3 p.m.—The Shrimp Management Committee will meet to discuss the Shrimp Vessel Effort; AP recommendations; and receive a Report on Electronic Logbooks for Shrimp Fishery.

3 p.m.–5:30 p.m.—The Joint Reef Fish/Mackerel/Red Drum Management Committee will meet to discuss the Generic Aquaculture Amendment.

5:30 p.m.–6:30 p.m.—Informal Questions and Answer Session.

Thursday, April 10, 2008

8:30 a.m.–10:30 a.m.—The Habitat Protection Committee will discuss

Proposed Management Action for Flowers Garden Banks and receive an Update on LNG Facilities.

10:30 a.m.–11:30 a.m.—CLOSED SESSIONS—Council will discuss AP and SSC Selections and Budget/Personnel Issues.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: March 18, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–5778 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG50

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Science and Statistical Committee (SSC), its Ad Hoc Excessive Shares Committee, the Mid-Atlantic section of the Joint Monkfish Committee, its Protected Resources Committee, its Research Set-Aside (RSA) Committee, its Executive Committee, its Surfclam/Ocean Quahog Committee, its Bycatch Committee, and its Demersal Committee, will hold public meetings.

DATES: The meetings will be held on Monday, April 7, 2008 through Thursday, April 10, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Sheraton Annapolis Hotel, 173 Jennifer Road, Annapolis, MD 21401; telephone: (410) 266–3131.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New St., Room 2115, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331 ext. 19.

SUPPLEMENTARY INFORMATION:

Monday, April 7, 2008

10 a.m. until 5 p.m.—The Science and Statistical Committee (SSC) will meet.

Tuesday, April 8, 2008

9 a.m. until 11 a.m.—The Ad Hoc Excessive Shares Committee will meet.

11 a.m. until 12 p.m.—The Mid-Atlantic section of the Joint Monkfish Committee will meet.

1 p.m until 3 p.m.—The Protected Resources Committee will meet.

3 p.m. until 5:30 p.m.—The Research Set-Aside (RSA) Committee will meet.

Wednesday, April 9, 2008

8 a.m. until 9:30 a.m.—The Executive Committee will meet.

9:30 a.m. until 10 a.m.—The Surfclam/Ocean Quahog Committee will meet.

10 a.m. until 12 p.m.—The Bycatch Committee will meet.

1:15 p.m. until 3:15 p.m.—The Council will convene and hold its Business Session.

3:15 p.m. until 4 p.m.—The Council will receive a presentation regarding New England Council's Habitat Areas of Particular Concern (HAPC) Initiative.

4 p.m. until 5 p.m.—Monkfish Framework 6 will be reviewed and discussed for the purpose of adoption.

Thursday, April 10, 2008

8 a.m. until 9:30 a.m.—The Demersal Committee will meet.

9:30 a.m. until 2:30 p.m.—The Council will convene to review and discuss Amendment 1 to Tilefish for purposes of adoption.

2:30 p.m. until 4 p.m.—The Council will receive Committee Reports and consider Continuing and New Business.

Agenda items by day for the Council's Committees and the Council itself are:

Monday, April 7—An orientation session for the Science and Statistical Committee will be held to review and discuss the roles of the Council, the SSC, the Monitoring Committees, NMFS, and the Council staff; review the Council's current specification setting procedures and related timing issues; review Annual Catch Limits (ACL) and Accountability Measures (AM) requirements established by the Magnuson-Steven Reauthorization Act (MSRA); discuss possible alternative specification procedures; review Terms of Reference (TOR) for the SSC regarding the annual specification setting process; evaluate and modify current SSC composition by discipline/expertise; review SSC membership appointment protocol and the need to expand the Committee; and, discuss quality assurance/quality control measures for SSC appointment.

Tuesday, April 8—The Ad Hoc Excessive Shares Committee will review and discuss the meaning/interpretation of the Magnuson-Stevens Act (MSA) National Standard 4, Section 303A(c)(5)(D), Section 303A(c)(9) and develop ideas on and practical application of excessive shares concept. The Mid-Atlantic section of the Joint Monkfish Committee will review and discuss proposed measures in Framework 6, select a preferred alternative, and develop a Committee recommendation for Council consideration and action. The Protected Resources Committee will review recent Harbor Porpoise Take Reduction Team activities and receive a report on NMFS' Protected Resources Public Outreach Program in the Mid-Atlantic region. The RSA Committee will review a draft policy document regarding the Council's RSA program's operations, review the status of the Mid-Atlantic Council's RSA projects/awards, discuss the need for RSA programmatic reviews, and consider establishing a Mid-Atlantic Research Consortium.

Wednesday, April 9—The Executive Committee will review discussions and outcomes from the Northeast Regional Coordinating Council (NRCC) meeting, and review, discuss, and endorse staff's proposed approach to satisfying MSA Section 303(a)(15). The Surfclam/Ocean Quahog Committee will receive an update on commitments made at the most recent Amendment 14 Fishery Management Action Team (FMAT)

meeting. The Bycatch Committee will discuss measures to reduce bycatch mortality in recreational fisheries and review the status of the Council's Bycatch educational outreach initiative. Following these Committee meetings, there will be an awards presentation to recognize the recipient of the 2007 Ricks E Savage Award. The Council will then convene to receive various reports, receive a presentation regarding the New England Council's HAPC Initiative, and review and approve Monkfish Framework 6 for Secretarial submission.

Thursday, April 10—The Demersal Committee will review the purpose and need of the current list of potential actions to be addressed by Amendment 15. The Council will then review preferences for management alternatives based on public comments received for Tilefish Amendment 1, discuss and adopt preferred alternatives to be included in the Final Environmental Impact Statement (FEIS) supporting Tilefish Amendment 1, and approve Amendment 1 and associated FEIS for Secretarial submission. The Council will then receive Committee Reports, and consider any continuing or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent t take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan, (302) 674–2331 ext 18, at least 5 days prior to the meeting date.

Dated: March 18, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–5773 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG47

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet April 6–12, 2008. The Council meeting will begin on Monday, April 7, at 12:30 p.m., reconvening each day through Saturday. All meetings are open to the public, except a closed session will be held from 12:30 p.m. until 1:30 p.m. on Monday, April 7 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Seattle Marriott Hotel, 3201 South 176th Street, Seattle, WA 98188; telephone: (206) 241–2000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Public Comment

Comments on Non-Agenda Items

C. Administrative Matters

1. Future Council Meeting Agenda and Workload Planning
2. Legislative Matters
3. Magnuson-Stevens Act Reauthorization Implementation
4. Membership Appointments and Council Operating Procedures

D. Enforcement Issues

Fishery Enforcement Activity Report

E. Habitat

Current Habitat Issues

F. Salmon Management

1. Tentative Adoption of 2008 Ocean Salmon Management Measures for Analysis
2. Clarify Council Direction on 2008 Management Measures
3. Pacific Salmon Commission Coded-Wire Tag Workgroup Report
4. Methodology Review Process and Preliminary Topic Selection for 2008
5. Final Action on 2008 Management Measures
6. Clarify Final Action on 2008 Management Measures

G. Pacific Halibut Management

Incidental Catch Regulations for the Salmon Troll and Fixed Gear Sablefish Fisheries

H. Groundfish Management

1. Management Specifications for 2009–2010 Fisheries
2. NMFS Report
3. Fishery Management Plan Amendment 21: Intersector Allocation
4. Consideration of Inseason Adjustments
5. Part I of Management Measures for 2009–2010 Fisheries
6. Part II of Management Measures for 2009–2010 Fisheries
7. Final Consideration of Inseason Adjustments

I. Marine Protected Areas

1. Proposals for New Marine Protected Areas in the Monterey Bay National Marine Sanctuary
2. Olympic Coastal National Marine Sanctuary Condition Report

J. Highly Migratory Species Management

1. NMFS Report
2. Recommendations to the U.S. Section of the Inter-American Tropical Tuna Commission
3. Exempted Fishing Permit for Longline Fishing in the West Coast Exclusive Economic Zone

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, April 6, 2008	.
Groundfish Advisory Subpanel	1 p.m..
Groundfish Management Team	1 p.m..
Legislative Committee	1 p.m..
MONDAY, April 7, 2008	.
Council Secretariat	7 a.m..

SCHEDULE OF ANCILLARY MEETINGS—Continued

California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Salmon Advisory Subpanel	8 a.m..
Salmon Technical Team	8 a.m..
Scientific and Statistical Committee	8 a.m..
Habitat Committee	9 a.m..
Enforcement Consultants	4:30 p.m..
Tribal Policy Group	As necessary.
Tribal and Washington Technical Group	As necessary.
Washington State Delegation	As necessary.
TUESDAY, April 8, 2008	.
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Enforcement Consultants	8 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Salmon Advisory Subpanel	8 a.m..
Salmon Technical Team	8 a.m..
Tribal Policy Group	As necessary.
Tribal and Washington Technical Group	As necessary.
Washington State Delegation	As necessary.
WEDNESDAY, April 9, 2008	.
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Salmon Advisory Subpanel	8 a.m..
Salmon Technical Team	8 a.m..
Enforcement Consultants	As necessary.
Tribal Policy Group	As necessary.
Tribal and Washington Technical Group	As necessary.
Washington State Delegation	As necessary.
THURSDAY, April 10, 2008	.
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Highly Migratory Species Advisory Subpanel	8 a.m..
Highly Migratory Species Management Team	8 a.m..
Salmon Advisory Subpanel	8 a.m..
Salmon Technical Team	8 a.m..
Enforcement Consultants	As necessary.
Tribal Policy Group	As necessary.
Tribal and Washington Technical Group	As necessary.
Washington State Delegation	As necessary.
FRIDAY, April 11, 2008	.
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Groundfish Advisory Subpanel	8 a.m..
Groundfish Management Team	8 a.m..
Highly Migratory Species Advisory Subpanel	8 a.m..
Highly Migratory Species Management Team	8 a.m..
Salmon Advisory Subpanel	8 a.m..
Salmon Technical Team	8 a.m..
Enforcement Consultants	As necessary.
Tribal Policy Group	As necessary.
Tribal and Washington Technical Group	As necessary.
Washington State Delegation	As necessary.
SATURDAY, April 12, 2008	.
Council Secretariat	7 a.m..
California State Delegation	7 a.m..
Oregon State Delegation	7 a.m..
Enforcement Consultants	As necessary.
Washington State Delegation	As necessary.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: March 18, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–5755 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XG49

Fisheries of the South Atlantic; South Atlantic Fishery Management Council

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

ACTION: Notice of a public meeting of the South Atlantic Fishery Management Council's Allocation Committee.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Allocation Committee in North Charleston, SC.

DATES: The meeting will take place April 8–9, 2008. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at Southern Wesleyan University, Classroom 6, 4055 Faber Place Drive, Suite 301, North Charleston, SC 29406.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The Allocation Committee meeting will take place from 8:30 a.m. to 5 p.m. on April 8, 2008, and from 8:30 a.m. to 3 p.m. on April 9, 2008.

The Committee will continue to work on alternatives for consideration in the Council's draft Comprehensive Allocation Amendment. The amendment addresses allocations between recreational and commercial fishing sectors. The amendment currently includes alternatives to determine allocations based on (1) Landings data from the National Marine Fisheries Service or Atlantic Coast Cooperative Statistics Program, (2) Catch data from stock assessments (including discard mortalily), (3) the Council's Judgement on Fairness and Equity, and (4) detailed economic and social analysis. The Committee will receive a report on social projects/data collection completed or planned for the South Atlantic region, an overview of previous management actions and how reductions in harvest were applied to each sector, and a presentation on the applicability of certain economic models that may prove useful for helping to determine allocations for species managed by the Council.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accomodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: March 18, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E8–5779 Filed 3–20–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF77

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 140th meeting to consider and take actions on fishery management issues in the Western Pacific Region.

DATES: The 140th Council meeting and public hearings will be held on March 17–18, 2008 in Guam and March 20–21, 2008 in Saipan, Commonwealth of the Northern Mariana Islands (CNMI). For specific times and the agenda, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 140th Council meeting and public hearings will be held at the Guam Hilton, 202 Hilton Road, Tumon Bay, Guam, 96913 ; telephone: 671–646–1835; and the Fiesta Resort and SPA Saipan, P.O. Box 501029, Saipan, MP, 96950; telephone: 670–234–6418.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the Council will hear recommendations from other Council advisory groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

Schedule and Agenda for Council Standing Committee Meetings

Monday, March 17, 2008

Standing Committee Meetings

1. 7:00 a.m.—9:30 a.m. Executive and Budget Standing Committee

2. 9:30 a.m.—11:30 a.m. Pelagics Ecosystem and International Fisheries Standing Committee

3. 9:30 a.m.—11:30 a.m. Program Planning Standing Committee

The agenda during the full Council meeting will include the items listed here.

Schedule and Agenda for Council Meeting

12:30 p.m.—5:00 p.m. Monday, March 17, 2008

1. Opening Ceremony
2. Introductions
3. Approval of Agenda
4. Approval of 139th Meeting Minutes
5. Agency Reports
A. NMFS
1. Pacific Islands Regional Office (PIRO)
2. Pacific Islands Fisheries Science Center (PIFSC)
B. NOAA General Counsel
C. United States Fish and Wildlife Service (USFWS)
D. Enforcement
1. United States Coast Guard (USCG)
2. NOAA Office for Law Enforcement (OLE)
3. Status of Violations
6. Guest Speaker

9:00 a.m.—5:00 p.m. Tuesday, March 18, 2008

7. Mariana Archipelago 1-Guam
A. Isla Informe (Island Area Reports)
B. Enforcement Issues
C. Action Items
1. Guam Purse-seine Closed Area
2. Community Development Plan (CDP) Regulatory Amendment to Allow Future CDPs
D. Community Issues
1. Military Expansion
2. Transshipment Issues
E. Education and Outreach Initiatives
F. Marianas Fishery Ecosystem Plan (FEP) Advisory Panel Recommendations
G. Marianas FEP Plan Team Recommendations
H. Marianas FEP Regional Ecosystem Advisory Committee (REAC) Recommendations
I. Scientific and Statistical Committee (SSC) Recommendations
J. Public Hearing
K. Council Discussion and Action
8. Hawaii Archipelago and Pacific Remote Island Areas (PRIA)
A. Moku Pepa (Island Area Reports)
B. Enforcement Issues
C. Update on Status of Main Hawaiian Islands (MHI) Bottomfish Management and Monitoring
1. Data Collection, Processing and Analysis
a. Catch Reports
b. Dealer Reports
c. Delinquencies
2. Review Annual Data by Month for Last Three Years
3. Federal Regulations
4. State of Hawaii Rules and Regulations
5. Report on Economic Performance
D. Action Items
1. MHI Bottomfish Risk Analysis
E. Northwestern Hawaiian Islands (NWHI) Buyout
F. Community Issues
1. Seascape Initiatives
G. Local, National, & International Education and Outreach Initiatives
H. SSC Recommendations
I. Public Comment
J. Council Discussion and Action
9. Protected Species
A. Status of Protected Species Program
B. Update on Endangered Species Act (ESA) Consultations
C. Loggerhead Petition
D. Albatross Petition
E. Observer Program Report on American Samoa and Hawaii 2007 Longline Fisheries
F. Public Comment
G. Council Discussion and Action
10. Public Comment on Non-Agenda Items

9:00 a.m.—5:00 p.m. Thursday, March 20, 2008

11. Opening Ceremony
12. Introductions
13. Marianas Archipelago 2–CNMI
A. Arongo Flaeey (Island Area Reports)
B. Enforcement Issues
C. Action Items
1. CNMI Purse-seine Closed Area
2. CNMI Longline Closed Area
D. Community Issues
1. Military Expansion
2. CNMI Monument
E. Education and Outreach Initiatives
F. Marianas FEP Advisory Panel Recommendations
G. Marianas FEP Plan Team Recommendations
H. Marianas FEP REAC Recommendations
I. SSC Recommendations
J. Public Hearing
K. Council Discussion and Action
14. American Samoa Archipelago
A. Motu Repote (Island Area Reports)
B. Enforcement Issues
C. Action Items
1. American Samoa Purse-seine Closed Area
2. American Samoa Longline Program Modifications
3. American Samoa Marine Conservation Plan (MCP)
D. Community Issues
E. Education and Outreach Initiatives
F. SSC Recommendations
G. Public Hearing
H. Council Discussion and Action
9:00 a.m.—5:00 p.m. Friday, March 21, 2008
15. Pelagic and International Fisheries
A. Action Items
1. Hawaii Swordfish Fishery Effort
2. Squid Permits
B. International Fisheries
1. Fourth International Fishers Forum (IFF4)
2. Western and Central Pacific Fisheries Commission (WCPFC)
a. Report on WCPFC 4

b. Commissioners
c. Advisory Committee
d. Implementing Regulations
3. Northwest Pacific Bottomfishing Agreement
4. South Pacific Regional Fishery Management Organization (RFMO)
5. US Commissioners Meeting to Tuna RFMOs
6. Climate Impacts on Oceanic Top Predators (CLIOTOP)
C. Secretariat for the Pacific Community (SPC) report on Insular Fishing in the Pacific
D. Pacific Pelagic Advisory Panel Recommendations
E. Pacific Pelagic Plan Team Recommendations
F. Marianas FEP REAC Recommendations
G. SSC Recommendations
H. Standing Committee Recommendations
I. Public Hearing
J. Council Discussion and Action
16. Program Planning and Research
A. Magnuson Stevens Reauthorization Act (MSRA) Implementation
1. Annual Catch Limits (ACLs)
2. Council Five-Year Research Priorities
3. Status of Marine Recreational Information Program (MRIP)
4. National Environmental Policy Act (NEPA) Coordination
5. SSC, Peer Review, Stipends
6. Proposed Revisions to the Exempted Fishing Permit (EFP) Process
B. Update on Status of Fishery Management Plan (FMP) Actions
1. CNMI Bottomfish Logbooks
2. Barter/Trade Issues
C. Potential Permit Fees
D. Status of MCPs
E. Western Pacific Cooperative Research Priorities
F. Legislative Report
G. SSC Recommendations
H. Standing Committee Recommendations
I. Public Hearing
J. Council Discussion and Action
17. Administrative Matters & Budget
A. Financial Reports
B. Administrative Reports
C. Standard Operating Procedures and Protocols (SOPP) Review
D. Meetings and Workshops
E. Council Family Changes
F. Standing Committee Recommendations
G. Public Comment
H. Council Discussion and Action
18. Public Comment on Non-Agenda Items
19. Other Business

Special Accomodations

These meetings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: March 18, 2008.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 08–1062 Filed 3–18–08; 3:31 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Open Meeting Notice

AGENCY: Department of Defense Education Activity (DoDEA), DoD.

ACTION: Open Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following *Federal advisory committee meeting will take place:*

1. *Name of Committee:* Advisory Council on Dependents' Education.
2. *Date:* Friday, May 2, 2008.
3. *Time:* 8 a.m. to 5 p.m. Japan Standard Time.
4. *Location:* New Sanno Hotel, 4–12–20 Minami-Azabu, Minato-ku, Tokyo 106–0047, Japan.
5. *Purpose of the Meeting:* Recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense.
6. *Agenda:* The meeting agenda will be the current operational qualities of schools and the institutionalized school improvement processes, as well as other educational matters.
7. *Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. Appropriate government issued identification will be required to enter the meeting facility, which is a U.S. Military managed facility.
8. *Committee's Point of Contact:* Mr. Jim Jarrard, telephone (703) 588–3121, 4040 North Fairfax Drive, Arlington, VA 22203, *e-mail: james.jarrard@hq.dodea.edu.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Advisory Council on Dependents' Education about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of the planned meeting of the Advisory Council on Dependents' Education.

All written statements shall be submitted to the Designated Federal Officer for the Advisory Council on Dependents' Education and this individual will ensure that the written statements are provided to the membership for their consideration. For the next meeting of the Advisory Council on Dependents' Education, Mr. Jim Jarrard, telephone (703) 588–3121, 4040 North Fairfax Drive, Arlington, VA 22203; *e-mail: james.jarrard@hq.dodea.edu,* will be acting in the capacity of the Designated Federal Officer for this committee.

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed above at least fourteen calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Advisory Council on Dependents' Education until its next meeting.

The Designated Federal Officer will review all timely submissions with the Advisory Council on Dependents' Education Chairpersons and ensure they are provided to all members of the Advisory Council on Dependents' Education before the meeting that is the subject of this notice.

Oral Statements by the Public to the Membership: Pursuant to 41 CFR 102–3.140(d), time will be allotted for public comments to the Advisory Council on Dependents' Education. Individual comments will be limited to a maximum of five minutes duration. The total time allotted for public comments will not exceed thirty minutes.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Jarrard, telephone (703) 588–3121, or *e-mail: james.jarrard@hq.dodea.edu.*

Dated: March 17, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–5739 Filed 3–20–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Business Board (DBB)

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following *Federal advisory committee meeting will take place:*

1. *Name of Committee:* Defense Business Board (DBB).
2. *Date:* Thursday, April 17, 2008.
3. *Time:* 12 p.m. to 1:30 p.m..
4. *Location:* Rockwell Hall, United States Transportation Command, Scott Air Force Base, O'Fallon, IL.
5. *Purpose of the Meeting:* The mission of the DBB is to advise the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board will deliberate on findings from three task groups: (1) Task Group on Tooth-to-Tail Review, (2) Task Group Industrial Base Strategic Relationship, and (3) Task Group on Enterprise Governance. Copies of DRAFT Task Group presentations will be available on Friday, April 11th by contacting the DBB Office.
6. *Agenda:* 12 p.m.–1:30 p.m. Public Meeting.
   - *Task Group Reports:*
   - Tooth-to-Tail.
   - Industrial Base Strategic Relationship.
   - Enterprise Governance.
7. Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. Members of the public who wish to attend the meeting must contact the Defense Business Board no later than Noon on Monday, April 14th to be placed on a list of attendees. Members of the public without access to Scott AFB must arrive at the Visitor Center, Main Entrance, Shiloh Gate by 11 a.m. to be escorted to Rockwell Hall. Local Point of Contact is

Mr. Lance Davidson, (618) 229–4098. Public attendees are required to bring two forms of identification upon arrival at Scott AFB: (1) A government-issued photo I.D., and (2) any type of secondary I.D. which verifies the individual's name (i.e. debit card, credit card, work badge, social security card).

8. *Committee's Designated Federal Officer:* Kelly Van Niman, Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155, *kelly.vanniman@osd.mil,* (703) 697–2346.

SUPPLEMENTARY INFORMATION:

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Business Board about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Business Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Business Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed above at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Defense Business Board until its next meeting.

The Designated Federal Officer will review all timely submissions with the Defense Business Board Chairperson and ensure they are provided to all members of the Defense Business Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: Linda Clay, Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155, *linda.clay@osd.mil,* (703) 697–2168.

Dated: March 17, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–5737 Filed 3–20–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board (DHB) Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, the following meeting is announced:

Name of Committee: Defense Health Board (DHB).

Dates: April 23 and 24, 2008.

Times: April 23, 2008:

8 a.m.–12 p.m. (Open Session).

1 p.m.–4:15 p.m. (Open Session).

April 24, 2008:

8 a.m.–12 p.m. (Open Session).

Place of Meeting: Hotel Murano, 1320 Broadway Plaza, Tacoma, Washington 98402.

Purpose of the Meeting: The purpose of the meeting is to address and deliberate pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

Agenda: The Board will receive an update on the Department's efforts to reengineer the Disability Evaluation Program. The Board will receive reports from the Psychological Health and Traumatic Brain Injury Center of Excellence and the Traumatic Brain Injury External Advisory Subcommittees. The Board will also deliberate recommendations regarding the DoD Pandemic Inflluenza Preparedness Update and Influenza Update.

On April 24, 2008, the Board will receive a Military Vaccine Agency Update of the Vaccine Healthcare Centers and the Biowarfare Countermeasures Subcommittee Report will also be discussed. A question to the Board will be presented on the Joint Pathology Center. A presentation on the DoD Biological Specimen Repositories and Health Risk Assessment, Burn Pit Exposures Balad Air Base. Recommendations on Convalescent Plasma and DHB Chlamydia Recommendations to ASD (HA) will be presented.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the Defense Health Board meeting from 8 a.m. to 4:15 p.m. on April 23, 2008 and from 8 a.m. to 5 p.m. on April 24, 2008 is open to the public. Any member of the public wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should be not longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer at the address detailed below at any point. However, if the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

FOR FURTHER INFORMATION CONTACT: Colonel Roger L. Gibson, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Room 810, Falls Church, Virginia 22041–3206, (703) 681–3279, Ext 123, *Fax:* (703–681–3321, (*roger.gibson@ha.osd.mil*). Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.* The public is encouraged to register to register for the meeting.

Written statements may be mailed to the above address, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3321.

Dated: March 17, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–5738 Filed 3–20–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

The following patents are available for licensing: U.S. Patent Number 5,520,331 entitled ''Liquid Atomizing Nozzle'', issued on May 28, 1996; U.S. Patent Number 6,105,382 entitled ''Chest Mounted Armored Microclimate Conditioned Air Device'', issued on August 22, 2000; U.S. Patent Number 6,233,740 entitled ''Aircrew Integrated Recovery Survival Vest'', issued on May 22, 2001; U.S. Patent Number 6,241,164 entitled ''Effervescent Liquid Fine Mist Apparatus and Method'', issued on June 05, 2001; U.S. Patent 6,598,802 entitled ''Effervescent Liquid Fine Mist Apparatus and Method'', issued on July 29, 2003; U.S. Patent Number 6,659,963 entitled ''Apparatus for Obtaining Temperature and Humidity Measurements'', issued on December 09, 2003; U.S. Patent Number 7,010,399 entitled ''Hybrid Lidar-Radar for Medical Diagnostics'', issued on March 07, 2006; U.S. Patent Number 7,025,304 entitled ''Helicopter Messenger Cable Illumination'', issued on April 11, 2006; U.S. Patent Number 7,156,161 entitled ''Lightweight Thermal Heat Transfer Apparatus'', issued on January 02, 2007; U.S. Patent Number 7,176,812 B1 entitled ''Wireless Blade Monitoring System and Process'', issued on February 13, 2007; U.S. Patent Number 7,180,442 B1 entitled ''Target Identification Method Using Cepstral Coefficients'', issued on February 20, 2007; U.S. Patent Number 7,225,999 entitled ''Spray Array Apparatus'', issued on June 05, 2007; U.S. Patent Number 7,239,311 entitled ''Global Visualization Process (GVP) and System for Implementing a GVP'', issued on July 03, 2007; U.S. Patent Number 7,284,600 B2 entitled ''Process of Making a Lightweight Thermal Heat Transfer Apparatus'', issued October 23, 2007; U.S. Patent Number 7,331,183 B2 entitled ''Personal Portable Environmental Control System'', issued February 18, 2008; U.S. Patent Application Number 11/417,283 filed on May 01, 2006, Navy Case Number 83036 entitled ''Imagery Analysis Tool''; U.S. Patent Number 11/820,034 filed on April 10, 2002, Navy Case Number 83825 entitled ''System and Method of Operation thereof for Increasing Acoustic Bandwidth of Transmitting Devices''; U.S. Patent Application Number 11/001,599 filed on November 30, 2004, Navy Case Number 84051 entitled ''Rapid Release Mechanism for Textile Apparel Pockets (Receptacles) and Packs (Stowage Receptacles); U.S. Patent Application Number 11/543,277 filed on October 06, 2006, Navy Case Number 84818 entitled ''Method for Dyeing High Density Polyethylene Fiber Fabric''; U.S. Patent Application Number 11/726,204 filed on March 16, 2007, Navy Case Number 84896 entitled ''Radar Altimeter Model for Simulator''; U.S. Patent Application Number 11/449,977 filed on August 03, 2006, Navy Case Number 84935 entitled ''Cleaning Device for Fiber Optic Connectors''; U.S. Patent Application Number 11/251,535 filed on September 29, 2005, Navy Case Number 85000 entitled ''Just In Time Wiring Information System (JITWIS)''; U.S. Patent Application Number 11/417,287 filed on May 01, 2006, Navy Case Number 95903 entitled ''Bond Integrity Tool''; U.S. Patent Application Number 11/499,179 filed June 05, 2006; Navy Case Number 96399 entitled ''Fluids Mixing Nozzle''; U.S. Patent Application Number 11/357,460 filed on February 14, 2006, Navy Case Number 96400 entitled ''Apparatus and Method to Amalgamate Substances''; U.S. Patent Application Number 11/251,539 filed on October 03, 2005, Navy Case Number 96569 entitled ''Method for Fabrication for a Polymeric Conductive Optical Transparency''; U.S. Patent Application Number 11/482,300 filed on July 11, 2006, Navy Case Number 96614 entitled ''Embedded Dynamic Vibration Absorber''; U.S. Patent Application Number 11/801,771 filed on May 31, 2007, Navy Case 96940 entitled ''Large Area Hybrid Photomultiplier Tube''; U.S. Patent Application Number 11/801,770 filed on May 31, 2007, Navy Case Number 96941 entitled ''Gating Large Area Hybrid Photomultiplier Tube''; U.S. Patent Application Number 11/482,303 filed on July 11, 2006, Navy Case Number 97495 entitled ''Hoisting Harness Assembly Tool''; U.S. Patent Application Number 11/481,227 filed on July 07, 2006, Navy Case Number 97763 entitled ''Portable Medical Equipment Suite''; U.S. Patent Application Number 11/789,120 filed on April 04, 2007, Navy Case Number 97943 entitled ''Transceiver Optical Subassembly''; U.S. Patent Application Number 11/789,121 filed on April 04, 2007, Navy Case Number 97944 entitled ''Hybrid Fiber Optic Transceiver Optical Subassembly''; U.S. Patent Application Number 11/726,202 filed on March 05, 2007 entitled ''Image Enhancer for Detecting and Identifying Objects in Turbid Media''; U.S. Patent Application Number 11/789,119 filed on April 05, 2007, Navy Case Number 98491A entitled ''Adjustable Liquid Atomization Nozzle''; U.S. Patent Application Number 11/789,118 filed on April 05, 2007, Navy Case Number 98491b entitled ''Method of Producing and Controlling the Atomization of an Output Flow from a C–D Nozzle''.

ADDRESSES: Request for data and inventor interviews should be directed to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Office, Office of Research and Technology Applications, Building 505; Room 116, 22473 Millstone Road, Patuxent River, MD 20670, telephone: 301–342–5586 or e-mail: *Paul.Fritz@navy.mil*.

DATES: Request for data, samples, and inventor interviews should be made prior to May 30, 2007.

FOR FUTHER INFORMATION CONTACT: Mr. Paul Fritz, Office of Research and Technology Applications, Building 505; Room 116, Naval Air Warfare Center Aircraft Division, 22473 Millstone Road, Patuxent River, MD 20670, telephone: 301–342–5586, *Paul.Fritz@navy.mil*.

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these inventions. All licensing application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Division, Business Office, Office of Research and Technology Applications, Building 505; Room 116, 22473 Millstone Road, Patuxent River, MD 20670.

The Navy, in its decisions concerning the granting of licenses, will give special consideration to existing licensees, small business firms, and consortia involving small business firms. The Navy intends to ensure that its licensed inventions are broadly commercialized throughout the United States.

PCT application may be filed for each of the patents as noted above. The Navy intends that licensees interested in a license in territories outside of the United States will assume foreign

prosecution and pay the cost of such prosecution.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: March 17, 2008.

T.M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–5735 Filed 3–20–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education—Comprehensive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116B.

DATES: *Applications Available:* March 21, 2008.

Deadline for Transmittal of Applications: May 5, 2008.

Deadline for Intergovernmental Review: July 7, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Comprehensive Program supports innovative grants and cooperative agreements to improve postsecondary education. It supports reforms, innovations, and significant improvements of postsecondary education that respond to problems of national significance and serve as national models.

Priorities: Under this competition, we are particularly interested in applications that meet the following invitational priorities.

Invitational Priorities: For FY 2008 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1.

Under this priority we are particularly interested in projects that have demonstrated promising results in earlier evaluations and that will yield greater impact on a larger scale, using more rigorous evaluation methodologies (at least quasi-experimental). It is expected that the educational activities and interventions that are the subject of proposals will have demonstrated successful outcomes, but not necessarily with methods that meet the rigor of an experimental or quasi-experimental design. Less rigorous methodologies, such as pre- and post-tests and descriptive or attitudinal studies, were appropriate for use in generating the hypotheses that will now be tested on a larger scale, using more rigorous methodologies and reducing or eliminating biases that are common in smaller, anecdotal studies. Applicants are encouraged to consult the report by the Secretary's Academic Competitiveness Council (*http://www.ed.gov/about/inits/ed/competitiveness/acc-mathscience/index.html*) for a more detailed explanation about appropriate evaluation methodologies for rigorous evaluations, defined as being at least at the quasi-experimental level.

We are particularly interested in proposals for projects that can be expanded, scaled up, and evaluated rigorously to achieve one or more of the following goals:

(1) To encourage higher levels of access, persistence, and completion of graduation requirements for higher education students.

(2) To align curriculum on a State or multi-state level between high schools and colleges, and between two-year and four-year postsecondary programs, to ensure continuing academic progress and transferability of credits.

(3) To improve the mathematics and science proficiency of postsecondary students, including pre-service mathematics and science teachers.

(4) To enable postsecondary students, including pre-service teachers, to achieve proficiency in or advanced proficiency or postsecondary institutions to develop programs in one or more critical need languages: Arabic, Chinese, Korean, Japanese, Russian, and languages in the Indic, Iranian, and Turkic language families.

Invitational Priority 2.

Under this priority we are particularly interested in projects that are designed to establish, improve, or expand Professional Science Master's degree programs, which combine traditional academic training with specialized knowledge and skills needed for work in science and technology research, product development, manufacturing, or related areas. Projects should include industry partners to ensure that education and training in the Professional Science Master's degree program align with the expectations and needs of business and industry.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 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 or cooperative agreements.

Estimated Available Funds: $2,584,000. The Secretary expects that grantees will receive funding in FY 2008 for the full project period.

Estimated Range of Awards: $400,000–$600,000 for a four-year project period.

Estimated Average Size of Awards: $500,000 for a four-year project period.

Maximum Award: We will reject any application that proposes a budget exceeding $600,000 for a four-year project period. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 5–7.

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, other public and private nonprofit institutions and agencies, and combinations of these 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: *www.Grants.gov.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, PO 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 84.116B.

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 the section in which the applicant addresses most of the selection criteria that reviewers use to evaluate the application. The application narrative must be limited to no more than 20 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, *except* titles, headings, footnotes, quotations, references, and captions. Charts, tables, figures, and graphs in the application narrative may be single spaced and will count toward the page limit.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.
- The page limit does not apply to Part I, the title page; Part II, the budget summary form (ED Form 524); Part IV, assurances, certifications, and the response to section 427 of the Department of Education's General Education Provisions Act (GEPA); the table of contents; the project abstract; or the appendix. The appendix may only include the project evaluation chart, summaries of the qualifications of key personnel, letters of support, and references. If you include any attachments or appendices not specifically requested, these items will be counted as part of the program narrative (Part III) for purposes of the page limit requirement.

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: March 21, 2008.

Deadline for Transmittal of Applications: May 5, 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: July 7, 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 regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under the Comprehensive Program 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 Comprehensive Program, CFDA number 84.116B 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 Comprehensive Program 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 84.116, not 84.116B).

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 program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process

(see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, 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: Levenia Ishmell, Comprehensive Program Assistant, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., Room 6147, 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 84.116B), 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 84.116B), 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 84.116B), 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 program are from 34 CFR 75.210 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 in 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.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following measures will be used by the Department in assessing the performance of the Fund for the Improvement of Postsecondary Education's Comprehensive 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 on these measures in your project's annual performance report (EDGAR, 34 CFR 75.590). Applicants are also advised to consider these two measures in conceptualizing the design, implementation, and evaluation of the proposed project because of their importance in the application review process. Collection of data on these measures should be a part of the project evaluation plan, along with measures of progress on goals and objectives that are specific to your project.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Levenia Ishmell, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., Room 6147, Washington, DC 20006–8544. Telephone: (202) 502–7668 or by e-mail: *Levenia.Ishmell@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 18, 2008.

Diane Auer Jones,

Assistant Secretary for Postsecondary Education.

[FR Doc. E8–5782 Filed 3–20–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Supplemental Environmental Impact Statement: Site Selection for the Expansion of the Strategic Petroleum Reserve

AGENCY: Department of Energy.

ACTION: Notice of additional public scoping meeting.

SUMMARY: On March 5, 2008, the Department of Energy (DOE) published a Notice of Intent in the **Federal Register** (73 FR 11895) to prepare a supplemental environmental impact statement (SEIS) to analyze the impacts of potential new locations for certain off site facilities associated with the proposed Strategic Petroleum Reserve expansion site at Richton, Mississippi. That Notice also announced that DOE will hold three meetings at which interested agencies, organizations,

Native American tribes, and members of the public may submit comments or suggestions to assist in identifying alternatives, significant environmental issues, and the appropriate scope of the SEIS. DOE now announces that it will hold an additional public scoping meeting, in Perry County, Mississippi.

New Public Scoping Meeting: A public scoping meeting will be held at New Augusta, Mississippi, on April 7, 2008, 6 p.m. to 8 p.m., at Perry Central High School, 9899 Hwy. 98.

FOR FURTHER INFORMATION CONTACT: Donald Silawsky, Office of Petroleum Reserves (FE–47), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0301. Mr. Silawsky may also be contacted by telephone at 202–586–1892, by facsimile at 202–586–4446, or by electronic mail at *donald.silawsky@hq.doe.gov*. Additional information may also be found on the DOE Fossil Energy Web site at *http://www.fe.doe.gov*.

Issued in Washington, DC, on March 19, 2008.

James A. Slutz,

Acting Principal Deputy Assistant Secretary, Office of Fossil Energy.

[FR Doc. 08–1064 Filed 3–19–08; 12:30 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

March 17, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP07–34–003, RP07–541–002, CP07–69–002 .

Applicants: Southwest Gas Storage Company.

Description: Southwest Gas Storage Company submits Twenty-Second Revised Sheet 5 to FERC Gas Tariff, First Revised Volume 1, to be effective April 1, 2008.

Filed Date: 03/14/2008.

Accession Number: 20080317–0111.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 26, 2008.

Docket Numbers: RP08–70–002.

Applicants: Discovery Gas Transmission LLC.

Description: Discovery Gas Transmission LLC submits Substitute Original Sheet 21A to FERC Gas Tariff, Original Volume 1 in compliance with the filing made on 3/6/08, to be effective January 1, 2008.

Filed Date: 03/13/2008.

Accession Number: 20080317–0069.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 25, 2008.

Docket Numbers: RP08–184–001.

Applicants: SG Resources Mississippi, L.L.C.

Description: SG Resources Mississippi, LLC submits Substitute Original Sheet 23 et al to FERC Gas Tariff, Original Volume 1, to be effective March 1, 2008.

Filed Date: 03/14/2008.

Accession Number: 20080317–0112r

Comment Date: 5 p.m. Eastern Time on Wednesday, March 26, 2008.

Docket Numbers: RP08–272–000.

Applicants: Transcontinental Gas Pipe Line Corp.

Description: Transcontinental Gas Pipe Line Corp submits First Revised Forty-Fourth Revised Sheet 28C and Substitute Forty-Fifth Revised Sheet 28C to FERC Gas Tariff, Third Revised Volume 1, effective November 1, 2007 and April 1, 2008.

Filed Date: 03/14/2008.

Accession Number: 20080317–0110.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 26, 2008.

Docket Numbers: RP08–273–000.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Company, Ltd submits Fifth Revised Sheet 62 to its FERC Gas Tariff, Second Revised Volume 2, to be effective April 14, 2008.

Filed Date: 03/14/2008.

Accession Number: 20080317–0113.

Comment Date: 5 p.m. Eastern Time on Wednesday, March 26, 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. E8–5763 Filed 3–20–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 18, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: CP07–4–001.

Applicants: Mississippi Hub, LLC.

Description: Abbreviated Application for Limited Amendment of Certificate of Public Convenience and Necessity.

Filed Date: 03/03/2008.

Accession Number: 20080305–0071.

Comment Date: 5 p.m. Eastern Time on Friday, March 28, 2008.

Docket Numbers: RP08–271–000.

Applicants: Black Marlin Pipeline Company.

Description: Petition for Temporary Exemptions from Tariff Provisions and Request for Expedited Action submitted by Black Marlin Pipeline Company.

Filed Date: 03/13/2008.

Accession Number: 20080314–5040.

Comment Date: 5 p.m. Eastern Time on Friday, March 21, 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. E8–5765 Filed 3–20–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R06–OAR–2007–0524; FRL–8544–9]

Adequacy Status of Submitted State Implementation Plans for Transportation Conformity Purposes: Motor Vehicle Emissions Budgets for the Houston-Galveston-Brazoria and the Dallas-Fort Worth 8-Hour Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is notifying the public that we have found the on-road motor vehicle emissions budgets (MVEB) contained in the revisions to the Houston-Galveston-Brazoria 8-hour ozone reasonable further progress plan and the Dallas-Fort Worth 8-hour ozone attainment demonstration plan adequate for transportation conformity purposes. As a result of our finding, the budgets from the submitted state implementation plan revisions must be used for future conformity determinations in the Houston-Galveston-Brazoria and the Dallas-Fort Worth areas.

DATES: These budgets are effective April 7, 2008.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.* You may also contact Mr. Guy Donaldson, Air Planning Section (6PD–L), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7242, E-mail address: *Donaldson.Guy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' refers to EPA. The word ''budget(s)'' refers to the mobile source emissions budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides (NO_X). The word ''SIP'' in this document refers to the State Implementation Plan revision submitted by the State of Texas in June, 2007, in partial fulfillment of its obligations for the 8-hour ozone National Ambient Air Quality Standard.

In June 2007, we received several SIP revisions from the Texas Commission on Environmental Quality (TCEQ). These revisions included the Reasonable-Further-Progress (RFP) SIP and the Attainment Demonstration SIP for the Dallas-Fort Worth ozone nonattainment area. We also received the Reasonable-Further-Progress SIP for the Houston-Galveston-Brazoria ozone nonattainment area. Each of these submissions revised the motor vehicle emissions budgets (MVEB) in these areas. The MVEB is the amount of emissions allowed in the state implementation plan for on-road motor vehicles; it establishes an emissions ceiling for the regional transportation network.

The Dallas-Fort Worth RFP SIP contains MVEBs for the year 2008. In this SIP, the emissions budget for VOCs is 119.81 tons per day (tpd); the NO_X emissions budget is 249.33 tpd. The Dallas-Fort Worth Attainment Demonstration SIP contains MVEBs for the year 2009. In the attainment SIP, the emissions budget for VOCs is 99.09 tpd; the NO_X emissions budget is 186.81 tpd.

The Houston-Galveston-Brazoria RFP SIP contains MVEBs for the year 2008. In this SIP, the emissions budget for VOCs is 86.77 tpd; the NO_X emissions budget is 186.13 tpd.

On June 28, 2007, the availability of all of these budgets was posted on EPA's Web site for the purpose of soliciting public comments. The comment period closed on July 30, 2007, and we received no comments.

Today's notice is simply an announcement of a finding that we have already made. EPA Region 6 sent a letter to the Texas Commission on Environmental Quality on October 24, 2007, finding that the motor vehicle emissions budgets for the Houston-Galveston-Brazoria 8-county ozone nonattainment area and the Dallas-Fort Worth 9-county ozone nonattainment area are adequate and must be used for transportation conformity determinations.

Transportation conformity is required by Section 176(c) of the Clean Air Act. EPA's conformity rule, 40 CFR part 93, requires that transportation plans, programs and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards. The criteria by which EPA determines whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4).

Please note that such an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of either of the SIPs. Even if

we find a budget adequate, either SIP could later be disapproved.

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

Dated: March 5, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8–5791 Filed 3–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6697–2]

Environmental Impact Statements and Regulations;

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. 20070538, ERP No. D–COE–E30043–NC, North Topsail Beach Shoreline Protection Project, Seeking Federal and State Permits to Allow Implementation of a Non-Federal Shoreline and Inlet Management Project, New River Inlet, Onslow County, NC.

Summary: EPA expressed environmental concerns about the long-term impacts to marine habitats and migratory species from dredge/fill actions, and requested a more thorough cumulative impacts analysis and suggested the Corps consider developing a broader shoreline management strategy. *Rating* EC2.

EIS No. 20080008, ERP No. D–NPS–C65006–NY, Governors Island National Monument, General Management Plan, Implementation, New York Harbor, NY.

Summary: EPA does not object to the proposed action. *Rating* LO.

Final EISs

EIS No. 20070553, ERP No. F–BLM–J65433–WY, Rawlins Field Office Planning Area Resource Management Plan, Addresses the Comprehensive Analysis of Alternatives for the Planning and Management of Public Land and Resource Administered by (BLM), Albany, Carbon, Laramie and Sweetwater Counties, WY.

Summary: EPA continues to have environmental concerns about cumulative impacts to air quality, especially with the level of resource development in southwest Wyoming.

EIS No. 20080007, ERP No. F–STA–J03021–00, Keystone Oil Pipeline Project, Proposed Construction, Connection, Operation and Maintenance, Applicant for Presidential Permit, ND, SD, NE, KS, MO, IL, and OK.

Summary: EPA expressed environmental concerns about wetlands, and requested clarification on the applicability of Executive Order 11990.

EIS No. 20080027, ERP No. F–NRC–C06017–NY, GENERIC—James A. FitzPatrick Nuclear Power Plant, License Renewal of Nuclear Plant, Site Specific Supplement 31 to NUREG–1437, Town of Sriba, NY.

Summary: EPA continues to have environmental concerns about impacts to fisheries.

EIS No. 20080039, ERP No. F–BLM–K39018–NV, Kane Springs Valley Groundwater Development Project, to Construct Infrastructure Required to Pump and Convey Groundwater Resources, Right-of-Way Application, Lincoln County Water District, Lincoln County, NV.

Summary: EPA continues to have environmental concerns about cumulative impacts to the Kane Springs Valley carbonate-rock aquifer, especially long-term reliability. The final EIS did not include information on water use efficiency, supply and demand management measures, and back-up water supplies; we recommend that this information be included in the ROD with a commitment to work closely with groundwater users to promote sustainable use measures.

Dated: March 18, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–5802 Filed 3–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6697–1]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements filed 03/10/2008 through 03/14/2008. Pursuant to 40 CFR 1506.9.

EIS No. 20080090, Draft EIS, BIA, CA, Enterprise Rancheria Gaming Facility and Hotel Fee-To-Trust Acquisition Project, Implementation, Federal Trust, Estom Yumeka Maida Tribe, Yuba County, CA, Comment Period Ends: 05/05/2008, Contact: John Rydzik, 916–978–6042.

EIS No. 20080091, Draft EIS, AFS, WY, Winter Elk Management Programs, Long-Term Special Use Authorization for Wyoming Game and Fish Commission to use National Forest System Land within the Bridger-Teton National Forest at Alkali Creek, Dog Creek, Fall Creek, Fish Creek, Muddy Creek, Patrol Cabin, and Upper Green River, Jackson and Sublette, WY, Comment Period Ends: 05/05/2008, Contact: Greg Clark, 307–276–5810.

EIS No. 20080092, Draft EIS, BIA, MT, Absaloka Mine Crow Reservation South Extension Coal Lease Approval, Proposed Mine Development Plan, and Related Federal and State Permitting Actions, Crow Indian Reservation, Crow Tribe, Bighorn County, MT, Comment Period Ends: 05/05/2008, Contact: George Gover, 406–638–2672.

EIS No. 20080093, Final Supplement, AFS, ID, Meadow Face Stewardship Pilot Project, Improvement to Aquatic and Terrestrial Vegetative Conditions, Supplement Information on the Cumulative Effects Analysis, Nez Perce National Forest, Clearwater Ranger District, Idaho County, ID, Wait Period Ends: 04/21/2008, Contact: Darcy Pederson, 208–983–1950.

EIS No. 20080094, Final Supplement, AFS, ID, North Sheep Allotments—Sheep and Goat Allotment Management Plans, Additional Information on Analyses Concerning Management Indicator Species, Capable and Suitable Grazing Lands, and Adaptive Management Strategies, Authorization of Continued Sheep Grazing for Fisher Creek, Smiley Creek, North Fork-Boulder and Baker Creek Sheep and Goat Grazing Allotments, Sawtooth National Forest, Ketchum Ranger District, Sawtooth National Recreation Area, Blaine and Custer Counties, ID, Wait Period Ends: 04/21/2008, Contact: Carol Brown, 208–727–5000.

EIS No. 20080095, Draft EIS, NOA, OR, Bull Run Water Supply Habitat Conservation Plan, Application for and Incidental Take Permit to cover the Continued Operation and Maintenance, Sandy River Basin, City of Portland, OR, Comment Period

Ends: 05/27/2008, Contact: D. Robert Lohn, 503–231–6269.

EIS No. 20080096, Draft Supplement, NOA, CA, Cordell Bank, Gulf of the Farallones and Monterey Bay National Marine Sanctuaries, Updated Information, Proposes a Series of Regulatory Changes, Offshore of Northern/Central, CA, Comment Period Ends: 05/05/2008, Contact: Sean Morton, 301–713–7264.

EIS No. 20080097, Final EIS, FRC, CA, Upper American River Hydroelectric FERC No. 2101–084, El Dorado and Sacramento Counties, CA and Chili Bar Hydroelectric FERC No. 2155–024, El Dorado County, CA, Issuance of a New License for the Existing and Proposed Hydropower Projects., Wait Period Ends: 04/21/2008, Contact: Andy Black, 1–866–208–3372.

EIS No. 20080098, Final Supplement, USA, TX, Central City Project, Proposed Modification to the Authorized Projects which provides Flood Damage Reduction, Habitat Improvement, Recreation and Urban Revitalization, Upper Trinity River Central City, Upper Trinity River Basin, Trinity River, Fort Worth,TX, Wait Period Ends: 04/21/2008, Contact: Saji Alummuttil, 817–886–1764.

EIS No. 20080099, Final EIS, FHW, NC, US 74 Shelby Bypass Transportation Improvements, Preferred Alternative is 21, Construction, Funding and COE Section 404 Permit, Cleveland County, NC, Wait Period Ends: 05/02/2008, Contact: John F. Sullivan III, 919–856–4346.

EIS No. 20080100, Final EIS, AFS, ID, Aspen Range Timber Sale and Vegetation Treatment Project, New Updated Version, Preferred Alternative is 5, Proposal to Treat Forested and Nonforested Vegetation, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou County, ID, Wait Period Ends: 04/21/2008, Contact: Doug Heyrend, 208–547–4356.

Amended Notices

EIS No. 20070137, Final EIS, AFS, ID, WITHDRAWN—Aspen Range Timber Sale and Vegetation Treatment Project, Preferred Alternative is 5, Proposal to Treat Forested and Nonforested Vegetation, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou County, ID, Wait Period Ends: 05/14/2007, Contact: Doug Heyrend, 208–547–4356. Revision for FR Published 04/13/2007: Official Withdrawn by Agency.

Dated: March 18, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–5753 Filed 3–20–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8544–8]

EPA Science Advisory Board; Notification of a Public Teleconference of the Science Advisory Board Environmental Economics Advisory Committee (EEAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Science Advisory Board (SAB) Staff Office is announcing a public teleconference of the SAB Environmental Economics Advisory Committee (EEAC) to receive a briefing from the EPA National Center for Environmental Economics (NCEE) regarding its upcoming advisory requests. The EEAC will also discuss plans for possible self-initiated projects.

DATES: The teleconference will be held from 12 p.m.—2 p.m. Eastern Time on April 14, 2008.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public teleconference and call-in numbers may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board Staff Office by telephone/voice mail at (202) 343–9867, or via e-mail at *stallworth.holly@epa.gov.* The SAB mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found in the SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Environmental Economics Advisory Committee will hold a public teleconference to consider topics for possible self-initiated advice to EPA. 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: The mission of the EEAC is to provide independent advice to the EPA Administrator, through the chartered SAB, regarding the science and research to assess public benefits and costs of EPA's decisions. The EEAC has provided advice on a wide range of topics, including the valuation of mortality risk reduction as well as other non-market benefits. The NCEE will brief EEAC on its request for advice on its guidelines for cost-effectiveness analysis, the valuation of mortality risk reduction and other proposed changes to EPA's guidelines for economic analyses. In addition, the EEAC will consider possible topics for self-initiated advice to the EPA Administrator, including policy design for global climate change, the effectiveness of voluntary programs such as water quality trading, and the accuracy and reliability of stated preference versus revealed preference approaches to non-market valuation.

Availability of Meeting Materials: Materials in support of this meeting, including an agenda and outline of topics for discussion will be placed on the SAB Web site at: *http://www.epa.gov/sab/* prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the advisory process.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Stallworth, DFO, at the contact information noted above, to be placed on the public speaker list for the April 14, 2008 teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office by April 7, 2008 so that the information may be made available to the SAB for their consideration prior to this teleconference. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail to *stallworth.holly@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).

Meeting Access: For information on access or services for individuals with

disabilities, please contact Dr. Stallworth at (202) 343–9867 or *stallworth.holly@epa.gov.* To request accommodation of a disability, please contact Dr. Stallworth, preferably at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: March 14, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–5756 Filed 3–20–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 17, 2008.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 20, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail to *PRA@fcc.gov* or by U.S. mail to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the collection(s), contact Jerry Cowden at (202) 418–0447 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0805.

Title: 700 MHz Eligibility, Regional Planning Requirements, Interference Protection Criteria and 4.9 GHz Guidelines (47 CFR 90.523, 90.527, 90.545, and 90.1211).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit; not-for-profit institutions; state, local or tribal government.

Number of Respondents and Responses: 15,116 respondents; 21,116 responses.

Estimated Time Per Response: 2.89236 hours (range of 30 minutes to 628 hours).

Frequency of Response: On occasion reporting and one-time reporting requirements; third party disclosure.

Obligation to Respond: Required to obtain or retain benefits (47 CFR 90.523, 90.527, and 90.545); voluntary (47 CFR 90.1211).

Total Annual Burden: 61,075 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Section 90.523 requires that nongovernmental organizations that provide services which protect the safety of life or property obtain a written statement from an authorizing state or local government entity to support the nongovernmental organization's application for assignment of 700 MHz frequencies. *Section 90.527* requires 700 MHz regional planning regions to submit a plan for use of the 700 MHz general use spectrum in the consolidated narrowband segment 763–775 MHz and 793–805 MHz. It advocates a fair and open process in developing allocation assignments by requiring input from eligible entities in the allocation decisions and the application technical review/approval process. Entities that seek inclusion in the plan to obtain future licenses are considered third party respondents. *Section 90.545* TV/DTV interference protection criteria, provides that public safety base, control and mobile transmitters in the 763–775 MHz and 793–805 MHz band applicants select one of three ways to meet the TV/DTV interference protection requirements: (1) By utilizing geographic separation in the rule; (2) submitting an engineering study to justify other separations, or (3) obtain concurrence from applicable TV/DTV station(s). *Section 90.1211* authorizes the fifty-five 700 MHz regional planning committees to develop and submit on a voluntary basis a plan on guidelines for coordination procedures to facilitate the shared use of 4940–4990 MHz (4.9 GHz) band. Applicants are granted a geographic area license for the entire fifty MHz of 4.9 GHz spectrum over a geographical area defined by the boundaries of their jurisdiction—city, county or state. Accordingly, licensees are required to coordinate their operations in the shared band to avoid interference, a common practice when joint operations are conducted.

Commission staff will use the information to assign licenses, determine regional spectrum requirements and to develop technical standards. The information will also be used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the efficient use of the available frequencies. This information collection includes rules to govern the operation and licensing of the 700 MHz and 4.9 GHz bands rules and regulation to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–5804 Filed 3–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

March 11, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the

following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 20, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith–B.Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith–B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0999.

Title: Section 20.19, Hearing Aid–Compatible Mobile Handsets (Hearing Aid–Compatibility Act).

Form Nos.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 925 respondents; 950 responses.

Estimated Time Per Response: 1.5–4 hours.

Frequency of Response: On occasion and annual reporting requirements and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 12,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In submitting the information requested in the reports, respondents may need to disclose confidential information to satisfy the requirements. However, covered entities would be free to request that such materials submitted to the Commission be withheld from public inspection (see 47 CFR 0.459 of the Commission's rules).

Needs and Uses: The Commission will submit this information collection to the OMB after this 60 day comment period as a revision to obtain the full three-year clearance from them. There is an increase in the estimated burden hours.

Commission rules require digital wireless phone manufacturers and service providers to make available a certain number of digital wireless handset models that meet specific performance levels set forth in an established technical standard. The phones must be made available according to an implementation schedule specified in Commission rules.

The Commission adopted and released a First Report and Order on February 28, 2008 (FCC 08–68) in which the Commission modified the deployment benchmarks for hearing aid-compatible phones, and imposed new requirements on manufacturers and service providers to ensue their product lines are current and include handset models with varying levels of functionality and are periodically refreshed. The Commission also requires manufacturers and service providers to continue to file reports on the status of their compliance with these requirements, and it modified the content and timing of these reports (service providers are to file the new reports annually beginning on January 2009 and manufacturers will file in January 2009 and then annually beginning in July 2009). The requirement to provide certain information in conjunction with product labeling remains, although the details of the information required has changed slightly, especially with regard to phones that have Wi–Fi air interface capability. Finally, the Commission requires manufacturers and service providers which already have public Web sites to publish up-to-date information on their Web sites regarding their hearing aid-compatible models and to keep that information current.

The reporting criteria will assist the Commission staff in monitoring the progress of implementation by phone manufacturers and wireless carriers, and it will provide valuable information to the public concerning hearing aid-compatible handsets. The reports will permit the Commission to continue to stay abreast of ongoing standards work, testing, and other pertinent information associated with achieving digital wireless compatibility with hearing aids and cochlear implants. This information will help to ensure that the Commission's decisions relating to hearing aid compatibility with wireless phones are fair to all involved and reflect the actual status of technology. The technical standard for hearing aid compatibility is required by the Hearing Aid Compatibility (HAC) Act of 1988, and will be used by covered entities and the Commission as a compliance guide.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–5834 Filed 3–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 13, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a

collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before May 20, 2008. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at 202–418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form Number: FCC Form 316.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 750 respondents, 750 responses.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i) and 310(d) of the Communications Act of 1934, as amended.

Estimated Time Per Response: 1–4 hours.

Total Annual Burden: 855 hours.

Total Annual Costs: $425,150.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 17, 2005, the Commission released a Second Order on Reconsideration and Further Notice of Proposed Rulemaking, Creation of a Low Power Radio Service, MB Docket No. 99–25 (FCC 05–75). The Further Notice of Proposed Rulemaking (*''FNPRM''*) proposed to permit the assignment or transfer of control of Low Power FM (LPFM) authorizations where there is a change in the governing board of the permittee or licensee or in other situations corresponding to the circumstances described above. This proposed rule was subsequently adopted in a Third Report and Order and Second Further Notice of Proposed Rulemaking, MB Docket No. 99–25 (FCC 07–204) (*Third Report and Order*), released on December 11, 2007.

FCC Form 316 has been revised to encompass the assignment and transfer of control of LPFM authorizations, as proposed in the FNPRM and subsequently adopted in the Third Report and Order, and to reflect the ownership and eligibility restrictions applicable to LPFM permittees and licensees.

Filing of the FCC Form 316 is required when applying for authority for assignment of a broadcast station construction permit or license, or for consent to transfer control of a corporation holding a broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of interest is not a controlling one; there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder; and, in the case of LPFM stations, where there is a voluntary transfer of a controlling interest in the licensee or permittee entity. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated.

OMB Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

Form Number: FCC Form 314 and FCC Form 315.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 4,510 respondents; 4,510 responses

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Estimated Time Per Response: 1 hour to 5 hours.

Total Annual Burden: 15,860 hours.

Total Annual Costs: $33,343,150.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Instructions to Forms 314 and 315 have been revised to reflect the new ownership limits adopted in the *Third Report and Order and Second Notice of Proposed Rulemaking*, FCC 07–204 (released December 11, 2007), namely, that an entity may own only one LPFM station. By amending the Rules to permanently limit LPFM eligibility, the Commission is protecting the public interest in localism and fostering greater diversity of programming from community sources. Forms 314 and 315 have also been revised to reflect the three-year holding period of an LPFM license, as adopted in the *Third Report and Order*, during which a licensee cannot transfer or assign a license, and must operate the station. That restriction will prevent entities from using the LPFM assignment and transfer process to undermine the Commission's LPFM policies and will ensure that the benefits to the public which were the basis for the license grant will be realized.

On December 18, 2007, the Commission adopted a *Report and Order and Order on Reconsideration* in its 2006 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 06–121, FCC 07–216. Section 202 requires the Commission to review its broadcast ownership rules every four years and determine whether any of such rules are

necessary in the public interest. Further, Section 202 requires the Commission to repeal or modify any regulation it determines to be no longer in the public interest.

Consistent with actions taken by the Commission in the 2006 Quadrennial Regulatory Review, the following changes are made to Forms 314 and 315: The instructions to Forms 314 and 315 have been revised to include a reference to the 2006 Quadrennial Regulatory Review as a source of information regarding the Commission's multiple ownership attribution policies and standards. The language in Section A, IV of Worksheet #3 in Forms 314 and 315 is revised. This worksheet is used in connection with Section III, Item 6b of Form 314 and Section IV, Item 8b of Form 315 to determine the applicant's compliance with the Commission's multiple ownership rules and cross-ownership rules set forth in 47 CFR 73.3555. The revisions to the worksheet account for changes made by the Commission in the 2006 Quadrennial Review to 47 CFR 73.3555(d), the Daily Newspaper Cross-Ownership Rule. The revised rule changes the circumstances under which an entity may own a daily newspaper and a radio station or television station in the same designated market area. In Section B of Worksheet #3 of Form 314, the description of a ''Daily Newspaper'' is changed to comport to the definition of ''Newspaper'' contained in 47 CFR 73.3555(c)(3)(iii) that the Commission revised in the 2006 Quadrennial Regulatory Review. In Section B of Worksheet #3 of Form 315, language from 47 CFR 73.3555(d) is added to assist applicants in their determination of compliance with the Daily Newspaper Cross-Ownership Rule.

FCC Form 314 and the applicable exhibits/explanations are required to be filed when applying for consent for assignment of an AM, FM, LPFM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment of a broadcast station construction permit or license has been consummated.

FCC Form 315 and applicable exhibits/explanations are required to be filed when applying for transfer of control of an entity holding an AM, FM, LPFM or TV broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated. Due to the similarities in the information collected by these two forms, OMB has assigned both forms OMB Control Number 3060–0031.

47 CFR 73.3580 requires local public notice in a newspaper of general circulation of the filing of all applications for transfer of control of license/permit. This notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for transfer of control of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

OMB Control: 3060–0110.

Title: Application for Renewal of Broadcast Station License.

Form Number: FCC Form 303-S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions.

Number of Respondents and Responses: 3,217 respondents, 3,217 responses.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and Section 204 of the Telecommunications Act of 1996.

Estimated Time per Response: 3–12 hours.

Frequency of Response: Every eighth year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 6,335 hours.

Total Annual Costs: $1,730,335.

Nature of Response: Required to obtain or retain benefits.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Order on Reconsideration* in its 2006 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules pursuant to Section 202 of the Telecommunications Act of 1996, MB Docket No. 06–121, FCC 07–216. Section 202 requires the Commission to review its broadcast ownership rules every four years and determine whether any of such rules are necessary in the public interest. Further, Section 202 requires the Commission to repeal or modify any regulation it determines to be no longer in the public interest. Consistent with actions taken by the Commission in the 2006 Quadrennial Regulatory Review, changes are made to Form 303-S to account for revisions made to 47 CFR 73.3555(d), the Daily Newspaper Cross-Ownership Rule. The revised rule changes the circumstances under which an entity may own a daily newspaper and a radio station or television station in the same designated market area. In Section III of Form 303-S, a new Question 7 is added which asks the licensee to certify that neither it nor any party to the application has an attributable interest in a newspaper that is within the scope of 47 CFR 73.3555(d). Instructions for this new question are added to Form 303-S, and include a reference to the 2006 Quadrennial Regulatory Review as a source of information regarding the Commission's newspaper/broadcast cross-ownership rule.

OMB Control Number: 3060–0750.

Title: 47 CFR Section 73.671 Educational and Informational Programming for Children; 47 CFR Section 73.673, Public Information Initiatives Regarding Educational and Informational Programming for Children.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2,323 respondents; 4,266 responses.

Estimated Time per Response: 1 to 5 minutes.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 26,818.56 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: 47 CFR 73.671 C(5) states that a core educational television program must be identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I.

47 CFR 73.673 states each commercial television broadcast station licensee must provide information identifying programming specifically designed to educate and inform children to publishers of program guides. Such

information must include an indication of the age group for which the program is intended.

These requirements are intended to provide greater clarity about broadcasters' obligations under the Children's Television Act (CTA) of 1990 to air programming ''specifically designed'' to serve the educational and informational needs of children and to improve public access to information about the availability of these programs. These requirements provide better information to the public about the shows broadcasters air to satisfy their obligation to provide educational and informational programming under the Children's Television Act.

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station.

Form Number: FCC Form 318.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 16,659 respondents, 23,302 responses.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 154(i), 303, 308 and 325(a) of the Communications Act of 1934, as amended.

Estimated Time per Response: 15 minutes to 12 hours.

Total Annual Burden: 34,276 hours.

Total Annual Costs: $35,850.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On December 11, 2007, the FCC released a Third Report and Order and Second Further Notice of Proposed Rulemaking (''Third Report and Order'') MM Docket No. 99–25, FCC 07–204. In the Third Report and Order, the FCC extended the local standards for rural markets. Under the old Rules, an LPFM applicant was deemed local if it was physically headquartered or had a campus within ten miles of the proposed LPFM transmitter site, or if 75 percent of its board members resided within ten miles of the proposed LPFM transmitter site. The Third Report and Order modified the ten-mile requirement to twenty miles for all LPFM applicants for proposed facilities in other than the top fifty urban markets, for both the distance from transmitter and residence of board member standards. We have revised the Form 318 to reflect this extension of local standards for rural markets. While the overall number of respondents increases because the Rule change expands the universe of eligible applicants, there are no new information collection requirements with respect to completion of the Form 318.

In the Third Report and Order, the Commission also delegated to the Media Bureau the authority to consider Section 73.807 waiver requests from certain LPFM stations. When implementation of a full-service station community of license modification would result in an increase in interference caused to the LPFM station or its displacement, the LPFM station may seek a second-adjacent channel short spacing waiver in connection with an application proposing operations on a new channel. Such waiver requests would be filed on a Form 318.

The Third Report and Order also allows LPFM stations to file waiver requests of Section 73.809 of the Rules if: (1) It is at risk of displacement by an encroaching full-service station modification application and no alternative channel is available, and (2) it can demonstrate that it has regularly provided at least eight hours per day of locally originated programming. LPFM stations that wish to make a showing under this waiver standard must file an informal objection to the ''encroaching'' community of license modification application.

FCC Form 318 is required: (1) To apply for a construction permit for a new Low Power FM (LPFM) station; (2) to make changes in the existing facilities of such a station; or (3) to amend a pending FCC Form 318 application.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–5835 Filed 3–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2855]

Petitions for Reconsideration of Action in Rulemaking Proceeding

March 18, 2008.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by April 7, 2008. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 07–91).

Number of Petitions Filed: 6.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–5803 Filed 3–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: COLLEGE CREEK MEDIA, LLC, Station KEAU, Facility ID 164133, BMPH–20080225AHE, From CHOTEAU, MT, To FAIRFIELD, MT; COLLEGE CREEK MEDIA, LLC, Station KUUS, Facility ID 164134, BMPH–20080225AHG, From FAIRFIELD, MT, To VAUGHN, MT; COLLEGE CREEK MEDIA, LLC, Station KZUS, Facility ID 164132, BMPH–20080225AHI, From BELT, MT, To HIGHWOOD, MT; JAMES JARRELL COMMUNICATIONS AND FOUNDATION, Station WELL–FM, Facility ID 64562, BPED–20080219AZN, From DADEVILLE, AL, To WAVERLY, AL; JBL BROADCASTING, INC., Station WVEK–FM, Facility ID 14721, BPH–20080219ALZ, From CUMBERLAND, KY, To WEBER CITY, VA; JOYNER, TOM, Station WNCM, Facility ID 170946, BMPH–20080219ASH, From GARYSBURG, NC, To SHARPSBURG, NC; PERRY BROADCASTING OF AUGUSTA, INC., Station WAKB, Facility ID 31942, BPH–20080228ABX, From WAYNESBORO, GA, To HEPHZIBAH, GA; POCAHONTAS BROADCASTING CO., Station WELC–FM, Facility ID 52864, BPH–20080219AST, From WELCH, WV, To POCAHONTAS, VA; ROANOKE VALLEY COMMUNICATIONS, INC.,

Station WZRU, Facility ID 2468, BPED–20080219BAC, From ROANOKE RAPIDS, NC, To GARYSBURG, NC; ROBERT R. RULE, Station NEW, Facility ID 166086, BMPH–20080213AHK, From WRIGHT, WY, To SLEEPY HOLLOW, WY.

DATES: Comments may be filed through May 20, 2008.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or http://www.BCPIWEB.com.

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E8–5805 Filed 3–20–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 7, 2008.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. John R. Maxwell, Ashburn, Virginia; Jean M. Edelman, Fairfax, Virginia; Michael T. Foster, Arlington, Virginia; Subhash K. Garg, McLean, Virginia; Jonathan C. Kinney, Arlington, Virginia; Oscar L. Mahan, Leesburg, Virginia; Lim P. Nguonly, Vienna, Virginia; Paul W. Bice, Ashburn, Virginia; Sonia N. Johnston, Herndon, Virginia; and William J. Ridenour, Clifton, Virginia; acting as a group, to acquire voting shares of Security One Bank, Falls Church, Virginia.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. John M. Morrison Revocable Trust No. 4, John M. Morrison trustee, Naples, Florida; to acquire voting shares of Central Bancshares, Inc., Golden Valley, Minnesota, and thereby indirectly acquire voting shares of Central Bank, Stillwater, Minnesota.

Board of Governors of the Federal Reserve System, March 18, 2008.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. E8–5752 Filed 3–20–08; 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 April 17, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Gateway Financial Holdings of Florida, Inc., Daytona Beach, Florida; to acquire 100 percent of the voting shares of Gateway Bank of Southwest Florida, Sarasota, Florida (in organization).

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Frandsen Financial Corporation, Arden Hills, Minnesota; to acquire 99.85 percent of the voting shares of Anderson Financial Group, Inc., Wayzata, Minnesota, and thereby indirectly acquire voting shares of Northern National Bank, Nisswa, Minnesota.

2. Frandsen Financial Corporation, Arden Hills, Minnesota; to acquire 100 percent of the voting shares of Tower Bancshares, Inc., Cloquet, Minnesota, and thereby indirectly acquire voting shares of State Bank of Tower, Tower, Minnesota.

Board of Governors of the Federal Reserve System, March 18, 2008.

Margaret McCloskey Shanks,

Associate Secretary of the Board.

[FR Doc. E8–5751 Filed 3–20–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Statewide Automated Child Welfare Information System (SACWIS) Assessment Review Guide (SARGE).

OMB No.: 0970–0159.

Description: HHS cannot fulfill its obligation to effectively serve the nation's Adoption and Foster Care populations, nor report meaningful and reliable information to Congress about the extent of problems facing these children or the effectiveness of assistance provided to this population, without access to timely and accurate information. Currently, SACWIS

support State efforts to meet the following Federal reporting requirements: The Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act; the National Child Abuse and Neglect Data System (NCANDS); Child Abuse Prevention and Treatment Act (CAPTA); and the Chafee Independent Living Program. These systems also support State efforts to provide the information to conduct the Child and Family Service Reviews. Currently, forty-two States and the District of Columbia have developed, or are developing, a SACWIS with Federal financial participation. The purpose of these reviews is to ensure that all aspects of the project, as described in the approved Advance Planning Document, have been adequately completed, and conform to applicable regulations and policies.

To initiate a review, States will submit the completed SACWIS Assessment Review Guide (SARGE) and other documentation at the point that they have completed system development and the system is operational statewide. The additional documents submitted as part of this process should all be readily available to the State as a result of good project management practices.

The information collected in the SACWIS Assessment Review Guide will allow State and Federal officials to determine if the State's SACWIS meets the requirements for title IV–E Federal Financial Participation (FFP) defined at 45 CFR 1355.50. Additionally, other States will be able to use the documentation provided as part of this review process in their own system development efforts.

Respondents:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Review	3	1	250	250

Estimated Total Annual Burden Hours: 750.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: March 14, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–5653 Filed 3–20–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Office of Refugee Resettlement Individual Development (IDA) Program Post-Asset Acquisition Data Collection.

OMB No.: New Collection.

Description: In October 1999 the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), began funding Individual Development Account (IDA) programs, a discretionary grant program authorized by Section 412(c)(1)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(c)(1)(A)), for low-income refugees. IDAs are a tool that enable low-income families to save, build assets, and enter the financial mainstream. Since the inception of the ORR IDA Program, data have never been collected from the former refugee participants to assess how they are doing since they acquired their asset (i.e., home, small business, car, post-secondary education/vocational training/recertification, computer, or home renovation).

This report will be used to document the experiences of the refugees and their families since they acquired their asset. There is much to be learned from the experiences of IDA programs serving refugees. ORR has requested this report in order to document long-term program outcomes and understand what happens after a participant obtains his/her asset. The lessons drawn will not only have direct implications for ORR, but also for currently funded refugee IDA grantees. The broader asset field will also benefit from learning about the achievements and challenges of a program that serves refugees.

Respondents: Former ORR IDA participants who acquired an asset through the ORR IDA Program.

Former ORR IDA grantee agencies will also assist in locating the former IDA participants.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Former IDA Participants Data	200	1	.30	60
Former IDA Grantee Agencies	48	1	10	480

Estimated Total Annual Burden Hours: 540.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: March 14, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–5656 Filed 3–20–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Longitudinal Investigation of Fertility and the Environment

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request for renewal of an information collection request. The original information collection request was approved (OMB Clearance 0925–0543) following publication in the **Federal Register** on January 9, 2004, page 1589 and December 2, 2004, page 70153. The proposed collection extension was previously published in the **Federal Register** on January 16, 2008, page 2925 and allowed 60 days for public comment. Only one public comment was received during the previous comment period. It was received via e-mail from a concerned citizen who stated that she felt that the study should no longer continue because it is not a good use of tax dollars.

5 CFR 1320.5 (General Requirements) Reporting and Recordkeeping Requirements: Final Rule requires that the agency inform the 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. This information is required to be stated in the 30-day **Federal Register** Notice.

Proposed Collection: Title: Longitudinal Investigation of Fertility and the Environment (LIFE Study). *Type of Information Collection Request:* EXTENSION (OMB control number 0925–0543, expiration date, March 30, 2008). *Need and Use of Information Collection:* The purpose of the LIFE Study is to assess the impact of environmental factors, broadly defined to include lifestyle factors, on human reproduction and development. The LIFE Study is consistent with the mission of the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development that includes conducting basic, clinical and epidemiologic research focusing on factors and processes associated with human reproduction and development thereby, ensuring the birth of healthy infants capable of reaching full adult potential unimpaired by physical or mental disabilities. This study will assess the relation between select environmental factors and human reproduction and development. This research originally proposed to recruit 960 couples who are interested in becoming pregnant and willing to participate in a longitudinal study. Fewer than expected couples were enrolled during the first three years of the project (n = 350), predominantly due to the fact that more couples were ineligible for participation than had been originally estimated. In light of this fact, the revised study plan is to enroll a total of 500 couples (i.e., 150 additional couples), a sample size that will not compromise the main study objectives. Couples will be selected from geographic regions that were chosen from peer reviewed competitive proposals. Fecundity will be measured by the time required for the couples to achieve pregnancy, while fertility will be measured by the ability of couples to have a live born infant. Infertility will be recognized for couples unable to conceive within 12 months of trying. The study's primary environmental exposures include: Organochlorine pesticides; polychlorinated biphenyls; polybrominated diphenyl ethers; metals; perfluorinated compounds; cotinine; and phytoestrogens. A growing body of literature suggests these compounds may exert adverse effects on human reproduction and development; however, definitive data are lacking especially for sensitive endpoints. Couples will participate in a 25-minute baseline interview and be instructed in the use of home fertility monitors and pregnancy kits for counting the time required for pregnancy and detecting pregnancy. Blood and urine samples will be collected at baseline from both partners of the couple for measurement of the environmental exposures. Two semen samples from male partners and two saliva samples from female partners also will be requested. Semen samples will be used to globally assess male fecundity as measured primarily by sperm concentration and morphology. Saliva samples will be used for the measurement of cortisol levels as a marker of stress among female partners so that the relation between environmental factors, stress and human reproduction can be assessed. The findings will provide valuable information regarding the effect of environmental contaminants on sensitive markers of human reproduction and development, filling critical data gaps. Moreover, these environmental exposures will be analyzed in the context of other lifestyle exposures such as use of cigarettes and alcohol, consistent with the manner in which human beings are exposed. *Frequency of Response:* Following the baseline interview (25 minutes), couples will each complete a 2-minute daily diary on select lifestyle factors. Women will perform daily fertility testing (7 minutes) approximately 11 days per cycle and pregnancy testing (4 minutes) at day of expected menses using a dipstick test in urine. Approximately 60% of women will become pregnant after 2 to 3 months, at which point they will switch to the less intensive portion of the protocol. Men will provide two semen samples, a month apart, requiring approximately 20 minutes for each collection, and women will collect two saliva samples, a month apart, requiring approximately 6 minutes each. Participating couples will be given a choice to submit their information by mail or to send it electronically to the Data Coordinating Center. This option will be available throughout data collection in the event couples change their minds about how they would like to submit information. Study participants will collect semen and saliva samples and forward them in prepaid delivery packages to the study's

laboratories. Research nurses will collect blood and urine samples and return them to the study's laboratories. *Affected Public:* Individuals from participating communities. *Type of Respondents:* Men aged 18+ years and women aged 18–40 years. *Estimated Number of Respondents:* Approximately 500 couples enrolling (minimum of 400 completing the study). *Estimated Number of Response Sets Per Respondent:* 7 per woman and 4 per man over approximately two years. *Average Burden Hours Per Response:* (1) 0.17 hours for completing the screening instrument; (2) 0.42 hours for baseline interviews with men and women; (3) 2.5 hours for daily journal while attempting pregnancy for men and women; (4) 0.38 and 0.7 hours for biospecimen collection for women and men, respectively; (5) 2.6 hours for fertility monitors; (6) 0.27 hours for pregnancy testing for women; and (7) 0.29 hours for pregnancy journals for women. *Estimated Total Annual Burden Hours Requested:* 1,640 to 4,950 hours for female participants and 1,050 to 2,740 hours for male participants depending upon the length of time required for pregnancy. There is no cost to respondents. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov,* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Germaine M. Buck Louis, Epidemiology Branch, Division of Epidemiology, Statistics & Prevention Research, NICHD, 6100 Executive Blvd., Room 7B03, Rockville, MD 20852, 301–496–6155. You may also e-mail your request to *louisg@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 12, 2008.

Paul L. Johnson,

Project Clearance Liaison, The Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health.

[FR Doc. E8–5700 Filed 3–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Emergency Review; Comment Request; Information Program on Clinical Trials for Serious and Life-Threatening Diseases: Maintaining a Databank

Summary: In accordance with Section 3507(j) of the Paperwork Reduction Act of 1995, the National Institutes of Health hereby publishes notification of an Emergency Clearance for the expansion of the information related to the ''Information Program on Clinical Trials for Serious and Life-Threatening Diseases: Maintaining a Databank.'' The expanded program will include information on certain clinical trials of drugs, biologics, and devices, whether or not they relate to serious and life-threatening diseases.

The information collection is essential to the mission of the FDA and National Institutes of Health [42 U.S.C. 282(j)(2)(A)(ii)] and is critical to meeting their roles in the Clinical Trial Registry that was expanded by Public Law 110–85, which was enacted on September 27, 2007.

NIH cannot reasonably comply with the normal clearance procedures for information collection, because the use of normal procedures will delay the collection and hinder the agency in accomplishing its mission and meeting new statutory requirements, to the detriment of the public good. Compelling reason exists for the collection of required information for successful planning and implementation of the expansion of the Clinical Trial Registry, as described in Public Law 110–85.

This information collection is essential to the effective stewardship of Federal Funds. After consultation with other agencies and NIH components, NIH has determined that the information is not currently available in any single, reliable, accessible source.

Proposed Collection: Title: Information Program on Clinical Trials for Serious and Life-Threatening Diseases: Maintaining a Databank; Type of Information Collection Request: New; Form Number: NA; Need and Use of Information Collection: In compliance with provisions of Title VIII of Public Law 110–85 (Food and Drug Administration Amendments Act of 2007) the National Institutes of Health is modifying the clinical trial registry established under previous law [ClinicalTrials.gov, established in response to FDAMA, Section 113]. The registry collects specified information on certain clinical trials identified in the law, with the objective of enhancing patient enrollment and providing a mechanism for tracking subsequent progress of clinical trials, to the benefit of public health. The registry is widely used by patients, physicians, and medical researchers, in particular those involved in clinical research studies.

Public Law 110–85 expands the scope of clinical trials that must be registered in ClinicalTrials.gov to include certain defined clinical trials of drugs, biologics, and devices subject to FDA regulation, regardless of whether they are related to serious or life-threatening diseases. It also increases the clinical trial information (*i.e.*, number of data elements) that must be submitted as part of each registration.

Frequency of Response: Responsible parties for applicable clinical trials must submit the required information shortly after the initiation of a trial [by the later of 21 days after the first patient is enrolled or December 26, 2007]. Updates to registration records are thereafter required at least once a year, unless there are no changes to report. Changes in recruitment status and completion of a trial must be reported not later than 30 days after such events. Records for trials that were ongoing (as defined in the Law) as of December 26, 2007 are also required to be updated to comply with the new registration data elements, even if they were previously registered.

Description of Respondents: Respondents are referred to in the law as ''responsible parties.'' The statute defines the responsible party as: (1) The sponsor of the clinical trial (as defined in 21 CFR 50.3) or (2) the principal

investigator of such clinical trial if so designated by a sponsor, grantee, contractor, or awardee, provided that ''the principal investigator is responsible for conducting the trial, has access to and control over the data from the clinical trial, has the right to publish the results of the trial, and has the ability to meet all of the requirements'' for submitting information under the law.

Estimate of Burden: Under the clearance to date (OMB No. 0910–0459), the FDA total hours burden was 200,839. The current annual reporting burden is shown in Table 1. It is estimated that approximately 3,500 applicable clinical trials of drugs and biologics and 445 applicable trials of devices will be registered annually in accordance with Public Law 110–85, Section 801. This estimate is based on FDA reports that in 2005 some 5,332 new clinical trial protocols were submitted to its Center for Drug Evaluation and Research and 474 new protocols were submitted to the Center for Biologics Evaluation and Research. FDA projects that rates of submission will remain at or near this level in the near future. An estimated 50% of the drug and biological protocols received in 2005, or approximately 2,900 protocols, were for trials involving assessments of effectiveness, which would be subject to the provisions of Title VIII of Public Law 110–85. This figure was raised to 3,500 drug and biological trials per year to account for IND-exempt trials that are required to register in the expanded registration data bank, but for which a protocol might not be sent to FDA. The estimated 445 new applicable device clinical trials per year includes trials related to pre-market applications (approximately 50 applications to FDA containing 75 clinical trial protocols in 2005), 510(k) submissions (approximately 360 submissions to FDA containing clinical trial protocols in 2005), and humanitarian device exemptions (9 in 2005). The estimates of drug, biologic, and device trials computed using this approach are consistent with the numbers of relevant trials that were registered with the ClinicalTrials.gov registry in calendar year 2007.

The hour burden accounts for time required to register trials and provide necessary updating over the course of the study. Based on previous experience, it is estimated that each new registration record will be updated an average of 8 times during the course of the study (*e.g.*, to reflect protocol changes, additions of investigational sites, updates of recruitment status, trial completion). The time to complete an initial (new) registration (for trials of drugs, biologics, or devices) is estimated to be 7 hours (including time to extract, reformat and submit information which has already been produced for other purposes), an increase of 50% above the 4.6 hours that was estimated by FDA for the smaller set of information collected under previous law. The time required for subsequent updates of this information is expected to be significantly less than for the original registration (as less information must be provided), and is estimated at 2 hours per update. Applying these figures to the anticipated numbers of trials produces a burden estimate for mandatory, new trial registrations of 90,735 hours.

TABLE 1.—ESTIMATED BURDEN FOR MANDATORY NEW TRIAL REGISTRATIONS

Type of respondents	Number of respondents	Frequency of response	Average time per response (hours)	Annual hour burden
Drugs and Biologics	3,500	1 New	7	24,500
		8 Subsequent Updates	2	56,000
Devices	445	1 New	7	3,115
		8 Subsequent Updates	2	7,120
Total	3,945			90,735

In addition to mandatory registrations, the registration databank will also receive a large number of voluntary submissions of information from registrants who wish to make their information public for purposes of recruitment or compliance with other policies (*e.g.*, International Committee of Medical Journal Editors). Voluntary registration is explicitly authorized in Public Law 110–85 [*Pub. L. 110–85, Section 801(a), adding new 42 U.S.C. 282(j)(4)(A)*] and information is collected in accordance with the same specifications established for mandatory registrations. The number of voluntary registrations is estimated by subtracting the anticipated annual number of mandatory registrations from the total number of trial registrations that is expected. In calendar year 2007, there were approximately 13,300 new trials registered in the ClinicalTrial.gov registry databank, of which some 8,000 were trials with drugs or biologics as an intervention, 900 were trials with a device as an intervention, and 4,400 were other types of trials (*e.g.*, observational studies, procedural interventions, behavioral interventions). These figures are consistent with the numbers of trials registered during calendar year 2005. Subtracting the anticipated number of mandatory trial registrations (from Table 1) from the anticipated number of total registrations (2007 statistics) produces estimated numbers of voluntary registrations of 4,500 trials of drugs and biologics, 455 trials of devices, and 4,400 trials of other intervention types. To account for a possible increase in voluntary submissions resulting from the heightened level of attention being devoted to clinical trials information, these estimates were raised by 20 percent to 5,400 trials of drugs and biologics, 545 trials of devices, and 5,280 trials of other intervention types. Assuming the same average time per response as for mandatory trials, the annual burden is estimated to be 258,175 hours (Table 2).

TABLE 2.—ESTIMATED BURDEN FOR VOLUNTARY REPORTING

Type of respondents	Number of respondents	Frequency of response	Average time per response (hours)	Annual hour burden
Drugs and Biologics	5,400	1 New	7	37,800
		8 Updates	2	86,400
Devices	545	1 New	7	3,815
		8 Updates	2	8,720
Other	5,280	1 New	7	36,960
		8 Updates	2	84,480
Total Voluntary	11,225			258,175

The combined, recurring burden for mandatory and voluntary reporting would be the sum of the totals in Tables 1 and 2, or 348,910 hours. This figure would be expected to decline over time as registrants become more familiar with the registration processes and refine their data submission systems.

During the first year of implementation, there will be an additional mandatory reporting burden associated with the collection of information for applicable trials of drugs, biologics, and devices that were ongoing as of December 26, 2007, but had been previously registered with ClinicalTrials.gov. These respondents have already provided information collected under the previous OMB clearance and will provide only the additional elements subject to this clearance. The number of trials subject to this requirement is estimated by searching the existing ClinicalTrials registry for ongoing, interventional Phase 2–4 studies of drugs, biologics, and devices. Doing so produces an estimate of 7,650 trials: 7,000 previously registered trials of drugs and biologics and 650 previously registered trials of devices. It is anticipated that information collection required to bring these trials into compliance with the new information collection requirements will be significantly less than for a new trial registration and is estimated as 3 hours. Information for these trials will need to be updated to reflect the continued progress of the trial. The number of updates is estimated to be 4, which is half of the updates estimated for new registrations. Each update is estimated to require 2 hours, consistent with the updates for newly registered trials. The total burden associated with the updating of information for ongoing trials is 84,150 hours, as shown in Table 3.

TABLE 3.—ESTIMATED BURDEN FOR MANDATORY UPDATING OF INFORMATION FOR ONGOING TRIALS

Type of respondents	Number of respondents	Frequency of response	Average time per response (hours)	Annual hour burden
Drugs and Biologics	7,000	1 Compliance Update	3	21,000
		4 Subsequent Updates	2	56,000
Devices	650	1 Compliance Update	3	1,950
		4 Subsequent Updates	2	5,200
Total	7,650			84,150

There are no Capital Costs, Operating Costs or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs. All comments should be sent via e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: David Sharlip, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number 301–402–9680 or E-mail your request to *sharlipd@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 15 days of the date of this publication.

Dated: March 14, 2008.

Betsy L. Humphreys,

Deputy Director, National Library of Medicine, National Institutes of Health.

[FR Doc. E8–5824 Filed 3–20–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Primate, Cognition and Pain.

Date: April 1, 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: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@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; Review of ACE Member Conflict Applications.

Date: April 2, 2008.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@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; Biomaterials and Tissue Engineering.

Date: April 3–4, 2008.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Alexander Gubin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@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; Family Management and Food Allergy.

Date: April 3, 2008.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@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; Channels, Receptors, and Synapses.

Date: April 9, 2008.

Time: 2:30 p.m. to 5:30 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: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PBKD Member Conflicts.

Date: April 16, 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: Shirley Hilden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Dentistry-Related.

Date: April 24–25, 2008.

Time: 6 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: J. Terrell Hoffeld, DDS, PhD, USPHS Dental Director, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: May 27–28, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@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: March 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–5581 Filed 3–20–08; 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; Review of An Unsolicited T Cell Development P01 Application.

Date: April 23, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Quirijn Vos, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–451–2666, *qvos@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: March 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–5579 Filed 3–20–08; 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 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 a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, 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.

Name of Committee: National Children's Study Advisory Committee.

Date: April 22–23, 2008.

Time: 9 a.m. to 4 p.m.

Agenda: The agenda will include updates of Study Center activities, an expert panel report on public use data access and disclosure control, reports from both the Ethics and Community Outreach and Engagement Subcommittees, and the status of the Office of Management and Budget review.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20892.

Contact Person: Jessica Sapienza, Committee Liaison Officer, National Children's Study, Division of Epidemiology, Statistics, and Prevention Research, NICHD, NIH, 6100 Executive Blvd., Room 5C01, Bethesda, MD 20892, (703) 902–1339, *ncsinfo@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(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: March 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–5584 Filed 3–20–08; 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 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 Child Health and Human Development Special Emphasis Panel; Translational Research in Muscle Rehabilitation.

Date: April 14, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Child Health and Human Development, 6100 Executive Blvd., 51301 Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anne Krey, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, Bethesda, MD 20892, 301–435–6908.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Maternal-Fetal Adaptations to Hypoxemia.

Date: April 17, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@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: March 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–5585 Filed 3–20–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical 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 General Medical Sciences Special Emphasis Panel; Basic Research on Human Embryonic Stem Cells.

Date: April 7–8, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rebecca H. Johnson, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; National Centers for Systems Biology.

Date: April 10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mona R. Trempe, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, 301–594–3998, *trempemo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry

Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–5587 Filed 3–20–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; 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 a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, 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.

Name of Committee: Director's Council of Public Representatives.

Date: April 18, 2008.

Time: 8:30 a.m. to 5 p.m.

Agenda: Key topics for this meeting will focus on emerging issues of public importance in biomedical and behavioral research. Further information will be available on the COPR Web site at the beginning of April at *http://www.copr.nih.gov.*

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Kelli L. Carrington, Executive Secretary/Public Liaison Officer, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, 301–594–4575, *carringk@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.copr.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 13, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–5586 Filed 3–20–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5193–N–04]

Notice of Proposed Information Collection to OMB: Assessing Quality of Life Issues in FEMA's Alternative Housing Pilot Program (AHPP)—Household Outcomes Survey

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 20, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8234, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Harold R. Holzman, (202) 402–5709 for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Assessing Quality of Life Issues in FEMA's Alternative Housing Pilot Program (AHPP)—Household Outcomes Survey.

Description of need for the information and proposed use: The Alternative Housing Pilot Program (AHPP) (Pub. L. 109–234, Sec. 2403) is providing FEMA funds to four states (Alabama, Louisiana, Mississippi, and Texas) to test alternative housing types that could be used in place of FEMA trailers or mobile homes following a future disaster.

The goal of the AHPP Quality of Life (QOL) study is to provide FEMA with a rigorous evaluation of the quality of life outcomes for AHPP recipients in the four states that received AHPP grants. Over the four-year study, the evaluation will assess a range of outcomes, including households' economic and employment situations, physical and mental health status, and changes in housing satisfaction.

Household surveys will be the primary tool for evaluating the impact of AHPP on program participants' quality of life. Baseline surveys will be administered during each grantee program's start-up period, using the OMB-approved Alternative Housing Pilot Program Evaluation Baseline Survey (OMB Control Number 2528–0248; ICR Reference Number 200705–2528–001). A follow-up Household Outcomes Survey will be administered twice during the remaining evaluation period to capture data on outcomes; the Household Outcomes Survey is the subject of this notification. The survey will be conducted using a mixed mode approach, by telephone with in-person follow-up. Each survey interview will

take approximately 45 minutes. The selection of survey participants will differ across the four states. When possible, a random assignment research design will be implemented and households that are determined eligible for AHPP but do not receive an AHPP unit will form the control group. Otherwise, surveys will be conducted with a random sample of AHPP participants.

Members of the Affected Public: AHPP participants.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response:

AHPP household outcomes survey	Number of respondents	Frequency of response	Burden per respondent (Hours)	Total respondent burden (Hours)
First Household Outcomes Survey	1612	1	.75	1209
Second Household Outcomes Survey	1612	1	.75	1209
Total	3224	2	1.50	2418

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 14, 2008.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E8–5792 Filed 3–20–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–12]

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: March 21, 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. 88–2503–0G (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: March 13, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E8–5455 Filed 3–20–08; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5148–N–04]

Notice of Regulatory Waiver Requests Granted for the Fourth Quarter of Calendar Year 2007

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act) requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers that HUD has approved. Each notice covers the quarterly period since the previous **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the period beginning on October 1, 2007 and ending on December 31, 2007.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Aaron Santa Anna, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276,Washington, DC 20410–0500, telephone (202) 708–3055 (this is not a toll-free number). 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.

For information concerning a particular waiver that was granted and for which public notice is provided in this document, contact the person whose name and address follow the description of the waiver granted in the accompanying list of waivers that have been granted in the fourth quarter of calendar year 2007.

SUPPLEMENTARY INFORMATION:

Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary or equivalent rank, and the person to whom authority to waive is delegated must also have authority to issue the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request; and

e. State how additional information about a particular waiver may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

This notice follows procedures provided in HUD's Statement of Policy on Waiver of Regulations and Directives issued on April 22, 1991 (56 FR 16337). In accordance with those procedures and with the requirements of section 106 of the HUD Reform Act, waivers of regulations are granted by the Assistant Secretary with jurisdiction over the regulations for which a waiver was requested. In those cases in which a General Deputy Assistant Secretary granted the waiver, the General Deputy Assistant Secretary was serving in the absence of the Assistant Secretary in accordance with the office's Order of Succession.

This notice covers waivers of regulations granted by HUD from October 1, 2007 through December 31, 2007. For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Fair Housing and Equal Opportunity, the Office of Housing, and the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the regulatory section of title 24 of the Code of Federal Regulations (CFR) that is being waived. For example, a waiver of a provision in 24 CFR part 58 would be listed before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement that appears in 24 CFR and that is being waived. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver of regulations that involve the same initial regulatory citation are in time sequence beginning with the earliest-dated regulatory waiver.

Should HUD receive additional information about waivers granted during the period covered by this report (the fourth quarter of calendar year 2007) before the next report is published (the first quarter of calendar year 2008), HUD will include any additional waivers granted for the fourth quarter in the next report.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: March 14, 2008.

Robert M. Couch,

General Counsel.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Offices of the Department of Housing and Urban Development October 1, 2007 through December 31, 2007

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly after each set of regulatory waivers granted.

The regulatory waivers granted appear in the following order:

I. Regulatory waivers granted by the Office of Community Planning and Development.

II. Regulatory waivers granted by the Office of Housing.

III. Regulatory waivers granted by the Office of Public and Indian Housing.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulations: 24 CFR 92.2 and 24 CFR 92.254 (b) (2).

Project/Activity: The State of Texas Department of Housing and Community Affairs (TDHCA) requested waivers of the HOME Program regulations established at 24 CFR 92.2 and 92.254(b)(2) regarding the definition of reconstruction and the principal residence requirement to facilitate the reconstruction of affordable housing following the devastation caused by Hurricane Rita.

Nature of Requirement: Section 92.2 of the HOME regulations defines reconstruction, in part, as the rebuilding, on the same lot, of housing standing on a site at the time of project commitment. Section 92.254(b)(2) of the HOME regulations states that housing owned by an income-eligible individual qualifies as affordable housing only if the housing is the principal residence of the owner at the time HOME funds are committed to the project.

Granted By: Roy A. Bernardi, Deputy Secretary.

Date Granted: December 4, 2007.

Reasons Waived: Hurricane Rita caused serve damage to numerous homes in Texas. Some homes were partially or completely moved from their foundations. Many units were rendered unfit for habitation and their occupants were forced to seek temporary housing alternatives. Consequently, many homeowners affected by the disaster were not occupying their homes as a principal residence at the time of the commitment of HOME funds to their units. In addition, in some cases, the housing was destroyed and not standing on the site at the time of the commitment of HOME funds. It was determined that requiring the State to adhere to the reconstruction definition and principal residence requirements, at § 92.2 and § 92.254(b) (2) respectively, would create a significant hardship for the communities and income-eligible homeowners in need of assistance in areas impacted by Hurricane Rita.

Contact: Virginia Sardone, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7154, Washington, DC 20410–7000, telephone (202) 708–2470.

• Regulations: 24 CFR 92.252(e).

Project/Activity: The County of Clackamas, Oregon, requested a waiver of the affordability period for Newell Creek Apartments. The project became uninhabitable due to earth movement and the falling away of soil at the site caused by severe and prolonged rainfall. The PJ would have been required to repay $528,000 of HOME funds because the project failed to meet the affordability period required for new construction of rental housing.

Nature of Requirement: Section 92.252(e) of the HOME regulations establishes a 20-year affordability period for new construction of rental housing.

Granted By: Roy A. Bernardi, Deputy Secretary.

Date Granted: December 4, 2007.

Reasons Waived: The County and the developer exercised due diligence by developing a viable restoration plan that included refinancing the existing debt, reconfiguring the project by demolishing several buildings and rehabilitating other units. However, the plan was rejected by the project's primary lender, which subsequently foreclosed.

Contact: Virginia Sardone, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7154, Washington, DC 20410–7000, telephone (202) 708–2470.

• Regulations: 24 CFR 92.500(d)(1)(B)

Project/Activity: The City of Lake Charles, Louisiana requested a waiver of its HOME commitment deadline to facilitate its continued recovery from the devastation caused by Hurricanes

Katrina and Rita. The City is located within a declared disaster area pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Corresponding requirements in the Cranston-Gonzalez National Affordable Housing Act (the Act) must be suspended under the authority of section 290 of the Act.

Nature of Requirement: Section 92.500(d)(1)(B) of the HOME regulations requires that a participating jurisdiction (PJ) commit its annual allocation of HOME funds within 24 months after HUD notifies the PJ that HUD has executed the jurisdiction's HOME Investment Partnership Agreement.

Granted By: Roy A. Bernardi, Deputy Secretary.

Date Granted: November 6, 2007.

Reasons Waived: It was determined that the waiver would facilitate the continued recovery of the City of Lake Charles from the devastation caused by Hurricane Katrina and Hurricane Rita by waiving the FY 2005 HOME commitment requirement.

Contact: Virginia Sardone, Office of Affordable Housing Programs, Office of Community and Planning Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7154, Washington, DC 20410–7000, telephone (202) 708–2470.

II. Regulatory Waivers Granted by the Office of Housing—Federal Housing Administration (FHA)

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 5.801.

Project/Activity: Juniper Village at Forest Hills, Forest Hills, Pennsylvania, FHA Project Number 033–43110. The prior owner's representative requested waiver of the requirement to submit an Annual Financial Statement for the period ending December 31, 2007 for the property since the financial reporting period would be for only four days.

Nature of Requirement: Section 5.801 of HUD's regulations provides guidance for uniform financial reporting standards for public housing agencies, Section 8 project-based housing assistance or tenant-based housing assistance payments programs, owners of housing assisted under any section 8 Certificate and Voucher programs, owners of multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured or held by HUD, HUD approved Title I and Title II non-supervised lenders, non-supervised mortgagees and loan correspondents. The financial information must be prepared in accordance with Generally Accepted Accounting Principles, submitted electronically to HUD through the internet or HUD designated format annually, no later than 60 days after the end of the fiscal year of the reporting period and in certain instances, 90 days after the end of the reporting period.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 12, 2007.

Reason Waived: This waiver was granted because the amount of financial information for submission would be both time intensive and cost prohibitive for the new owner. This property changed ownership as a result of a Transfer of Physical Assets (TPA). The seller of a TPA transaction is required to file an Annual Financial Statement (AFS). Since the reporting period was only four days (January 1 through January 4, 2007) and the seller filed an AFS for the period ending December 31, 2006, the waiver was granted. All subsequent filings are not exempt.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 203.37a.

Project/Activity: A request was made for extension of waiver of the restrictions prohibiting placement of FHA-mortgage insurance on property acquired, and subsequently resold in 90 days or less in certain disaster areas designated by the Federal Emergency Management Agency (FEMA) in the States of Alabama, Louisiana, and Mississippi, stemming from Hurricanes Katrina, Rita and Wilma.

Nature of Requirement: Section 203.37a(b)(2) of HUD's regulations provides that properties that have a resale date of 90 days or less following the date of acquisition by the seller are not eligible for an FHA-insured mortgage.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 24, 2007.

Reason Waived: The Department recognizes that safe and adequate housing is a major factor in the restoration and stabilization of communities following a natural disaster. Investors and developers are playing a major role in the recovery of the housing stock in the FEMA designated disaster areas. The extension was granted in recognition that recovery in the impacted areas has been slow and there remained a significant number of dwellings that were severely damaged and need to be rehabilitated. Many displaced residents are waiting for restoration of these dwellings to return to the region.

Contact: Maynard T. Curry, Housing Program and Policy Specialist, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9266, Washington, DC 20410–8000, telephone (202) 708–2121.

• Regulation: 24 CFR 219.220(b).

Project/Activity: Elizabeth Center Apartments, Elizabeth, New Jersey—FHA Project Number 031–55014. This project requested a waiver of the regulations to allow for the re-amortization and extension of maturity for the flexible subsidy loan on the subject property.

Nature of Requirement: Section 219.220(b) of HUD's regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 10, 2007.

Reason Waived: The waiver was granted because the project was experiencing financial difficulty and in need of physical repairs. It was determined that granting the waiver would allow the project to forbear repayment of the Flexible Subsidy Operating Assistance Loan in conjunction with the refinancing of the project through the Section 223(a)(7) program. Further, it would allow the property to make critical and non-critical repairs at the property as well as extend the affordability for the residents. The owner agreed to execute a Use Agreement extending affordability for 20 years beyond the date of the original maturity or the term of the new amortization, whichever is longer. All surplus cash is to be applied to the existing flexible subisdy debt helping preserve the affordability of this project.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street,

SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 219.220(b).

Project/Activity: Four Freedoms House, Seattle, Washington—FHA Project Number 127-SH007. The owner of this project requested approval to defer prepayment of the Flexible Subsidy loan in order to fund much-needed repairs at this property designed for the elderly.

Nature of Requirement: Section 219.220(b) of HUD regulations governs the repayment of operating assistance provided under the Flexible Subsidy Program for Troubled Projects prior to May 1, 1996 states: ''Assistance that has been paid to a project owner under this subpart must be repaid at the earlier of the expiration of the term of the mortgage, termination of these actions would typically terminate FHA involvement with the property, and the Flexible Subsidy loan would be repaid, in whole, at that time.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 13, 2007.

Reason Waived: Waiver of this regulation was granted to provide the owner of this property approval to prepay the existing mortgage and obtain financing to perform much-needed substantial rehabilitation of the property. The owner proposed to refinance and combine the loan for Four Freedoms House with the loan on Henry M. Jackson, FHA Project Number 127–EH018, a neighboring project with the same ownership; pay a lump sum of $100,000 toward the flexible subsidy loan at the time of the refinancing and fully retire the remaining flexible subsidy debt over the new mortgage term and deposit $1,000 per unit into the Reserve for Replacement account. All surplus cash is to be applied to the debt, the balance of the flexible subsidy loan is to be re-amortized and a new use agreement was required in connection with prepayment of the section 202 loan until the maturity date.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 236.60(e).

Project/Activity: Madonna Manor Apartments, Jackson, Mississippi, FHA Project Number 065–44802. The owner, Catholic Charities Housing Association of Jackson, requested permission to prepay the FHA-insured loan but were denied approval from HUD to retain the excess income retained between September 22, 2000 and July 2007.

Nature of Requirement: Section 236.60(e) of HUD's regulations provides guidelines for retaining excess income. Excess income is defined as cash collected as rent from the residents by the mortgagor on a unit-by-unit basis that is in excess of the HUD-approved unassisted Basic Rent. The mortgagor must submit a request to retain Excess Income at least 90 days before the beginning of each fiscal year or any other date during a fiscal year that the mortgagor plans to begin retaining Excess Income for that fiscal year. If HUD, following review of the request, approves the request the mortgagor will not be required to submit a new request each fiscal year provided the use of Excess Income remains the same.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 23, 2007.

Reason Waived: The owner had previously been approved to retain the excess income. The following year the owner requested permission to retain the excess income on an indefinite basis. HUD staff failed to issue a letter of permission or denial. A new purchaser had been approved for both an FHA bond financed 221(d)(4) substantial rehabilitation loan and a section 236(e)(2) decoupling. It was determined that providing for a waiver of this requirement for the period September 22, 2000 to August 31, 2004 would allow the owner to prepay the existing mortgage and obtain financing to perform substantial rehabilitation of the improvements and repairs at the property. The proposed purchaser would continue to operate the project under a new use agreement preserving this housing for low-income residents until the maturity date of the new mortgage.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 236.60(e).

Project/Activity: Country Village Apartments, Redwood Falls, Minnesota, FHA Project Number 092–44141. The owners requested a waiver of the requirement that the owner submit excess income for the subject property.

Nature of Requirement: Section 236.60(e) of HUD's regulations refers to retaining excess income. Excess income is defined as cash collected as rent from the residents by the mortgagor on a unit-by-unit basis that is in excess of the HUD-approved unassisted Basic Rent. The mortgagor must submit a request to retain Excess Income at least 90 days before the beginning of each fiscal year before any other date during a fiscal year that the mortgagor plans to begin retaining Excess Income for that fiscal year. If HUD, following review of the request approves the request, the mortgagor will not be required to submit a new request each fiscal year provided the use of Excess Income remains the same.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 15, 2007.

Reason Waived: This regulation was waived to allow the project to retain excess income since the excess income was used for eligible Reserve for Replacement items. The owner was not aware that he needed make further requests to continue to retain excess income. However, the project's REAC scores improved from 56 in 1999 to 94 in 2003 and again in 2006. After approval of this request, the project is eligible for prepayment and the current owner advised of his intention to sell the project. The transaction also involved decoupling the existing 236 and prepaying the 236 mortgage with proceeds from a city bond financing. The state is also committing funds for rehabilitation.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 811.108(a)(3).

Project/Activity: Mechanicville Elderly Apartments, Mechanicville, New York, FHA Project Number 014–35166. The Mechanicville Housing Authority requested approval to use final fund balances of the 1995 Multifamily Mortgage Revenue Refunding Bonds for energy efficiency measures at their two public housing projects.

Nature of Requirement: Section 811.108(a)(3) of HUD's regulations refers to the requirements for debt service reserve on FHA insured projects. The debt service reserve must be invested and the income used to pay principal and interest on that portion of the obligations which is attributable to the funding of the debt service reserve. Any excess investment income must be added to the debt service reserve. Should the investment income be insufficient, surplus cash or residual receipts, to the extent approved by the field office may be used to pay such principal and interest costs. Upon full payment of the principal and interest,

on the obligations (including that portion of the obligations attributable to the funding of the debt service reserve) any funds remaining in the debt service reserve shall be remitted to HUD.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 1, 2007.

Reason Waived: The Mechanicville Housing Authority requested waiver of this regulation in order to help finance energy efficiency improvements identified by an energy audit of its public housing projects. It was determined that a waiver would allow excess bond reserves to be used for desirable housing purposes. It was further determined that the Section 8 project which generated these funds is in excellent condition and did not need the money. This waiver would help finance the estimated $1 million of energy conservation improvements and thereby reduce the draw on HUD's operating subsidies to the Housing Authority.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Mount Beulah Terrace, Pagedale, MO, Project Number: 085–EE090/MO36–S051–006.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 1, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Buena Vista Residence, Salem, MA, Project Number: 023–HD183/MA06–Q021–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 3, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: The Meadows, North Smithfield, RI, Project Number: 016–EE046/RI43–S021–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 16, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Lutheran Village at Chippewa, Beaver Falls, PA, Project Number: 033–EE126/PA28–S051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 19, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Summit Apartments, Kansas City, MO, Project Number: 084–HD056/MO16–Q061–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 8, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Mosaic Housing XVI, Farmington, NM, Project Number: 116–HD029/NM16–Q061–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 13, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: D Street Senior Housing, Ontario, CA, Project Number: 143–EE060/CA43–Q051–002.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban

Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Sequoyah Apartments, Broken Arrow, OK, Project Number: 118–EE044/OK56–S061–001.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Itek Tuchena, Durant, OK, Project Number: 118–EE047/OK56–S061–004.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 10, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Spruce Street House of Hope, Nashville, TN, Project Number: 086–HD039/TN43–Q061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: ASI Freeport Senior Housing, Freeport, IL, Project Number: 071–EE224/IL06–S061–005.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.100(d).

Project/Activity: Haven Peniel Senior Citizens Residence, Philadelphia, PA, Project Number: 034–EE151/PA26–S061–003.

Nature of Requirement: Section 891.100(d) prohibits amendment of the amount of the approved capital advance funds prior to initial closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2007.

Reason Waived: The project is economically designed and comparable in cost to similar projects in the area, and the sponsor/owner exhausted all efforts to obtain additional funding from other sources.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.130(a).

Project/Activity: Summit Apartments, Kansas City, MO, Project Number: 084–HD056/MO16–Q061–002.

Nature of Requirement: Section 891.130(a) prohibits an identity of interest between the sponsor or owner with development team members or between development team members until two years after final closing.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 28, 2007.

Reason Waived: The seller of the land, although a member of the Sponsor's Board, donated the site, with the exception of a $10 transfer fee.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Buena Vista Residence, Salem, MA, Project Number: 023–HD183/MA06–Q021–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 3, 2007.

Reason Waived: The sponsor/owner needed additional time to obtain a more experienced contractor and to revise the firm commitment application.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: La Palma Apartments, Miami-Dale County, FL, Project Number: 066–EE093/FL29–S021–014.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 3, 2007.

Reason Waived: The sponsor/owner needed additional time to receive final approval of secondary financing documents a waiver of impact fees.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban

Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Homes of Care I, Lawrence, MA, Project Number: 023HD218/MA06–Q041–007.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 3, 2007.

Reason Waived: The sponsor/owner needed additional time to receive final approval of secondary financing and to meet new design regulations.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: The Presbyterian Homes of Dover, Toms River Township, NJ, Project Number: 035–EE050/NJ39–S041–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 16, 2007.

Reason Waived: The sponsor/owner needed additional time for the site to be conveyed from the Township to the owner.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Aliff Place, Fort Gay, WV, Project Number: 045–HD040/WV15–Q041–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 29, 2007.

Reason Waived: The sponsor/owner needed additional time for the Town of Fort Gay to obtain funds to pave the street and the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Hattie Jackson II, Washington Court House, OH, Project Number: 043–EE108/OH16–S041–009.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 1, 2007.

Reason Waived: The sponsor/owner needed additional time to revise the easement description, and allow the closing documents to be recorded for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Wade Chateau, Cleveland, OH, Project Number: 042–EE168/OH12–S041–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 8, 2007.

Reason Waived: The sponsor/owner needed additional time for this mixed-finance project to meet the underwriting criteria of multiple funding sources and for initial closing to take place.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Alternative Homes 2005, Alpha Borough, NJ, Project Number: 031–HD147/NJ39–Q051–003.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 15, 2007.

Reason Waived: The sponsor/owner needed additional time to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134,Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Cornerstone Homes, New Orleans, LA, Project Number: 064–EE167/LA48–S041–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 4, 2007.

Reason Waived: The sponsor/owner needed additional time for a new site to be approved, the firm commitment to be issued and for the project to be initially closed.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Mockingbird Apartments, Denton, TX, Project Number: 113–HD036/TX16–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 2007.

Reason Waived: The sponsor/owner needed additional time for the new site to be approved, for the firm commitment to be processed and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Lil Jackson Senior Community, Oceanside, CA, Project Number: 129–EE032/CA33–S051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 11, 2007.

Reason Waived: The sponsor/owner needed additional time to complete the environmental review process required by the City, for the firm commitment and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Vista Del Sol, Northridge, CA, Project Number: 122–HD166/CA16–Q051–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 12, 2007.

Reason Waived: The project experienced significant delays while the sponsor/owner needed additional time to sought additional funding, and developed the appropriate wage standards required by the city.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Princeton Manor, Florida City, FL, Project Number: 066–EE103/FL29–S041–006.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2007.

Reason Waived: The sponsor/owner needed additional time to obtain a partial release of security for the new site, for the firm commitment to be processed and for the project to reach initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Morris Heights Senior Housing, Bronx, NY, Project Number: 012–EE332/NY36–S041–002.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2007.

Reason Waived: The sponsor/owner needed additional time for this mixed finance project to proceed to initial closing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: UCP Glendale Accessible Apartments, Glendale, CA, Project Number: 122–HD163/CA16–Q051–001.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2007.

Reason Waived: The sponsor/owner needed additional time to complete the city's lengthy plan check review and to secure additional funding.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Share XIII (aka South Country Homes II), South Setauket, NY, Project Number: 012–HD126/NY36–Q041–005.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2007.

Reason Waived: The sponsor/owner needed additional time for the initially closing to take place.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.165.

Project/Activity: Share XII (aka South Country Homes I), South Setauket, NY, Project Number: 012–HD125/NY36–Q041–004.

Nature of Requirement: Section 891.165 provides that the duration of the fund reservation of the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 27, 2007.

Reason Waived: The sponsor/owner needed additional time for the initially closing to take place.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 708–3000.

• Regulation: 24 CFR 891.305.

Project/Activity: Summit Apartments, Kansas City, MO, Project Number: 084–HD056/MO16–Q061–002.

Nature of Requirement: Section 891.305 requires Section 811 project owners to have tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

Granted By: Brian D. Montgomergy, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 7, 2007.

Reason Waived: The required tax-exemption ruling from the Internal Revenue Service (IRS) although applied for, had not been issued in time for the scheduled initial closing of the project.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• Regulation: 24 CFR 891.310(b)(1) and 891.310(b)(2).

Project/Activity: Share XII (aka South Country Homes II), Project Number: 012–HD125/NY36–Q041–004.

Nature of Requirement: Section 891.310(b)(1) requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities. Section 891.310(b)(2) requires that a minimum of 10 percent of all bedrooms and bathrooms in a group home for the chronically mentally ill be accessible or adaptable for persons with disabilities.

Granted By: Brian D. Montgomergy, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 26, 2007.

Reason Waived: It was determined that the design of three of the four existing single family homes was such that it would not be economically or architecturally feasible to make all four group homes accessible. One group home would be accessible and if additional accessible units are needed, the sponsor has other permanent housing projects which are accessible.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• Regulation: 24 CFR 891.805 and 891.830(b) and 891.830(c)(4).

Project/Activity: Essex Senior Housing, Essex, VT, Project Number: 024–EE098/VT36–S061–001.

Nature of Requirement: Section 891.805 requires that the Sole General Partner of the Mixed Finance Owner be a Private Nonprofit Organization with a section 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a Nonprofit Organization with a 501(c)(3) (in the case of supportive housing for persons with disabilities. Section 891.830(b) requires that capital advance funds be drawn down only in approved ratio to other funds, in accordance with a drawdown schedule approved by HUD. Section 891.830(c)(4) prohibits the capital advance funds from paying off bridge or construction financing, or repaying or collateralizing bonds.

Granted By: Brian D. Montgomergy, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 18, 2007.

Reason Waived: The proposed sole nonprofit general partner of the for-profit mixed finance owner met the statutoy definition. It was determined that the waiver of § 891.830(b) would permit other funding sources to be disbursed faster than a pro rata basis, as required by HUD, in order to satisfy IRS's fifty percent test. However, the capital advance funds would not be drawn down any faster that a pro rata disbursement basis would have permitted. It was determined that the waiver of § 891.830(c)(4) would permit capital advance funds to be used to pay off that portion of a bridge or construction financing, or repaying a portion of bonds that strictly relate to capital advance eligible costs. However, the capital advance funds would not be used to pay for construction interest or any transaction costs associated with the tax-exempt bonds or low-income housing tax credits financing.

Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6134, Washington, DC 20410–8000, telephone (202) 798–3000.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Brick Consumer Home, Brick Township, New Jersey—FHA Project Number 035–HD003. This project has experienced move-outs and a general lack of interest in shared housing. A waiver of the very-low income requirement for one resident was requested.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 22, 2007.

Reason Waived: This property experienced three move-outs between 2005 and 2006. Due to the lack of interest in shared housing, management had difficulty maintaining full occupancy. A waiver of the very-low income requirement was requested for one resident who was admitted into the property in error. At the time, it was believed that the tenant met the exception that stipulates that low-income limits were to be used for Section 811 projects funded in FY 1995. However, management used the date the Project Rental Assistance Contract was executed instead of the date indicated on the funding reservation letter. It was discovered when management submitted a voucher for payment and an error was generated indicating the tenant's income exceeded the very-low limit and that a waiver would be required. The property is a Section 811 Capital Advance project for the disabled and is a three-bedroom house designated for chronically mentally ill clientele. This waiver was granted to prevent hardship to the subject tenant and allow them to remain at the property and not be displaced as a result of owner/management error and further help the property achieve 100 percent occupancy.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Prairie Haven, South Sioux City, Nebraska, FHA Project Number 103–EE016. The owner of Prairie Haven has requested permission to waive the very-low income requirement to help alleviate the current occupancy level and financial problems the property is experiencing.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 15, 2007.

Reason Waived: This regulatory waiver was granted to Prairie Haven to allow the property to rent to persons who are above the very low-income limits to the low-income limits (between 51 and 80 percent of area median income). Due to the remote location in the rural area within the municipality of South Sioux City, the owner has been unable to attract and maintain very low-income elderly applicants. The property had an average vacancy rate of 26.67 percent in 2007, despite management's extensive outreach and marketing efforts. The Kansas City Multifamily Hub reported that the local housing market continues to indicate an insufficient demand for very low-income elderly renters. Providing the waiver alleviated the current financial problems the project is experiencing and save the project from foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Shepherd Place Apartments, Carlisle, Kentucky, FHA Project Number 083–EH268. The owner/managing agent requested waiver of the very low-income restriction and elderly restriction in order to permit admission of lower-income (incomes between 51 and 80 percent of median), near-elderly applicants (between the age of 55 and 62), when there are no very low-income elderly applicants to fill vacant units.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 15, 2007.

Reason Waived: This property is located in rural Nicholas County. The owner/managing agent reported that the Bourbon County Housing Authority reported vacancies and several other housing complexes throughout the surrounding counties of Bourbon, Harrison and Nicholas report vacancies. The market analysis indicated there was insufficient effective demand to fill the complex with very low-income elderly. It was determined that granting the waiver would allow the property to have the flexibility to offer units to individuals who meet the definition of lower income and near elderly and the owner would be able to increase occupancy levels and stabilize the project's current financial status and prevent foreclosure.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Sunset Fields Apartments, Fennimore, Wisconsin, FHA Project Number 075–EE058. The project is experiencing severe vacancy problems. There is little demand by very low-income elderly for this type of housing in this small town.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 15, 2007.

Reason Waived: A waiver of the very low-income restriction and elderly restriction was granted in order to permit admission of lower-income (incomes between 51 and 80 percent of median) applicants where there are no very low-income elderly applicants to fill vacant units. There are currently three vacant units and one application from a lower income person. It was determined that this waiver would assist the project in operating successfully, to achieve full occupancy and perhaps develop a waiting list by expanding their leasing options.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Maplewood Estates, Stockton, Missouri—FHA Project Number 084–EE061. This project has had an average vacancy rate of 74 percent for the last twelve months despite management's extensive outreach efforts.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 20, 2007.

Reason Waived: This property was experiencing a very slow rent up process since initial occupancy on September 27, 2006. As of August 2007, 15 out of 27 units were still vacant. Management established an extensive marketing campaign that included radio and newspaper advertisements that were ongoing since August 2006. The property had difficulty remaining operational because the rental income, current at the time, did not cover the project's essential operating costs. It was determined that granting the waiver would allow the property owner to rent to persons who are above the very low-income limits to the low-income limits and alleviate their cash flow problems by assisting the property to achieve full occupancy.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

• Regulation: 24 CFR 891.410(c).

Project/Activity: Fair Haven West, Pella, Iowa—FHA Project Number 074–EE044. This project has had an average vacancy rate of 26.21 percent for the past fourteen months despite management's extensive outreach efforts.

Nature of Requirement: Section 891.410 relates to admission of families to projects for elderly or handicapped families that receive reservations under Section 202 of the Housing Act of 1959 and housing assistance under Section 8 of the U.S. Housing Act of 1937. Section 891.410(c) limits occupancy to very low-income elderly persons. To qualify, households must include a minimum of one person who is at least 62 years of age at the time of initial occupancy.

Granted By: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 29, 2007.

Reason Waived: A waiver of the income requirement was granted to assist management in renting up vacant units at this property. Due to the remote

location in the rural area within the municipality of Pella, the owner was unable to attract and maintain very low-income elderly applicants. The local housing market continued to indicate an insufficient demand for very low-income elderly renters. Because the current occupancy level would not support the complex, it was determined that waiver of this regulation would allow the property to rent units to persons who are at the low-income limit, between 51 and 80 percent of the area median income, giving the owner additional flexibility in attempting to rent vacant units and perhaps start a waiting list.

Contact: Beverly J. Miller, Director, Office of Asset Management, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6160, Washington, DC 20410–8000, telephone (202) 708–3730.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For further information about the following regulatory waivers, please see the name of the contact person that immediately follows the description of the waiver granted.

• Regulation: 24 CFR 5.801.

Project/Activity: Union Township Housing Authority, (NJ109), Union, NJ.

Nature of Requirement: Section 5.801 of HUD's regulations establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the fiscal year end (FYE) of the housing authority in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: October 30, 2007.

Reason Waived: The HA, a Section 8 only HA, requested a waiver of the audited financial reporting requirements under the Section 8 Program for FYE December 31, 2006, because the HA is under the single audit requirements of the Office of Management and Budget A–133 and does not conduct a separate audit. Additionally, the HA was granted a realignment of its FYE from March 31 to December 31, to correspond with the fiscal year end of the primary government, the Township of Union. The HA was granted a waiver because the circumstances that prevented the HA from submitting the audited financial data were beyond the HA's control. Nevertheless, with the FYE change, the HA is required to submit a hardcopy of the audit report to the HUD Field Office upon completion of the single audit.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: City of Meriden Housing Authority, (CT011), Meriden, CT.

Nature of Requirement: Section 5.801 of HUD's regulations establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the fiscal year end (FYE) of the housing authority in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: November 6, 2007.

Reason Waived: The HA requested a waiver for the removal of the Late Presumptive Failure (LPF) score of zero for the audited Financial Assessment Subsystem (FASS) Indicator for FYE September 30, 2006. The HA's audited financial submission was rejected, but due to server problems that impeded communication between the auditor and the HA, the HA failed to resubmit a corrected submission by the prescribed due date. The waiver granted the HA invalidation of the LPF, and resubmission of the audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Monroe Co. Housing Authority, (PA028), Stroudsburg, PA.

Nature of Requirement: Section 5.801 of HUD's regulations establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the fiscal year end (FYE) of the housing authority in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: November 30, 2007.

Reason Waived: The HA requested a waiver for the removal of the Late Presumptive Failure (LPF) score of zero for the audited Financial Assessment Subsystem (FASS) Indicator for FYE December 31, 2006, whose submission due date was September 30, 2007. The HA and the auditor completed the first and second step of the three-step audit submission process on September 20, 2007; however, the auditor failed to notify the HA that the process was completed and the submission ready for submission to the REAC. Due to the miscommunication, the HA missed the submission due date that resulted in the LPF. The waiver granted the HA invalidation of the LPF, and resubmission of the audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: City of Evansville Housing Authority, (IN016), Evansville, IN.

Nature of Requirement: Section 5.801 of HUD's regulations establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the fiscal year end (FYE) of the housing authority in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 5, 2007.

Reason Waived: The HA requested a waiver of the due date of September 30, 2007, for the resubmission of the audited financial submission for FYE December 31, 2006. The HA and the auditor completed the first and second step of the three-step audit submission process on September 27, 2007; however, the auditor failed to notify the HA that the process was completed and ready for submission to the REAC. Due to the miscommunication, the HA missed the submission due date that resulted in the LPF. The waiver granted the HA invalidation of the LPF, and resubmission of the audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: Marlborough Community Development Authority Housing Division, (MA070), Marlborough, MA.

Nature of Requirement: Section 5.801 of HUD's regulations establishes certain

reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the fiscal year end (FYE) of the housing authority in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 6, 2007.

Reason Waived: The HA, a Section 8 only entity, requested a waiver of the audited financial submission due date of September 30, 2007, for FYE December 31, 2006. The HA is a component unit of the City of Marlborough whose FYE is June 30, 2007. The HA was advised to request a FYE Change to coincide with the FYE of the primary reporting entity, the City of Marlborough. The waiver granted invalidation of the Failure to Submit (FTS) and allowed the HA to submit its audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 5.801.

Project/Activity: City of Renton Housing Authority, (WA011), Renton, WA.

Nature of Requirement: Section 5.801 of HUD's regulations establishes certain reporting compliance dates. The audited financial statements are required to be submitted no later than nine months after the fiscal year end (FYE) of the housing authority in accordance with the Single Audit Act and OMB Circular A–133.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 28, 2007.

Reason Waived: The HA requested a waiver of the resubmission due date of October 28, 2007, for the submission of the audited financial submission for FYE December 31, 2006. The HA and the auditor completed the first and second step of the three-step audit submission process on October 23, 2007; however, the auditor failed to notify the HA that the process was completed and ready for submission to the REAC. Due to the miscommunication, the HA missed the resubmission due date that resulted in the LPF. The waiver granted the HA invalidation of the LPF, and resubmission of the audited financial data.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.20.

Project/Activity: District of Columbia Housing Authority, (DC001), Washington, DC.

Nature of Requirement: The objective of this regulation is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: November 2, 2007.

Reason Waived: The HA requested a waiver of the physical inspections under Physical Assessment Subsystem (PASS) Indicator of the Public Housing Assessment Subsystem (PHAS) for fiscal year ending (FYE) September 30, 2007. The waiver granted a cancellation of the PASS inspections because 31 of the HA's 41 developments are in the midst of a comprehensive rehabilitation project that will ensure 20 year viability. HUD confirmed that the contracts are in place and the rehabilitation efforts are underway. Physical inspections will resume for the FYE September 30, 2008, assessment cycle.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.20.

Project/Activity: Housing Authority of the City of Wisconsin Rapids, (WI068), Wisconsin Rapids, WI.

Nature of Requirement: The objective of this regulation is to determine whether a housing authority (HA) is meeting the standard of decent, safe, sanitary, and in good repair. The Real Estate Assessment Center (REAC) provides for an independent physical inspection of a HA's property of properties that includes a statistically valid sample of the units.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: September 17, 2007.

Reason Waived: The HA requested a waiver of the physical inspections and Physical Assessment Subsystem (PASS) indicator score for fiscal year ending (FYE) December 31, 2006, because of major hail storm damage to HA's properties whose repairs were not scheduled to be completed until December 2007. The waiver granted a cancellation of the PASS inspections for FYE December 31, 2006. Physical inspections will resume for the FYE December 31, 2007, assessment cycle.

Contact: Myra E. Newbill, Acting Program Manager, NASS, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 100, Washington, DC 20410–5000, telephone (202) 475–8988.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Housing Authority of East Baton Rouge Parrish, (LA003), Baton Rouge, LA.

Nature of Requirement: These regulations establish annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: November 28, 2007.

Reason Waived: The Housing Authority of East Baton Rouge Parrish (HA) requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver of the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), to undertake the resident satisfaction survey, for the fiscal year ending (FYE) September 30, 2007. HUD agreed to carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Housing Authority of City of Ashville, (NC007), Ashville, NC.

Nature of Requirement: These regulations establish annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 17, 2007.

Reason Waived: Housing Authority of City of Ashville (HA) requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver of the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), to undertake the resident satisfaction survey, for the fiscal year ending (FYE) September 30, 2007. HUD agreed to carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Dallas Housing Authority, (TX009), Dallas, TX.

Nature of Requirement: The regulation establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 17, 2007.

Reason Waived: The Dallas Housing Authority (HA) requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver of the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), to undertake the resident satisfaction survey, for the fiscal year ending (FYE) December 31, 2007. HUD agreed to carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Decatur Housing Authority, (IL012), Decatur, IL.

Nature of Requirement: The regulation establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 18, 2007.

Reason Waived: The Decatur Housing Authority (HA) requested a waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver of the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), to undertake the resident satisfaction survey, for the fiscal year ending (FYE) March 31, 2008. HUD agreed to carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Housing Authority of the City of Greenville, (NC022), Greenville, NC.

Nature of Requirement: The regulation establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 28, 2007.

Reason Waived: The Housing Authority for the City of Greenville (HA) requested the waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver of the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), to undertake the resident satisfaction survey, for the fiscal year ending (FYE) March 31, 2008. HUD agreed to carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Huntsville Housing Authority, (AL047), Huntsville, AL.

Nature of Requirement: The regulation establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 28, 2007.

Reason Waived: The Huntsville Housing Authority (HA) requested the waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver of the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), to undertake the resident satisfaction survey, for the fiscal year ending (FYE) March 31, 2008. HUD agreed to carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Winfield Housing Authority, (AL058), Winfield, AL.

Nature of Requirement: The regulation establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 28, 2007.

Reason Waived: The Winfield Housing Authority (HA) requested the waiver to have more resources to concentrate on organizational, procedural and software changes to

convert to asset management. The HA was granted a waiver of the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), to undertake the resident satisfaction survey, for the fiscal year ending (FYE) March 31, 2008. HUD agreed to carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 902.60(d) and 24 CFR 902.60(e).

Project/Activity: Bear Creek Housing Authority, (AL081), Guin, AL.

Nature of Requirement: The regulation establishes annual certification requirements for management operations and resident satisfaction surveys.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 31, 2007.

Reason Waived: The Bear Creek Housing Authority (HA) requested the waiver to have more resources to concentrate on organizational, procedural and software changes to convert to asset management. The HA was granted a waiver of the requirements of 24 CFR 902.60(d), to submit a management operations certification, and 24 CFR 902.60(e), to undertake the resident satisfaction survey, for the fiscal year ending (FYE) March 31, 2008. HUD agreed to carry over the Management Assessment Subsystem (MASS) and Resident Assessment Subsystem (RASS) scores under the Public Housing Assessment System from the previous reporting period.

Contact: Greg Byrne, Director, Financial Management Division, Real Estate Assessment Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street, SW., Suite 200, Washington, DC 20410–5000, telephone (202) 475–8632.

• Regulation: 24 CFR 941.606(n)(1)(ii).

Project/Activity: The Punta Gorda Housing Authority of (PGHA), Punta Gorda, FL, Gulf Breeze Apartments Mixed-Finance Project. This waiver is requested by PGHA as it pertains to the selection of Brooks and Freund, LLC as the general contractor for Gulf Breeze Apartments.

Nature of Requirement: Section 941.606(n)(1)(u) of HUD's regulations states ''that if the partner and/or owner entity (or any other entity with an identity of interest with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids.''

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: October 22, 2007.

Reason Waived: PGHA submitted a certification by an independent third-party construction cost estimator prepared by Benchmark Estimating Services, Inc., for the Gulf Breeze Apartment project. This estimate totaled $18,690,310. HCPG also submitted the construction contract with Brooks and Freund, an affiliate of Norstar Development USA, which is the master developer for the project with a fixed-sum price of $18,450,772. PGHA demonstrated that the construction costs are reasonable and are within applicable HUD cost limits. HUD therefore granted the waiver as the Brooks and Freund cost is below that of the independent cost estimate and PGHA provided good cause to waive 24 CFR 941.606(n)(1)(ii)(B) in order to accomplish the mixed-finance development known as Gulf Breeze Apartments.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.606(n)(1)(ii)(B).

Project/Activity: Housing Authority of Fulton County (HAFC), Atlanta, GA, Mixed-Finance Rental Project. Waiver requested by HAFC for the Fulton County Replacement Housing Mixed-Finance Rental project consisting of 76 public housing/Low Income Tax Credit units (LIHTC), 116 project-based Section 8/LIHTC units, 71 LIHTC-only units and 29 market rate units.

Nature of Requirement: Section 941.606(n)(l)(u) of HUD's regulation states ''that if the partner and/or owner entity (or any other entity with an identity of interests with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids.''

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: November 6, 2007.

Reason Waived: HAFC submitted a certification by an independent third-party construction cost estimator and HUD reviewed the independent cost estimates and related budgets. The project is below the Total Development Cost limit, pursuant to PIH Notice 2007–19, and HUD performed a fee analysis of the construction contract which showed that all of the construction fees are within HUD's Cost Control and Safe Harbor Standards, revised April 9, 2003. HAFC demonstrated that the construction costs are reasonable and are within applicable HUD cost limits. HUD granted the waiver because HAFC provided good cause to waive 24 CFR 941.606(n)(1)(ii)(B) in order to accomplish the mixed-finance development known as Arcadia at Parkway Village, Phase I.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.610(a)(1–7).

Project/Activity: Housing Authority of the City of Milwaukee (HACM), Milwaukee, WI, request to waive HUD review of certain legal documents for the Scattered Sites Mixed-Finance Project.

Nature of Requirement: Section 941.610(a)(1–7) of HUD's regulations requires HUD review and approval of certain legal documents related to mixed-finance development before closing can occur and public housing funds can be released. Under the waiver, these documents no longer need to be submitted to HUD for review. In lieu of HUD's review of these documents, and before public housing funds can be released, the PHA must submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the legal documents detailed in 941.610 subparts (a)(1)–(a)(7). Granting a waiver of HUD's review and allowing the PHA to certify to the validity of certain legal documents will streamline the review process and expedite closing and public housing production.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: November 6, 2007.

Reason Waived: HACM is a high performing housing authority with extensive development and mixed-finance experience. The other development partners in the project are also experienced in public housing mixed-finance development. The Scattered Sites project includes Low Income Housing Tax Credits. The review process and financial control mechanisms associated with Low Income Housing Tax Credits are extensive. It was determined that HUD review would repeat and duplicate the activities which these processes are already performing. The financial structure of the Scattered Sites project is very similar to the previous mixed-finance projects undertaken by HACM, all of which underwent full evidentiary document review and approval by HUD. HACM advised that it would be represented by the same legal team for the Scattered Sites project that it used in several previous HOPE VI mixed-finance transactions. The legal team is very experienced and has long track record of success in these types of transactions.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.610(a)(1–7).

Project/Activity: King County Housing Authority (KCHA), Seattle, WA

Request to waive HUD review of certain legal documents for Salmon Creek Apartments HOPE VI Grant Number: WA19URD002I101.

Nature of Requirement: Section 941.610(a)(1–7) of HUD's regulations requires HUD review and approval of certain legal documents related to mixed-finance development before closing can occur and public housing funds can be released. Under the waiver, these documents no longer need to be submitted to HUD for review. In lieu of HUD's review of these documents, and before public housing funds can be released, the PHA must submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the legal documents detailed in 941.610 subparts (a)(1)–(a)(7). Granting a waiver of HUD's review and allowing the PHA to certify to the validity of certain legal documents will streamline the review process and expedite closing and public housing production.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: November 6, 2007.

Reason Waived: KCHA is a high performing housing authority with extensive development and mixed-finance experience. The other development partners in the project are also experienced in public housing mixed-finance development. Salmon Creek is a mixed-finance transaction, and as such, includes HOPE VI, Low Income Housing Tax Credits, and private mortgage funds. The review process and financial control mechanisms associated with Low Income Housing Tax Credits are extensive. The private sector mortgage lender also reviews the project's financial and project documents. It was determined that HUD review would repeat and duplicate the activities which these processes are already performing. Salmon Creek project is very similar to the two previous mixed-finance projects undertaken by KCHA, both of which underwent full evidentiary document review and approval by HUD. HUD was advised that for Salmon Creek, KCHA would be the developer, as it had been for the two previous phases. HUD also was advised that the investor partner, attorneys, and financial advisors would remain the same and Bank of America again would provide construction financing.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140–5000, telephone (202) 402–4181.

• Regulation: 24 CFR 941.610(a)(1–7).

Project/Activity: Housing and Redevelopment Authority of Duluth (HRAD), Duluth, MN, request to waive HUD review of certain legal documents for Harbor View Homes HOPE VI Project: Phase III HOPE VI, Project Number: MN46URD003I102.

Nature of Requirement: Section 941.610(a)(1–7) of HUD's regulations requires HUD review and approval of certain legal documents related to mixed-finance development before closing can occur and public housing funds can be released. Under the waiver, these documents no longer need to be submitted to HUD for review. In lieu of HUD's review of these documents, and before public housing funds can be released, the PHA must submit documentation which certifies, in form specified by HUD, to the accuracy and authenticity of the legal documents detailed in 941.610 subparts (a)(1)–(a)(7). Granting a waiver of HUD's review and allowing the PHA to certify to the validity of certain legal documents will streamline the review process and expedite closing and public housing production.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: December 21, 2007.

Reason Waived: HRAD is a high performing housing authority with extensive development and mixed-finance experience. The partners in the project are equally experienced. As of the date of request of the regulatory waiver, HRAD had closed 4 phases of the Harbor View Homes HOPE VI project, including Phases I and II, which are also part of the on-site development. The partners in Phase III are basically the same as the partners in Phases I and II. Phase III is a mixed-finance transaction and includes Low Income Housing Tax Credits. Therefore, all partners have extensive internal review processes and financial control mechanisms related to the financing. It was determined that HUD review would repeat and duplicate the activities which these processes are already processing.

Contact: Dominique Blom, Deputy Assistant Secretary for the Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20140, telephone (202) 402–4181.

• Regulation: 24 CFR 982.505(d).

Project/Activity: Housing Authority of Snohomish County (HASC) Snohomish County, WA. HASC requested a waiver regarding exception payment standards so to provide reasonable accommodation to a person with disabilities.

Nature of Requirement: Section 982.505(d) states that a public housing agency may only approve a higher payment standard for a family as a reasonable accommodation if the higher payment standard is within the basic range of 90 to 110 percent of the fair market rent (FMR) for the unit size.

Granted by: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: November 6, 2007.

Reason Waived: The applicant, who is a person with disabilities, owns a manufactured home that meets her physical needs and is accessible to her social support system. To provide a

reasonable accommodation so that this applicant pays no more than 40 percent of adjusted monthly income toward the family share, the HASC was granted a waiver to approve an exception payment standard that exceeded the basic range of 90 to 110 percent of the FMR.

Contact: Danielle Bastarache, Director, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410–5000, telephone (202) 708–0477.

• Regulation: 24 CFR 990.185(a).

Project/Activity: The Housing Authority of Baltimore City (HABC), Baltimore, MD. The HABC is contracting to an Energy Performance Company for a term longer than the stated 12-year maximum.

Nature of Requirement: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (Pub. L. 109–58, approved August 8, 2005). Section 151(2)(B) of Subtitle D (Public Housing) of this Act amends Section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii), which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.'' However, HUD's current regulation 24 CFR 990.185(a) states that the contract period shall not exceed 12 years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: October 18, 2007.

Reason Waived: The HABC advised that it is undertaking a self-developed energy project, acting as an Energy Services company, and hired a qualified third party consultant to provide energy management expertise. HABC advised that it anticipated that recommendations arising from its energy audit would incorporate a selection of energy conservation measures whose life cycle expectations and costs would exceed the 12-year regulatory limitation in 24 CFR 990.185(a). The HABC anticipated that the selection of retrofits would be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to HABC and its residents, the waiver granted the HABC the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to HABC.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. The HUD provisions include, but are not limited to information requirements necessary for the local field office to monitor savings over the life of the loan, and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget's (OMB) concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. HUD, through these provisions, provides individual assessments and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410–5000, telephone (202) 708–0744.

• Regulation: 24 CFR 990.185(a).

Project/Activity: The Big Rapids Housing Commission (BRHC), Big Rapids, MI. The BRHC is contracting to an Energy Performance Company for a term longer than the stated 12-year maximum.

Nature of Requirement: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (Pub. L. 109–58, approved August 8, 2005). Section 151(2)(B) of Subtitle D (Public Housing) of this Act amends section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii), which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.'' However, HUD's current regulation 24 CFR 990.185(a) states that the contract period shall not exceed 12 years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: October 18, 2007.

Reason Waived: The BRHC advised it is undertaking a self-developed energy project, acting as an Energy Services company, and hired a qualified third party consultant to provide energy management expertise. BRHC advised that it anticipated that recommendations arising from its energy audit would incorporate a selection of energy conservation measures whose life cycle expectations and costs would exceed the 12-year regulatory limitation in 24 CFR 990.185(a). The BRHC anticipated that the selection of retrofits would be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to BRHC and its residents, the waiver granted the BRHC the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to BRHC.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. The HUD provisions include, but are not limited to information requirements necessary for the local field office to monitor savings over the life of the loan, and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget's (OMB) concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. HUD, through these provisions, provides individual assessments and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410–5000, telephone (202) 708–0744.

• Regulation: 24 CFR 990.185(a).

Project/Activity: The Bethlehem Housing Authority (BHA), Bethlehem,

PA. The BHA is contracting to an Energy Performance Company for a term longer than the stated 12-year maximum.

Nature of Requirement: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (Pub. L. 109–58, approved August 8, 2005). Section 151(2)(B) of Subtitle D (Public Housing) of this Act amends section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii), which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.'' However, HUD's current regulation 24 CFR 990.185(a) states that the contract period shall not exceed 12 years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: October 18, 2007.

Reason Waived: The BHA advised that it is undertaking a self-developed energy project, acting as an Energy Services company, and hired a qualified third party consultant to provide energy management expertise. BHA advised that it anticipated that recommendations arising from its energy audit would incorporate a selection of energy conservation measures whose life cycle expectations and costs would exceed the 12-year regulatory limitation in 24 CFR 990.185(a). The BHA anticipated that the selection of retrofits would be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to BRHC and its residents, the waiver granted the BHA the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to BHA.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. The HUD provisions include, but are not limited to information requirements necessary for the local field office to monitor savings over the life of the loan, and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget's (OMB) concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. HUD, through these provisions, provides individual assessments and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410–5000, telephone (202) 708–0744.

• Regulation: 24 CFR 990.185(a).

Project/Activity: The Norwich Housing Authority (NHA), Norwich, Connecticut. The NHA is contracting to an Energy Performance Company for a term longer than the stated 12-year maximum.

Nature of Requirement: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (Pub. L. 109–58, approved August 8, 2005). Section 151(2)(B) of Subtitle D (Public Housing) of this Act amends Section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii), which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.'' However, HUD's current regulation 24 CFR 990.185(a) states that the contract period shall not exceed 12 years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: November 7, 2007.

Reason Waived: The NHA advised that it is undertaking a self-developed energy project, acting as an Energy Services company, and has hired a qualified third party consultant to provide energy management expertise. NHA anticipated that recommendations arising from its energy audit would incorporate a selection of energy conservation measures whose life cycle expectations and costs would exceed the 12-year regulatory limitation in 24 CFR 990.185(a). The NHA anticipated that the selection of retrofits would be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to NHA and its residents, the waiver granted the NHA the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to NHA.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. The HUD provisions include, but are not limited to information requirements necessary for the local field office to monitor savings over the life of the loan, and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget's (OMB) concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. HUD, through these provisions, provides individual assessments and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410–5000, telephone (202) 708–0744.

• Regulation: 24 CFR 990.185(a).

Project/Activity: The Lackawanna County Housing Authority (LCHA), Lackawanna, Pennsylvania. The LCHA is contracting to an Energy Performance Company for a term longer than the stated 12-year maximum.

Nature of Requirement: On August 8, 2005, President Bush signed into law the Energy Policy Act of 2005 (Pub. L. 109–58, approved August 8, 2005). Section 151(2)(B) of Subtitle D (Public Housing) of this Act amends section 9(e)(2)(C) of the United States Housing Act of 1937 by adding a new paragraph (iii), which states ''Term of contract:—The total term of a contract shall not exceed 20 years to allow longer payback periods for retrofits, including windows, heating systems replacements, wall insulation, site-based generation, advanced energy savings technologies, including renewable energy generation, and other such retrofits.'' However, HUD's current regulation 24 CFR

990.185(a) states that the contract period shall not exceed 12 years.

Granted By: Orlando J. Cabrera, Assistant Secretary for Public and Indian Housing.

Date Granted: November 13, 2007.

Reason Waived: The LCHA advised that it is undertaking a self-developed energy project, acting as an Energy Services company, and hired a qualified third party consultant to provide energy management expertise. LCHA anticipated that recommendations arising from its energy audit would incorporate a selection of energy conservation measures whose life cycle expectations and costs would exceed the 12-year regulatory limitation in 24 CFR 990.185(a). The LCHA anticipated that the selection of retrofits would be capable of generating adequate savings to amortize the resulting debt within the approved period of the energy performance contract. Based upon the anticipated savings and benefits to NHA and its residents, the waiver granted the LCHA the 12-year payback period to allow up to a 20-year payback period, contingent on HUD's provisions to LCHA.

HUD's provisions include additional information and technical activity requirements unique to the characteristics of the project and the PHA. The purpose of the provisions is to ensure success, minimizing risk to projected savings (used to amortize the loan) and to HUD. The PHA must comply with all of HUD's provisions for the waiver to be effective. The HUD provisions include, but are not limited to information requirements necessary for the local field office to monitor savings over the life of the loan, and procurement requirement to ensure fair and open competition. The HUD provisions are also a direct response to the Office of Management and Budget's (OMB) concern related to the higher risk levels associated with a 20-year versus the previous limit of 12 years. HUD, through these provisions, provides individual assessments and requirements of each project and waiver requesting an extension to 20-contract years to minimize risk and ensure that approval of the waiver is in the best interest of the PHA, HUD and the public.

Contact: Nicole Faison, Director, Office of Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410–5000, telephone (202) 708–0744.

[FR Doc. E8–5799 Filed 3–20–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act

AGENCY: Department of the Interior, Office of the Assistant Secretary—Water and Science (Interior).

ACTION: Notice of intent to prepare an Environmental Assessment for the Implementation of a Conjunctive Use Water Efficiency project in Eastern Juab County, Utah

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Department of the Interior, Central Utah Project Completion Act Office, and the Central Utah Water Conservancy District, as Joint Leads, will prepare an Environmental Assessment of the impacts associated with implementation of a Conjunctive Use Water Efficiency project in East Juab County, Utah.

This project anticipates the rehabilitation of several existing wells, as well as the potential development of additional groundwater wells, in order to more efficiently utilize existing ground-water supplies in conjunction with existing surface water supplies.

The project further anticipates implementation of additional centralized or distributed booster pump capability, extension of associated distribution system pipelines and overhead power lines, and development and implementation of a supervisory control and data acquisition (SCADA) system.

Also anticipated is the construction of a bypass pipeline along a segment of existing irrigation canal to reduce loss of water during the late irrigation season period of water shortage and perforated infiltration pipelines to recharge water to the groundwater basin at other times.

DATES: Date and location for public scoping will be announced locally.

SUPPLEMENTARY INFORMATION: The Bonneville Unit of the Central Utah Project was authorized to develop central Utah's water resources. Both the 1987 Final Supplement to the Final Environmental Impact Statement for the Municipal and Industrial System, Bonneville Unit, Central Utah Project (FEIS) and the 2004 Supplement to the 1988 Definite Plan Report for the Bonneville Unit (DPR) anticipated additional water development in East Juab County. Under the authority of Section 202 of the Central Utah Project Completion Act (P.L. 102–575), the Secretary of the Interior oversees Bonneville Unit water development, and specifically has authority to provide cost share associated with Conjunctive Use investigations and projects.

Information, Comments, and Inquiries: Additional information on matters related to this notice can be obtained from: Mr. Lee G. Baxter, 302 East 1860 South, Provo, Utah 84606, (801) 379–1174, *lbaxter@uc.usbr.gov.*

Dated: March 17, 2008.

Reed R. Murray,

Program Director, Department of the Interior.

[FR Doc. E8–5740 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008-N0065; 40136–1265–0000–S3]

Upper Ouachita and Handy Brake National Wildlife Refuges and the Louisiana Wetlands Management District

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Upper Ouachita and Handy Brake National Wildlife Refuges and the Louisiana Wetlands Management District.

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA) for Upper Ouachita and Handy Brake National Wildlife Refuges and the Louisiana Wetlands Management District in Morehouse, Union, Richland, East Carroll, West Carroll, Natchitoches, and Grant Parishes, Louisiana, is available for distribution. This Draft CCP/EA was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. The Draft CCP/EA describes the Service's proposal for management of these refuges and the wetlands management district over the next 15 years.

DATES: Written comments must be received at the postal address listed below no later than April 21, 2008.

ADDRESSES: To provide written comments or to obtain a copy of the Draft CCP/EA please write to: Ms. Tina Chouinard, Refuge Planner, North Louisiana National Wildlife Refuge Complex, 11372 Highway 143, Farmerville, Louisiana 71241; Telephone: 318/305–0643. The Draft CCP/EA may also be accessed and downloaded from the Service's Internet Web Site: *http://southeast.fws.gov.planning.*

FOR FURTHER INFORMATION CONTACT: Ms. Tina Chouinard, Refuge Planner, at Telephone: 318/305–0643; E-mail: *Tina_Chouinard@fws.gov*.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background: The Upper Ouachita and Handy Brake National Wildlife Refuges and the Louisiana Wetlands Management District are units of the North Louisiana National Wildlife Refuge Complex. Upper Ouachita Refuge is in northeastern Louisiana. The northern boundary lies on the Louisiana-Arkansas State line. The refuge borders both sides of the Ouachita River, running north-south for 13.7 miles and extending 3.3 miles to the east and 16 miles to the west. The southernmost point on the refuge is approximately 20 miles north of Monroe, Louisiana. The current acquisition area encompasses 61,633 acres of which 42,594 acres have been purchased, with 26,304 acres in Union Parish and 16,290 acres in Morehouse Parish.

Upper Ouachita Refuge was established in November 1978. The federally legislated purposes are ''for use as an inviolate sanctuary, or for any other management purpose, for migratory birds'' (Migratory Bird Conservation Act, 16 U.S.C. 715d); and for ''* * * the conservation of the wetlands of the nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions * * *'' (16 U.S.C. 3901 (b)). The refuge consists of 4,540 acres of pine and pine/hardwood mix, 19,767 acres of bottomland hardwood forests, 9,236 acres of reforested bottomlands, 2,000 acres of scrub/shrub, 1,182 acres of moist-soil plantings, 2,541 acres of agricultural fields, 682 acres of fallow agricultural fields, and 2,910 acres of open water.

The Louisiana Wetlands Management District was established in 1990, in response to growing Fish and Wildlife Service land-based responsibilities off of traditional refuges. The Wetlands Office is responsible for the administration of wetland easements and fee title land transfers from the USDA Farm Service Agency ''* * * for conservation purposes * * *.'' (Consolidated Farm and Rural Development Act, 7 U.S.C. 2002). The wetlands management district includes the first fee title tract transfer from the USDA Farm Service Agency to the Fish and Wildlife Service with the establishment of Handy Brake National Wildlife Refuge in 1988. The wetlands management district includes 36 USDA Farm Service Agency easements, 7 fee title tracts, and 1 lease that are concentrated in northeastern Louisiana and encompass 6 parishes. The wetlands management district is spread across north Louisiana in 44 units, ranging in size from 3 acres to 1,000 acres.

Handy Brake Refuge is primarily a permanent wetland of excellent habitat for wintering waterfowl, wading birds, and many other wetland-dependent species. A free lease of 35 acres of International Paper Company land provides an upland area overlooking the wetland. An observation deck in the upland area provides wildlife viewing opportunities into the wetlands. Habitat management within the wetlands management district focuses primarily on reforestation of marginal agricultural areas and development and maintenance of moist-soil units. These varied habitats provide for a diverse array of wildlife. There is no hunting or fishing permitted throughout the wetlands management district.

Significant issues addressed in this Draft CCP/EA include: management of white-tailed deer, invasive species, waterfowl, bottomland hardwood forest, and red-cockaded woodpecker, refuge access, land acquisition, visitor services (e.g., hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation), watershed protection, and cultural resource protection. The Service developed three alternatives for management of the refuge (Alternatives A, B, and C), with Alternative B as the Service's proposed alternative.

Alternative A (Current Management)

Current management and public use would continue under this alternative. Refuge management programs would continue to be developed and implemented with limited baseline biological information and limited monitoring, for mainly migratory waterfowl. Wildlife surveys would still be completed for presence and absence of species and to alert refuge staff to large-scale changes in population trends. Cooperation with partners for monitoring waterfowl, eagle, fish, and deer herd health surveys would continue. Upland forest management would continue focusing on red-cockaded woodpecker guidelines for minimizing hardwoods and maintaining a grassy understory in a portion of the mixed pine and upland forests. Bottomland hardwood forest management would continue at current rate of thinning to maintain a closed canopy forest and retain as much water tupelo and bald cypress as possible. The open fields would continue with manipulating water levels for moist-soil and cooperative cropland management. Management of invasive species would continue with opportunistic treatment and mapping. Partnerships would continue with Louisiana Department of Wildlife and Fisheries for several biological programs, hunting regulations, and law enforcement issues. A Partners program would still work with interested parties to develop projects for carbon sequestration and invasive species.

Hunting and fishing would continue to be the priority focus of public use on Upper Ouachita Refuge, with no expansion of current opportunities. Current restrictions or prohibitions would remain. Environmental education, wildlife observation, and wildlife photography would be accommodated at present levels, with a few interpretive sites added. Staffing would remain at current level with no new positions added, but current vacancies would be advertised and filled.

Alternative B (Proposed Action)

The biological potential of historical habitats would be restored and enhanced. Most management actions would emphasize natural ecological processes to foster habitat functions and wildlife populations. The biological program would be enhanced with inventories and monitoring so that adaptive management could be implemented primarily for migratory birds, but for other species of wildlife as well. A close evaluation of migratory bird use and nesting success on the refuge would be evaluated with granting opportunities and partnerships. Partnerships would be developed to establish scientifically, valid protocols and collaboratively work on research projects associated with information needed to manage the habitats and wildlife, or in other words how forest management is affecting wildlife. Upland forest management would focus on restoring the biological integrity of a mixed hardwood/pine forest by promoting upland hardwood species and reducing pine basal area. The red-

cockaded woodpecker habitat unit would be managed using a more historic fire regime while providing red-cockaded woodpecker habitat as required in the recovery guidelines. An historic fire regime would ultimately benefit red-cockaded woodpeckers by creating a more herbaceous understory. A forest inventory defining current conditions would be conducted to implement bottomland hardwood forest management. Bottomlands would have management increased to open the canopy cover and increase understory vegetation. Water control structures and pumping capability would be improved to enhance moist-soil and cropland management for the benefit of wintering waterfowl. Invasive species would be mapped and protocols for control established with the addition of a forester. Partnerships would continue to be fostered for several biological programs, hunting regulations, law enforcement issues, and research projects.

Public use would be similar to current management with a few improvements. Deer harvests would rely on monitoring results of the availability, diversity, and deer use of understory woody and herbaceous plants and deer herd health checks. This would allow the refuge to better understand the pressure being exerted on the habitat, and therefore make better habitat and harvest recommendations. On Upper Ouachita Refuge, youth turkey hunting would be allowed, and fishing events and boat launch facilities would be improved. Environmental education, wildlife observation, and wildlife photography would be accommodated at present levels with minimal disturbance to wildlife and habitat with an enhanced interpretive nature trail, interpretive panels, and ''check-out kits'' for teachers developed. Law enforcement would be increased to gain better compliance with refuge regulations. Staffing would increase with four positions (e.g., biological technician, forestry technician, one maintenance worker, and one law enforcement) to increase biological inventory and monitoring, enhance forest management, increase control of invasive species, enhance public use program, and provide safe and compatible wildlife-dependent recreation.

Alternative C (Minimize Management and Public Use)

This alternative would reduce the habitat and wildlife management and public use programs. Biological information would continue to be enhanced but management programs would be implemented less frequently, yet the refuge would still strive to accomplish the objectives. Extensive baseline inventory and monitoring programs would be conducted with several partners to provide a solid foundation of current conditions of refuge habitat and wildlife, while monitoring for changes in trends. Additional research projects would be implemented in the alternative by gaining granting opportunities and partnerships with other agencies and universities. Upland forest management would focus on red-cockaded woodpecker guidelines for minimizing hardwoods and maintaining a grassy understory in the entire mixed pine and upland forests, resulting in an intensive prescribed burning program which would include monitoring forest conditions. Bottomland hardwood forest management would be developed, using an intensive inventory to define current conditions and to monitor natural successional changes. Management in the bottoms would be limited to promote natural succession, as defined in a revised habitat management plan. The open field would be allowed to go through natural succession to a bottomland hardwood forest and the moist-soil units would not be maintained. Management of invasive species would become a priority to establish baseline information on location, density, and protocols for control. Partnerships would continue to be fostered for several biological programs, hunting regulations, law enforcement issues, and research projects.

Public use would be limited, with custodial-level maintenance. Public use would be monitored more closely for impacts to wildlife, and with negative impacts, new restrictions or closures would result. Deer hunting would be allowed when data demonstrated the population was exceeding the habitat carrying capacity, indicating that a reduction was necessary. Monitoring of the deer population and associated habitat conditions would be implemented. Several species, such as quail, woodcock, feral hog, and coyote, would no longer be hunted. Fishing would continue as under the current management alternative, but the open field would be closed to fishing during the wintering period and would be monitored for future impacts. Environmental education, wildlife observation, and wildlife photography would be accommodated at present levels but access limited to July–October and February–April to minimize disturbance to migratory birds. Staffing would increase with four positions (e.g., biologist, forestry technician, and two maintenance workers) to handle the increase in biological inventory and monitoring, invasive species control, and a fire program associated with implementing the red-cockaded woodpecker guidelines.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: October 29, 2007.

Cynthia K. Dohner,

Acting Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on March 18, 2008.

[FR Doc. E8–5717 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2008–N0041; 30120–1122–0000 F2]

Notice: Receipt of application for an Enhancement of Survival Permit; Request for Comments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: The DuPage County Forest Preserve District (District) (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a draft Safe Harbor Agreement (Agreement) between the Applicant and the Service for the Hine's emerald dragonfly (*Somatochlora hineana*). Section 9 of the Act and its implementing regulations prohibit the take of animal species listed as endangered or threatened. The definition of take under the Act includes the following activities: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). Section 10 of the Act, 16 U.S.C. 1539, establishes a program whereby persons seeking to pursue activities that otherwise could give rise to liability for unlawful ''take'' of federally protected species may receive a permit, which protects them from such liability. The Hine's emerald dragonfly (HED) was listed as endangered by the Service in

January 1995. A Recovery Plan for the species was published in September 2001.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental Action Statement and low-effect screening form, which are also available for public review.

DATES: To ensure consideration, we must receive your written comments on or before April 21, 2008.

ADDRESSES: Send your comments or request information by any of the following methods:

- *U.S. Mail:* Written comments should be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Chicago Field Office, 1250 S. Grove, Suite 103, Barrington, IL 60010.
- *Facsimile:* Written comments may be faxed to (847) 381–2285.
- *E-Mail: sha_dupagecounty@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Mengler, Chicago Field Office (see **ADDRESSES**); telephone: (847) 381–2253.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the permit application, copies of our preliminary Environmental Action Statement, and/or copies of the full text of the Agreement, including a map of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above. Copies of the draft Agreement are also available for public review during normal business hours (8–4:30) at the U.S. Fish and Wildlife Service's Regional Office, located at 1 Federal Drive, Fort Snelling, Minnesota 55111, and at the U.S. Fish and Wildlife Service's Chicago Field Office, located at 1250 S. Grove, Suite 103, Barrington, IL 60010. Documents are also available for review at the Service's Regional Web site at: *http://www.fws.gov/midwest/Endangered/permits/hcp/index.html*.

Public Availability of Comments

Public requests for comments submitted will be handled in accordance with the Freedom of Information Act. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

Draft Safe Harbor Agreement

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act, Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to Section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*), encourage private and other non-Federal property owners to implement conservation measures for federally listed species by assuring property owners that they will not be subjected to increased land use restrictions as a result of efforts to attract or increase the numbers or distribution of a listed species on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

Land subject to this Agreement (i.e., enrolled land) involve approximately 14 acres within the Waterfall Glen Forest Preserve District in DuPage County, Illinois. The land consists of mowed turf grass, several buildings, a gravel driveway, several picnic shelters, septic systems, and a series of fish ponds that are groundwater fed via a system of pipes and artesian wells. Currently, the land does not provide any suitable habitat for HED.

The purpose of this SHA is to facilitate management actions that results in an increased population of HED on land and water within Waterfall Glen Forest Preserve in DuPage County, Illinois. Specifically, this refers to management actions proposed for the fish farm parcel and adjoining land within said preserve that is owned and managed by the District, a local public agency. Without the Agreement and proposed management actions, the enrolled land is unlikely to support any HED in the foreseeable future. The proposed duration of the Agreement and permit is 15 years.

Upon approval of this Agreement, and consistent with the Service's Safe Harbor Policy published in the **Federal Register** on June 17, 1999 (64 FR 32717), the Service would issue a permit to the District authorizing take of HED incidental to the implementation of the management activities specified in the Agreement and other lawful uses of the properties, including normal routine land management activities, and/or to return to pre-Agreement conditions (baseline).

Decisions

We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1)(A) of the Act. If we determine that the requirements are met, we will sign the Agreement and issue an enhancement of survival permit to the Applicant for take of HED incidental to otherwise lawful activities, in accordance with the terms of the Agreement. We will not make our final decision until after the end of the 30-day comment period and we will fully consider all comments received during the comment period.

Dated: February 15, 2008.

Lynn Lewis,

Assistant Regional Director, Acting, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. E8–5741 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Proposed Absaloka Mine Crow Reservation South Extension Coal Lease Approval, Mine Development Plan and Related Federal and State Permitting Actions, Big Horn County, MT

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) and the Montana Department of Environmental Quality (MDEQ) as joint lead agencies, with the Crow Tribe of Indians, the Office of Surface Mining Reclamation and Enforcement (OSMRE), the Bureau of Land Management (BLM) and the U.S. Environmental Protection Agency (EPA), as cooperating agencies, intend to file a Draft Environmental Impact Statement (DEIS) with the EPA for the proposed extension of the existing Absaloka mine onto the Crow Indian Reservation and for related Federal and state permitting actions; and that the DEIS is now available for public review. The purpose of the proposed action is to maximize the economic benefit from the coal trust resource by continuing to provide benefits to the Crow Tribe, including royalty, tax income and employment; as

well as allow Westmoreland Resources Inc. (WRI) to continue to access coal resources, owned by the Crow Tribe, for the sale to customers using it for electric power generation. This notice also announces a public hearing to receive comments on the DEIS.

DATES: Written comments on the DEIS must arrive by May 5, 2008. The public hearing will be held April 10, 2008, beginning at 7 p.m. and continuing until all those who register to make statements have been heard.

ADDRESSES: You may mail or hand carry written comments to George Gover, Superintendent; Crow Agency, P.O. Box 69; Crow Agency Montana. You may also comment via the Internet to: *westmorelandeis@mt.gov*. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Greg Hallsten at 406–444–3276.

You may review the DEIS at BIA, Weaver Avenue, Building 2, Crow Agency, Montana; BIA, Rocky Mountain Regional Office, 316 N. 26th Street (Environmental, Cultural and Safety—Room 4433), Billings Montana; BLM, Montana State Office (Solid Minerals section), 5001 Southgate Drive, Billings, Montana; EPA, 10 W. 15th Street Suite 3200, Helena Montana; MDEQ, 1520 E. 6th Avenue, Helena, Montana; the Crow Tribal Office, Crow Agency, Montana; Big Horn County Library, Hardin, Montana; or Little Bighorn College Library, Crow Agency, Montana. The document is available for review on the Internet at: *deq.mt.gov*. Computer disk copies of the document may be obtained by contacting George Gover, Superintendent, Crow Agency-BIA, at 406–638–2672.

The public hearing will be at the Big Horn County Courthouse, 121 3rd Street West, Hardin, Montana.

FOR FURTHER INFORMATION CONTACT: Rick Stefanic, 406–247–7911.

SUPPLEMENTARY INFORMATION: The WRI has operated the Absaloka Mine on the existing Tract III Crow Indian coal lease in the Crow Ceded Area since 1974. The WRI proposes to advance surface coal mining operations southward onto the Crow Reservation pursuant to the terms of an agreement with the Crow Tribe under the Indian Mineral Development Act (IMDA). The legal description for the acreage on the Reservation involves coal basically within T.1S, R.37E., sections 1, 12, 13; and T.1S., R.37E., sections 8, 9, 10, 11, 14, 15, 16, 17, 20, and 21; Montana Principal Meridian. This area totals 3,660.23 acres in Big Horn County, Montana. All of the minerals are owned by the Crow Tribe. The surface estate is owned by the Crow Tribe (32%), allotted Indian owners (14%), and non-Indian fee owners (54%).

The DEIS analyzes three alternatives, the Proposed Action, Alternative One, and No Action. Under the Proposed Action, the MDEQ and OSMRE would approve Absaloka Mine's proposed Tract III Revision. The BIA would approve the IMDA lease for the South Extension, as well as the surface use agreements between the allottee surface owners and WRI; the OSMRE would approve the mining permit for the South Extension. Under this alternative, approximately 76.6 million tons of additional coal would be recovered and the mine life would be extended until about 2023.

Under Alternative One, WRI would not implement the South Extension development plan on the Crow Indian Reservation if the BIA does not approve the IMDA lease for the South Extension tract. Furthermore, because the South Extension includes allotted trust lands, the South Extension development plan would not be implemented if the BIA does not approve all surface use agreements between the allottee surface owners and WRI. The coal contained in the South Extension tract on the Crow Indian Reservation would not be mined. The WRI would, however, receive approval from MDEQ and OSMRE to revise Absaloka Mine's existing mine and reclamation plan to include the Tract III Revision area. Under this alternative, approximately 13 million tons of additional coal would be mined and the mine life would be extended to about 2011.

Under the No Action Alternative, none of the proposed actions would occur and WRI would not implement the South Extension development plan. The remaining (already permitted) 14 million tons of in-place coal reserves would be mined by approximately 2009 at the current 6.5 to 7.0 million-ton annual production rate.

In addition to the BIA's proposed action alternatives described above, the DEIS analyzes the proposed action for the EPA to issue a Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit for discharges of stormwater associated with the proposed mine expansion onto the Crow Indian Reservation. The proposed stormwater management alternative is for EPA Region 8 to issue an NPDES permit for the use of 24 sediment traps to contain the 2-year, 24-hour runoff event during the operational phase, which could be reduced in size to small depressions as a best management practice during the reclamation phase. The second alternative analyzed is to issue an NPDES permit for the use of conventional sediment ponds to detain the 10-year, 24-hour runoff event plus sediment storage, with pond size reduced to detain the 2-year, 24-hour runoff event plus sediment storage during the reclamation phase for all discharges to Sarpy Creek and to the Middle Fork of Sarpy Creek. The third alternative is to issue an NPDES permit for the use of a single large dam on the main stem of the Middle Fork of Sarpy Creek downstream of mine operations. The No Action alternative for the proposed stormwater management proposal corresponds with BIA alternatives that do not involve expansion of the mine onto the Crow Indian Reservation, in which case, the EPA would not issue an NPDES stormwater permit.

The DEIS analyzes the potential direct, indirect, and cumulative environmental impacts of the proposed action and alternatives on geology, paleontology, minerals, climate, air quality, soil, surface water and groundwater, land use, range resources, vegetation, wetlands, noxious weeds, wildlife and fisheries, threatened and endangered species, recreation, cultural resources, socioeconomics, environmental justice, transportation, visual resources, health and safety, noise, and fire management.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published in accordance with section 1503.1 of the Council of Environmental Quality Regulations (40 CFR, Parts 1500 through 1508) implementing the procedural

requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Director, Office of Environmental Policy and Compliance, via 516 DM 6.3 B. and Environmental Statement Memorandum ESM04–12.6(e).

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E8–5341 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Proposed Enterprise Rancheria Gaming Facility and Hotel Fee-to-Trust Acquisition Project, Yuba County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Enterprise Rancheria of Estom Ymeka Maidu Tribe (Tribe), National Indian Gaming Commission, U.S. Environmental Protection Agency (EPA) and Yuba County, California, as cooperating agencies, intends to file a Draft Environmental Impact Statement (DEIS) with the EPA for the Tribe's proposed Gaming Facility and Hotel Fee-to-Trust Acquisition Project to be located within unincorporated Yuba County, and that the DEIS is now available for public review. This review is part of the administrative process that evaluates tribal applications that seek to have the United States take land into trust pursuant to 25 CFR part 151. We will consider public comments carefully prior to deciding whether to approve or disapprove this application. This notice also announces a public hearing to receive comments on the DEIS.

DATES: Written comments on the DEIS must arrive by May 5, 2008. A public hearing will be held on April 9, 2008, at the Elk's Lodge, 920 D Street, Marysville, California, 95901–5322, from 6 p.m. to 9 p.m., or until all those who register to make comments have been heard.

ADDRESSES: You may mail or hand carry written comments to Amy Dutschke, Acting Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. Please include your name, return address, and the caption, ''DEIS Comments, Enterprise Rancheria, Gaming Facility and Hotel Fee-to-Trust Acquisition Project,'' on the first page of your written comments.

The DEIS will be available for review at the Yuba County Public Library, 303 2nd Street, Marysville, California 95901; the Sutter County Library, 720 Forbes Avenue, Yuba City, California 95991, and the Butte County Library, 1820 Mitchell Avenue, Oroville, California 95966. General information for the Yuba County Public Library can be obtained by calling (530) 749–7380. For information on the Sutter County Library please call (530) 822–7137. For the Butte County Library, please call (530) 538–7641.

If you would like to obtain a copy of the DEIS, please write or call John Rydzik, Chief, Division of Environmental, Cultural Resource Management and Safety, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Room W–2820, Sacramento, California 95825, telephone (916) 978–6042. You may view an electronic version of the DEIS at: *http://www.EnterpriseEIS.com*.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The Tribe has requested that the BIA take into trust 40 acres of land currently held in fee by the Tribe, on which the Tribe proposes to construct a gaming facility, hotel, parking areas and other facilities. The proposed 40-acre site (Yuba site) is located in unincorporated Yuba County, approximately four miles southeast of the Community of Olivehurst, near the intersection of Forty Mile Road and State Route 65.

The proposed project includes the development of a 207,760 square-foot gaming facility and a 107,125 square-foot hotel on the Yuba site. The two-story gaming facility would include a casino floor, food and beverage areas (consisting of a buffet, gourmet restaurant, and bar), meeting space, guest support services, offices, and security area. The resort would include an eight-story hotel with 170 rooms, a pool area, an exercise room, retail space and an arcade. Access to the site would be provided from Forty Mile Road.

The range of alternatives considered in the DEIS: includes (A) the proposed casino and hotel alternative, (B) a reduced intensity alternative, (C) a water park and hotel alternative, (D) a reduced intensity—Butte County alternative and (E) a no action alternative. Environmental issues addressed in the DEIS include land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, environmental justice, transportation, land use, agriculture, public services, noise, hazardous materials, visual resources, cumulative effects, indirect effects, growth inducing effects and mitigation measures.

The BIA held a public scoping meeting for the EIS on June 9, 2005, at the Elk's Lodge in Marysville, California.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. 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.

Authority

This notice is published in accordance with section 1503.1 of the Council of Environmental Quality Regulations (40 CFR, Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.l.

Dated: March 4, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E8–5342 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–062–08–1220–PM]

Notice of Emergency Motorized Vehicle Closure and Restrictions for Specified Routes During the 2008 Moab Jeep Safari; Moab Field Office, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Emergency Motorized Vehicle Closure and Restrictions.

SUMMARY: This notice restricts motorized use on 10 popular public land vehicle routes used by the Moab Jeep Safari during the 2008 Moab Jeep Safari organized group event. The action is in effect for the 2008 Jeep Safari event which takes place during the nine day period from March 15 to March 23, 2008. The following two components of the action apply only to users of motorized vehicles. *Exclusive Use:* On seven of the routes (Behind the Rocks, Cliff Hanger, Gold Bar Rim, Golden Spike, Moab Rim, Poison Spider Mesa, and Pritchett Canyon), motorized users holding a Special Recreation Permit for such use from the Bureau of Land Management, including participants in the Moab Jeep Safari, are granted exclusive use of the route while a Jeep Safari trip is occurring. This action temporarily excludes non-permit holding motorized users from these routes. *One Way Travel:* On three of the routes (Hell's Revenge, Kane Creek Canyon and Steel Bender), the routes are open to general motorized travel by non-permitted users in one direction only for the entire nine day duration of the Moab Jeep Safari. The dates for the Moab Jeep Safari and the dates when the Jeep Safari plans use of a route are posted at the Moab Field Office and on the Moab Field Office's Internet site at the addresses provided below. They are also available upon request.

DATES: This notice is effective upon publication and shall remain in effect from March 15 through March 23, 2008, during the 2008 Moab Jeep Safari.

FOR FURTHER INFORMATION CONTACT: Russell von Koch, Recreation Branch Chief, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532 or telephone 435–259–2100. Also see the Moab Field Office Internet site at: *http://www.blm.gov/ut/st/en/fo/moab.html.*

SUPPLEMENTARY INFORMATION: On January 23, 2008, the Decision Record authorizing permitted motorized use on a set of 30 routes (called ''Jeep Safari Routes'') was signed. This permit authorizes the Redrock 4Wheelers to utilize the Jeep Safari Routes for an organized group event during an annual nine day period each spring (that traditionally includes Easter Sunday and the previous eight days) from 2008 through 2012. The Environmental Assessment analyzing these routes (EA # 060–2005–080) concluded that allowing permitted motorized users exclusive use of seven of the more popular routes listed in the above summary, and managing for one-way travel on the three additional routes listed in the above summary for the nine day period of the Moab Jeep Safari would mitigate environmental damage by lessening the amount of traffic concentrated on these narrow dirt routes. The annual nine day Jeep Safari period sees the most intense and concentrated motorized use of these routes; the resultant overcrowding of these routes leads to degradation of resources as routes widen with the congregation of vehicles along them.

Specifically, exclusive motorized use of seven of the more popular routes listed above, by permittees only, would prevent damage to wilderness, water quality, soils, visual resources and vegetation by reducing the amount of travel. In addition, restricting motorized use of these routes would lessen user conflict and provide for a more enjoyable experience during the annual Jeep Safari for those motorized users holding a Special Recreation Permit.

One way use of three routes listed above would reduce impacts to water quality, soils, visual resources, and vegetation by eliminating passing, which results in road widening along these narrow routes. In addition, one way travel mitigates crowding along these three routes; this lessens user conflict and provides for a more enjoyable experience for those motorized users holding a Special Recreation Permit.

Exclusive Use: To enact these restrictions, the following routes will be for the exclusive use of permitted motorized users on days that they are utilized by the Moab Jeep Safari while Safari participants are making use of the routes: Behind the Rocks, Cliff Hanger, Gold Bar Rim, Golden Spike, Moab Rim, Poison Spider Mesa, and Pritchett Canyon. This means that for the routes listed above, motorized users without a Special Recreation Permit authorizing use of these routes are excluded from using them as described above. Non-motorized users are not restricted.

One Way Travel: The following routes are restricted to one way travel for the entire nine days of the Moab Jeep Safari: Hell's Revenge, Kane Creek Canyon and Steelbender. For the Hell's Revenge route, motorized use must occur one-way from east to west, i.e., from the Sand Flats Recreation Area entrance booth west to the end of the route west of the Lion's Back Rock. This action is consistent with Grand County's travel management which allows the Lion's Back access to be used only as an exit for general recreational travel. For the Kane Creek Canyon route, motorized use must occur one-way from north to south, i.e., from the Hurrah Pass/Kane Creek junction south to the end of the route at U.S. Highway 191. For the Steelbender route, motorized use must occur one-way from north to south, i.e., from the Moab Golf Club area entry south to the southern end of the route near Flat Pass and Kens Lake. This restriction applies to all motorized users.

This action will be posted at the Moab BLM Field Office as well as on the Moab Field Office Web site at: *http://www.blm.gov/ut/st/en/fo/moab.html.* The restrictions will also be posted at each of the trailheads affected during the 2008 Jeep Safari. Enforcement actions will be taken as necessary in accordance with 43 CFR 8360.0–7 and 18 U.S.C 3571.

Exceptions

The use of motorized vehicles for emergency, official United States military, and law enforcement purposes, or for official duties, or as otherwise authorized by the Bureau of Land Management are exempt from these restrictions. Use of motorized wheelchairs is also exempt.

Authority: The authority to implement these restrictions on motorized vehicular use is found in 43 CFR 8364.1.

Dated: March 12, 2008.

Selma Sierra,

BLM Utah State Director.

[FR Doc. E8–5769 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–305–1430–PF–01–24 1A]

Extension of Approved Information Collection, OMB Control Number 1004–0189

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend an existing approval to collect information from entities desiring a right-of-way across public lands under 43 CFR parts 2800 and 2880. The BLM and several other agencies use Form 299, Application for Transportation and Utility System and Facility, to determine whether applicants qualify to hold right-of-way grants across public lands, and for several other purposes.

DATES: You must submit your comments to the BLM at the address below on or before May 20, 2008. The BLM will not necessarily consider any comments received after this date.

ADDRESSES: You may send comments to the U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C Street, NW., Washington, DC 20045, ''ATTN: 1004–0189.''

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1620 L Street, NW., Washington, DC 20036.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: You may contact Alzata L. Ransom, Division of Lands, Realty and Cadastral Survey, on (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to leave a message for Ms. Ransom.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title XI of the Alaska National Interest Lands Conservation Act of December 2, 1980, requires that the Departments of Agriculture, Interior, and Transportation use a consolidated form in connection with rights-of-way for transportation and utility. The Federal Land Policy and Management Act of 1976, the Mineral Leasing Act, and the regulations at 43 CFR parts 2800 and 2880 authorize the BLM to use Form 299. The BLM will use Form 299 to collect information to:

(1) Determine whether the applicant qualifies for a right-of-way grant;

(2) Identify and communicate with the applicant on its right-of-way application;

(3) Identify the project location;

(4) Determine and compare existing and proposed land uses; and

(5) Determine if alternate routes and modes are available to the applicant on the right-of-way application.

If you do not provide this information, the BLM would not be able to properly administer its right-of-way program.

Based upon the BLM's experience and recent tabulations of activity, we process approximately 8,340 applications each year. The public reporting information collection burden takes 25 hours to complete. The estimated number of responses per year is 8,340 and the annual information burden is 208,500 hours.

Any member of the public may request and obtain, without charge, a copy of Form 299 by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

The BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: March 17, 2008.

Alexandra Ritchie,

Acting Bureau Information Collection Clearance Officer, Regulatory Affairs Division, Bureau of Land Management.

[FR Doc. E8–5771 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14908–A2; F–14908–B2; AK–965–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Sitnasuak Native Corporation. The lands are in the vicinity of Nome, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 10 S., R. 34 W.,
Secs. 20 and 29.
Containing 1,120.03 acres.

The subsurface estate in these lands will be conveyed to Bering Straits Native Corporation when the surface estate is conveyed to Sitnasuak Native Corporation. Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 21, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Eileen Ford,

Land Transfer Resolution Specialist, Land Transfer Adjudication II.

[FR Doc. E8–5719 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–10973, AA–11037, AA–12572, AA–11031, AA–10720, AA–11045, AA–10723, AA–10748, AA–11048, AA–10755, AA–11009; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chugach Alaska Corporation for lands located in the Prince William Sound, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 21, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Resolution Specialist, Resolution Branch.

[FR Doc. E8–5728 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14881–A2; F–14881–B2; AK–965–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Koyuk Native Corporation. The lands are in the vicinity of Koyuk, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 4 S., R. 11 W.,
Sec. 17.
Containing 640.00 acres.

T. 4 S., R. 12 W.,
Secs. 4 to 9, inclusive;
Secs. 17 and 18.
Containing 5,060.24 acres.

T. 5 S., R. 12 W.,
Secs. 13, 14, and 15;
Secs. 21, 22, and 23;
Secs. 27 and 28.
Containing 5,120.00 acres.

T. 4 S., R. 13 W.,
Secs. 1 and 2;
Secs. 29 to 32, inclusive.
Containing 3,835.84 acres.

T. 5 S., R. 14 W.,
Secs. 1 and 2;
Secs. 10 and 11;
Secs. 15, 21, and 22.
Containing 4,479.68 acres.
Aggregating 19,135.76 acres.

The subsurface estate in these lands will be conveyed to Bering Straits Native Corporation when the surface estate is conveyed to Koyuk Native Corporation. Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 21, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Eileen Ford,

Land Transfer Resolution Specialist, Land Transfer Adjudication II.

[FR Doc. E8–5733 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–010–08–1610–DQ–086L]

Notice of Availability of the Record of Decision for the Ring of Fire Resource Management Plan/Environmental Impact Statement (RMP/EIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and Bureau of Land Management (BLM) management policies, the BLM announces the availability of the RMP/ROD for the Ring of Fire planning area, located in southeast and southcentral Alaska, Kodiak Island, and the Aleutian Islands.

ADDRESSES: Copies of the Ring of Fire RMP/ROD are available upon request from the Field Manager, Anchorage Field Office, Bureau of Land Management, 6881 Elmore Road, Anchorage, AK 99507, or via the Internet at *http://www.blm.gov/.*

FOR FURTHER INFORMATION CONTACT: Mike Zaidlicz, Field Manager, Anchorage Field Office, 6881 Elmore Road, Anchorage, AK 99507, (907) 267–1246 or toll free (800) 478–1263.

SUPPLEMENTARY INFORMATION: The Ring of Fire RMP was developed with broad public participation through a three-year collaborative planning process. This RMP/ROD addresses management of approximately 1.3 million acres of BLM-administered public lands and mineral estate in the planning area. The Ring of Fire RMP/ROD is designed to achieve or maintain desired future conditions developed through the planning process. It includes a series of management actions to meet the desired resource conditions for upland and riparian vegetation, wildlife habitats, cultural and visual resources, and recreation.

The approved Ring of Fire RMP is the same as Alternative D in the Ring of Fire Proposed RMP/Final EIS, published in July 2006, with two exceptions:

1. In response to a protest from the Alaska Coalition/American Rivers, the BLM will defer Wild and Scenic River suitability determinations for segments identified in the RMP as ''Eligible.'' The BLM will manage these rivers in a manner that maintains or enhances the values that supported the rivers' eligibility until land ownership in the planning area is finalized. At that time, suitability determinations will be made through an amendment to the Ring of Fire RMP.

2. In response to a protest received from Lynn Canal Conservation, Inc., the BLM will defer the final determination on the establishment of an Area of Critical Environmental Concern (ACEC) for the Haines Block lands. The BLM will reconsider the application of the Importance Criteria found in BLM Manual 1613 and will provide an additional 60-day comment period at that time to gather public input on the

Haines Block ACEC. Establishment of an ACEC would require an RMP amendment. In the interim, the lands will be managed as they are currently.

All other portions of the Approved RMP are identical to those set forth in July 2006.

No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the Proposed RMP/Final EIS.

Dated: January 18, 2008.

Thomas P. Lonnie,

State Director.

[FR Doc. E8–5646 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–569]

In the Matter of Certain Endoscopic Probes for Use in Argon Plasma Coagulation Systems; Notice of Commission Decision To Review in Part an Initial Determination and on Review To Affirm the Administrative Law Judge's Determination That There is No Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') determining that there is no violation of section 337 of the Tariff Act of 1930. Specifically, the Commission has determined to review the portions of the ALJ's determination relating to construction of the claim term ''predetermined minimum safety distance'' and associated findings on infringement and domestic industry. On review, the Commission has determined to take no position with respect to these issues, and to affirm the ALJ's determination of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3112. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission based on a complaint filed by ERBE Elektromedizin GmbH and ERBE USA, Inc. (collectively, ''ERBE''). 71 FR 29386 (May 16, 2006). The complaint alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain endoscopic probes for use in argon plasma coagulation systems by reason of infringement of 10 claims of U.S. Patent No. 5,720,745 (''the '745 patent'') and infringement of U.S. Supplemental Trademark Registration No. 2,637,630 (''the '630 registration''). The complaint also alleged that a domestic industry exists and/or is in the process of being established, with regard to the '745 patent and the '630 registration under subsection (a)(2). The notice of investigation named Canady Technology, LLC of Hampton, Virginia (''Canady USA''); Canady Technology Germany GmbH of Germany (''Canady Gmbh''); and KLS Martin as the respondents. The complaint requested that the Commission institute an investigation pursuant to Section 337 and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order. The investigation has been terminated as to KLS Martin on the basis of a settlement agreement.

On January 16, 2008 the administrative law judge issued a final ID finding no violation of section 337 in this investigation. The ALJ found no violation of section 337 through the importation or sale for importation of argon plasma probes sold by the Canady in the United States. In particular, the ID found that the Canady probes do not directly infringe the '745 patent; that even if there were direct infringement there is no contributory infringement or inducement to infringe the '745 patent by Canady; that ERBE has not shown that there is a domestic industry with respect to the '745 patent because the ERBE products are not used to practice its claims; and that the '745 patent is not invalid.

On January 28, 2008, ERBE filed its petition for review of the ID, challenging the ALJ's findings with respect to no infringement of the '745 patent and the absence of a domestic industry. Canady filed its Contingent Petition for review of the ID on January 29, 2008.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties, the Commission has determined to review the portions of the ALJ's determination relating to the construction of the phrase ''predetermined minimum safety distance'' the associated findings on infringement and domestic industry. On review, the Commission has determined to take no position with respect to these issues, and to affirm the ALJ's determination of no violation of section 337.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: March 17, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–5762 Filed 3–20–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Clean Water Act

Notice is hereby given that on March 14, 2008, a proposed Consent Decree (''Decree'') in *United States & Commonwealth of Kentucky* v. *Lexington Fayette Urban County Government,* Civil Action No. 5:06–cv–00386–KSF, was lodged with the United States District Court for the Eastern District of Kentucky, Central Division.

The proposed Consent Decree would resolve claims against the Lexington Fayette Urban County Government (''LFUCG'') for the Clean Water Act violations involving the municipal separate storm sewer system and the sanitary sewer system alleged in the complaint filed in November 2006 by the United States and the Commonwealth of Kentucky. The proposed Consent Decree provides for LFUCG to perform injunctive measures as described in the Consent Decree, to pay a civil penalty of $425,000 to the United States, and to perform federal Supplemental Environmental Projects

valued at $1.23 million, and state environmental projects valued at $1.5 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States & Commonwealth of Kentucky* v. *Lexington Fayette Urban County Government,* Civil Action No. 5:06–cv–00386–KSF, D.J. Ref. 90–5–1–1–08858.

The Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Kentucky, 260 West Vine Street, Lexington, KY 40507, and at the Region 4 Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree exclusive of appendices from the Consent Decree Library, please enclose a check in the amount of $24.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address. To obtain copies of the appendices to the Consent Decree, which are approximately 1,800 pages, please contact Tonia Fleetwood regarding the total cost of copying appendices, at 25 cents per page.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–5671 Filed 3–20–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The Thomson Corp. & Reuters Group PLC; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *The Thomson Corp.* and Reuters Group PLC, Civil Action No. 1:08–cv–00262. On February 19, 2008, the United States filed a Complaint alleging that the proposed acquisition by The Thomson Corporation of Reuters Group PLC would violate section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires The Thomson Corporation to divest a copy of its WorldScope fundamentals product, along with certain other assets, and requires Reuters Group PLC to divest copies of its Estimates and Aftermarket (Embargoed) Research Database product, along with certain other assets.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 325 7th Street, NW., Room 215, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at: *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James Tierney, Chief, Networks and Technology Section, Antitrust Division, Department of Justice, 600 E. Street NW., Suite 9500, Washington, DC 20530, (telephone: 202–307–6200).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 600 E Street NW., Suite 9500, Washington, DC 20530, Plaintiff, v. The Thomson Corporation, Metro Center, I Station Place, Stamford, CT 06902, and Reuters Group, PLC, The Reuters Building, Canary Wharf, London E14 5EP, United Kingdom, Defendants.

Case: 1:08–cv–002 2.

Assigned To: Hogan, Thomas F.

Assign. Date: 0211912008.

Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action against The Thomson Corporation (''Thomson'') and Reuters Group PLC (''Reuters'') to obtain equitable relief to prevent Thomson's proposed acquisition of Reuters, and to obtain other relief as appropriate. The United States alleges as follows:

I. Nature of the Action

1. On May 15, 2007, Thomson and Reuters signed an agreement to combine the two companies, with Thomson to control approximately 70% of the combined businesses. The cash and stock transaction valued Reuters at $17.2 billion.

2. Thomson and Reuters both create and distribute financial news and data, including fundamentals data, earnings estimates data, and aftermarket research reports. Thomson and Reuters are two of the three largest providers of financial data worldwide to institutions such as investment banks and trading firms. More particularly, Thomson and Reuters are two of the four largest suppliers of fundamentals data to institutions worldwide, two of the three largest suppliers of earnings estimates data to institutions worldwide, and the two largest distributors of aftermarket research reports worldwide.

3. The United States brings this action to prevent the proposed acquisition of Reuters by Thomson because it would substantially lessen competition in the distribution and sale of fundamentals data, earnings estimates data, and aftermarket research reports in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

II. Parties to the Proposed Acquisition

4. Thomson is a Canadian corporation with its principal place of business in Stamford, Connecticut. Thomson is comprised of five business divisions: Legal, Financial, Tax & Accounting, Scientific, and Healthcare. Thomson Financial distributes and sells, among other financial products, the relevant products—fundamentals data, earnings estimates data, and aftermarket research reports.

5. Thomson is one of the three largest distributors of financial data to institutional users in the world. Thomson is one of the three largest distributors of fundamentals data and is the largest distributor of earnings estimates data and aftermarket research reports. In 2006, Thomson reported company-wide revenues of approximately $6.6 billion, with Thomson Financial accounting for approximately $2 billion.

6. Reuters is a United Kingdom public limited company with its principal place of business in London, England. Reuters distributes and sells, among other financial products, the relevant products—fundamentals data, earnings estimates data, and aftermarket research reports.

7. Reuters is also one of the three largest distributors of financial data to institutional users in the world. Reuters is one of the four largest distributors of fundamentals data in the world, the second largest distributor of earnings estimates data, and the second largest distributor of aftermarket research reports. In 2006, Reuters reported company-wide revenues of approximately $5 billion.

III. Jurisdiction and Venue

8. Plaintiff United States brings this action under section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain defendants from violating section 7 of the Clayton Act, 15 U.S.C. 18.

9. Defendants produce, distribute, and sell financial data products and services, including fundamentals data, earnings estimates data, and aftermarket research reports, in the flow of interstate commerce. Defendants' activities in producing, distributing, and selling these products generate revenues of hundreds of millions of dollars annually and substantially affect interstate commerce. This court has subject matter jurisdiction over this action pursuant to section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1331, 1337(a), and 1345.

10. Defendants sell a variety of financial data products and services, including fundamentals data, earnings estimates data, and aftermarket research reports, in this judicial district and have consented to venue and personal jurisdiction.

IV. Trade and Commerce

A. Financial Data

11. Investment managers, investment bankers, traders, corporate managers, and other firms (''institutional financial data users'') use financial data to support investment decisions and to provide advice to their firms or clients. This data includes relevant news information, pricing information on various types of investment vehicles, and descriptive and predictive data about individual companies, market sectors, or the economy. Although some financial information, such as delayed stock prices and basic news, is available for no charge on public websites, most institutional financial data users need, and are willing to pay for, higher quality data such as: real-time securities prices; real-time standardized earnings estimates; comprehensive and error-checked fundamentals data; pricing data for fixed-income securities; financial analytic tools; and proprietary news and analysis.

12. Financial data firms such as Thomson and Reuters typically deliver financial data and other products to their institutional users through a variety of distribution channels. The so-called ''terminals'' channel is the largest, wherein financial data providers package or bundle a number of different types of financial data, such as quotes and prices for a variety of financial instruments, fundamentals data, earnings estimates data, macroeconomic data, real-time and aftermarket research, as well as news, charting and other analytic tools. These types of financial data, analytic tools and news, sold in a variety of packaged configurations with optional content and features, are delivered through customized graphical user interfaces to institutional financial data users' desktop computers. These products are sold by subscription, generally on a per-user or enterprise basis, with pricing generally based on a single price for the bundled products and separately priced optional additions. Thomson and Reuters are two of the three largest providers of financial data terminals in the United States.

13. Financial data providers like Thomson and Reuters also deliver financial data through enterprise-level electronic data feeds that allow an institutional financial data user to assemble its own packages of financial data, analytic tools, and news; integrate the data with its own applications; and distribute them within its own organization to users' desktops. Financial data providers also sell redistribution rights on a wholesale basis to third parties who distribute the data to their own terminal or internet-based customers. Thomson and Reuters have competed to supply such data to resellers, and third party providers of financial data terminals to institutional financial data users rely on access to certain types of financial data for which Thomson and Reuters are the principal suppliers. Finally, financial data providers also supply financial data to their customers over the public internet via password-protected Web sites.

B. The Relevant Product Markets

There are three relevant product markets: (1) Fundamentals data; (2) earnings estimates data; and (3) aftermarket research.

1. Fundamentals Data

14. Fundamentals data concern the financial performance and other attributes of individual companies, including information from financial statements, calculated financial ratios, per share data, security and market identifiers, product information, and company profile data. Fundamentals data generally pertain to publicly-traded companies and both U.S.-based and foreign companies. Providers of fundamentals data such as Thomson and Reuters maintain fundamentals data for tens of thousands of companies, both active and defunct, over periods of years or decades.

15. Providers of fundamentals data extract the data from company financial statements and reports as they are released and update the data on an ongoing basis. Providers add significant value by interpreting and translating footnotes, calculating a variety of ratios, ''normalizing'' the data into a consistent format, and ''standardizing'' the data to facilitate comparisons of companies. Such data can be provided to customers in an ''as reported'' format or in a ''standardized'' format.

16. Institutional financial data users utilize fundamentals data in making investment decisions with respect to individual securities, to test investment strategies and models at different points in time, to chart the historical performance of companies, and to back-test quantitative models.

17. There are no substitutes for fundamentals data. Fundamentals data are a key component needed by institutional financial data users for developing and testing trading strategies and quantitative models as well as

making individual investment decisions. Institutional financial data users require timely, reliable, easily accessible, aggregated, accurate, and comprehensive financial data for many thousands of companies.

18. A small but significant post-acquisition increase in the price of fundamentals data would not cause institutional financial data users to substitute another product or otherwise reduce their use of fundamentals data to a sufficient extent so as to make such a price increase unprofitable.

19. The distribution and sale of fundamentals data is a line of commerce and a relevant product market within the meaning of section 7 of the Clayton Act.

2. Earnings Estimates Data

20. An earnings estimate is a prediction of a company's earnings, often in terms of quarterly or annual earnings per share. Thomson and Reuters, and other firms, maintain databases of published earnings estimates going back years or decades.

21. Providers of earnings estimates data collect and disseminate information from investment bankers and other sources on an ongoing basis. Collecting estimates data involves obtaining research reports from a wide range of investment bankers and other sources, such as brokerage firms and specialized investment research firms. Errors in the data are corrected, and as-reported data is normalized to common accounting conventions. Providers also calculate various consensus estimates across industries or sectors. These functions add significant value.

22. Institutional financial data users use earnings estimates when they decide whether to trade or invest in individual securities. Some institutional financial data users use historical earnings estimates data to evaluate investment strategies. For example, an analyst with a quantitative model for evaluating stock investments may back-test the proposed model with ten years of earnings history data to determine whether the model would have accurately predicted past price movements.

23. There are no reasonable substitutes for earnings estimates data. Earnings estimates data are a key component in the development and testing of quantitative trading models and trading decisions made by many institutional financial data users, who cannot otherwise acquire sufficiently robust, standardized, historic and current earnings estimates data.

24. A small but significant post-acquisition increase in the price of earnings estimates data would not cause institutional financial data users to substitute other products or otherwise reduce their usage of earnings estimates in sufficient quantities so as to make such a price increase unprofitable.

25. The distribution and sale of earnings estimates data is a line of commerce and a relevant product market under section 7 of the Clayton Act.

3. Aftermarket Research Reports

26. Research reports are detailed research documents prepared by analysts at investment banks, brokerage firms, and other research firms that evaluate the prospects of specific securities. These reports explain analysts' opinions and include financial projections, such as the company's projected earnings per share of stock at the end of the company's next fiscal quarter. Research reports are often based on quantitative models of firms' expected performance.

27. An investment bank or brokerage firm typically provides research reports to its customers immediately on publication. Such customers may obtain reports through a financial data terminal, via e-mail, or from authorized password-protected websites. After an embargo period of days or weeks after release to clients has elapsed, investment banks and brokerage firms typically allow their reports to be distributed in an ''aftermarket'' to other third parties, sometimes for a fee.

28. Thomson and Reuters aggregate and distribute research reports. Thomson and Reuters each collect reports from hundreds of investment banks, brokerage firms, and other research sources and sell copies of such reports once they are no longer embargoed. To do this, Thomson and Reuters have developed infrastructure including a database of the reports and an electronic distribution system. Thomson and Reuters also create and maintain indices, tables of contents, and search tools so that third parties can locate and compare the research reports available for purchase without having to contact individual investment banks and brokerage firms. Thomson and Reuters sell aftermarket research reports under various pricing plans, such as per-report, per-page, or so-called ''all you can eat'' access.

29. There are no reasonable substitutes for the aftermarket research report distribution services offered by Thomson and Reuters. Aftermarket research reports are a key investment research tool for many institutional financial data users, who cannot acquire the reports' contents by other means. For example, the aggregation, indexing, search, and comparison features provided by distributors of aftermarket research offer functionality not otherwise available. In addition, institutional financial data users cannot, in a practical or efficient manner, contact and arrange access to multiple research reports on an individual basis with possibly hundreds of research providers.

30. A small but significant post-acquisition increase in the price of aftermarket research report distribution services would not cause institutional financial data users to substitute another product or otherwise reduce their use of such reports in sufficient quantities so as to make such a price increase unprofitable.

31. The distribution and sale of aftermarket research reports is a line of commerce and a relevant product market under section 7 of the Clayton Act.

C. The Relevant Geographic Market

32. Thomson and Reuters sell fundamentals data, earnings estimates data, and aftermarket research reports to institutional financial data users around the world. The world constitutes a relevant geographic market under Section 7 of the Clayton Act for each of these relevant product markets.

D. The Proposed Transaction Will Harm Competition in the Relevant Markets

1. Fundamentals Data

33. Competition between Thomson and Reuters in the distribution and sale of fundamentals data has benefited institutional financial data users.

34. The proposed transaction will significantly increase concentration among suppliers of fundamentals data to institutional financial data users. In particular, the transaction will eliminate competition between the two major suppliers of fundamentals databases that provide comprehensive global coverage and the historical coverage required for quantitative analysis, as well as competition between two of the three largest suppliers of fundamentals data by datafeed.

35. The proposed transaction will substantially increase the likelihood that the combined firm unilaterally will increase the price of fundamentals data to a significant number of institutional financial data users. The combined firm likely would increase price both to institutional financial data users to whom they sell fundamentals data directly, either via data feed or as part of a financial data terminal product sold by Thomson or Reuters, as well as to

institutional financial data users to whom Thomson and Reuters sell indirectly, via resellers that offer financial data terminals in competition with Thomson and Reuters. The combined firm would have the incentive and ability to increase the cost of data sold to resellers, or to discontinue such supply of fundamentals data altogether.

36. The response of other financial data providers will not prevent or undo the competitive harm that will likely result from the proposed merger. To the extent other providers rely on data acquired from Thomson or Reuters, the combined firm would control the cost and availability of such data. Responses by firms with independent access to fundamentals data also would be unlikely to prevent or undo the transaction's competitive harm. A significant number of institutional financial data users regard the products of Thomson and Reuters as their first and second choices when purchasing fundamentals data, and consider fundamentals data products offered by other financial data providers to be distant third choices. An insufficient number of institutional financial data users would switch to a competing fundamentals data product to defeat a price increase imposed unilaterally by the merged firm.

37. Entry into or expansion into fundamentals data is difficult, time consuming, and costly. New entrants into the fundamentals data market, particularly with respect to international fundamentals data, must overcome significant barriers to entry. These include the difficulties of arranging for collection of data on tens of thousands of companies on a global basis, constructing a reliable historical database, the need to develop local expertise in each country's accounting norms, and the ability to develop data normalization and standardization processes. Therefore, entry or expansion by any other firm will not be timely, likely, or sufficient to defeat an anticompetitive price increase.

38. Without the constraining effect of competition between Thomson and Reuters, the combined firm will have a greater ability to exercise market power by raising its prices for fundamentals data to institutional financial data users without risk of losing significant sales to competitors.

39. The transaction will substantially lessen competition in the distribution and sale of fundamentals data in violation of section 7 of the Clayton Act. The transaction is likely to lead to higher prices and reduced quality for consumers of such data.

2. Earnings Estimates Data

40. Competition between Thomson and Reuters in the sale of earnings estimates data has benefited institutional financial data users.

41. The proposed transaction will significantly increase concentration among suppliers of earnings estimates data, eliminating competition between the world's two largest suppliers of earnings estimates data with broad, global, and historical coverage as well as the two largest suppliers of estimates by datafeed. Thomson and Reuters have a combined share of over 70% of the worldwide market for earnings estimates data, and each is significantly larger than the third largest supplier.

42. The proposed transaction will substantially increase the likelihood that Thomson and Reuters will increase the price of earnings estimates data to a significant number of institutional financial data users. The combined firm likely would increase price both to institutional financial data users to whom they sell estimates data directly, either via data feed or as part of a financial data terminal product sold by Thomson or Reuters, as well as to institutional financial data users to whom Thomson and Reuters sell indirectly, via resellers that offer financial data terminals in competition with Thomson and Reuters. The combined firm would have the incentive and ability to increase the cost of data sold to resellers, or to discontinue such supply of estimates data altogether.

43. The response of other financial data providers will not prevent or undo the competitive harm that will likely result from the proposed merger. To the extent other providers rely on data acquired from Thomson or Reuters, the combined firm would control the cost and availability of such data. Responses by firms with independent access to estimates data also would be unlikely to prevent or undo the transaction's competitive harm. A significant number of institutional financial data users regard the products of Thomson and Reuters as their first and second choices when purchasing earnings estimates data, and consider earnings estimates data offered by other financial data providers to be distant third choices. An insufficient number of institutional financial data users would switch to a competing earnings estimates data product to defeat an anticompetitive price increase.

44. Entry into or expansion in the distribution of earnings estimates data is difficult, time consuming, and costly. Firms entering the market face significant barriers to timely entry, including the difficulty and cost of replicating years or decades of historical data, significant human and intellectual-property resources for standardizing and verifying the data, and the effort and expense to establish the requisite business relationships with hundreds of investment banks and brokerage firms to collect the data. Therefore, entry or expansion by any other firm will not be timely, likely, or sufficient to defeat an anticompetitive price increase.

45. Without the effect of competition between Thomson and Reuters, the combined firm will have a greater ability to exercise market power by raising its prices for earnings estimates data to institutional financial data users without risk of losing significant sales to competitors.

46. The transaction will substantially lessen competition in the distribution and sale of earnings estimates data in violation of Section 7 of the Clayton Act. This is likely to lead to higher prices and reduced quality for consumers of such data.

3. Aftermarket Research Reports

47. Competition between Thomson and Reuters in the distribution of aftermarket research reports has benefited institutional financial data users.

48. The proposed transaction will significantly increase concentration in the distribution of aftermarket research reports. Thomson and Reuters have a combined market share in excess of 90%, and each is significantly larger than the third largest distributor of aftermarket research reports.

49. The proposed transaction will substantially increase the likelihood that Thomson and Reuters will increase the price of their aftermarket research to a significant number of institutional financial data users.

50. The responses of other financial data providers would not prevent or undo the competitive harm that will likely result from the proposed merger. Other firms lack the requisite relationships with hundreds of investment banks and brokerage firms and a comprehensive collection of research reports, which is both highly valued by institutional financial data users and extremely costly to duplicate. A significant number of financial data users regard the products distributed by Thomson and Reuters as their first and second choices when purchasing aftermarket research reports, and consider aftermarket research report distribution offered by other financial data providers to be distant third choices. An insufficient number of

institutional financial data users would switch to a competing aftermarket research report distributor to defeat a price increase imposed unilaterally by the merged firm.

51. Entry into or expansion in the distribution of aftermarket research reports is difficult, time consuming, and costly. Emerging firms would need to expend significant resources to attempt to establish the business relationships with hundreds of investment banks and brokerage firms necessary to obtain rights for distribution, collect copies of thousands of existing reports of the contributors, and establish the technological infrastructure for selling aftermarket research reports. Therefore, entry or expansion by any other firm will not be timely, likely, or sufficient to defeat an anticompetitive price increase.

52. Without competition between Thomson and Reuters, the combined firm will have a greater ability to exercise market power by raising prices to institutional financial data users for whom Thomson and Reuters are the only two sources of aggregated aftermarket research report sale and distribution.

53. The transaction will substantially lessen competition in the distribution and sale of aftermarket research reports in violation of section 7 of the Clayton Act. This is likely to lead to higher prices and reduced quality for consumers of such reports.

IV. Violations Alleged

54. The United States incorporates the allegations of paragraphs I through 52 above.

55. The proposed acquisition of Reuters by Thomson would substantially lessen competition in interstate trade and commerce in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

56. Unless restrained, the transaction will have the following anticompetitive effects, among others:

a. actual and potential competition between Thomson and Reuters in the distribution and sale of fundamentals data, earnings estimates data, and aftermarket research reports will be eliminated;

b. competition generally in the sale of fundamentals data, earnings estimates data, and aftermarket research reports will be substantially lessened; and

c. prices for fundamentals data, earnings estimates data, and aftermarket research reports likely will increase.

V. Request for Relief

57. The United States requests that this Court:

a. adjudge and decree the proposed acquisition to violate section 7 of the Clayton Act, 15 U.S.C. 18;

b. enjoin and restrain the Defendants and all persons acting on their behalf from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine Thomson with the operations of Reuters;

c. award the United States its costs for this action; and

d. grant the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

Thomas O. Barnett,

Assistant Attorney General, D.C. Bar #426840.

James J. Tierney,

Chief, Networks and Technology, Enforcement Section, D.C. Bar #434610.

David L. Meyer,

Deputy Assistant Attorney General, D.C. Bar #414420.

Scott A. Scheele,

Assistant Chief, Networks and Technology, Enforcement Section, D.C. Bar #429061.

Patricia A. Brink,

Deputy Director of Operations.

Robert P. Malinke, N. Scott Sacks (D.C. Bar #913087), Mary N. Strimel (D.C. Bar #455303), Aaron Comenetz (D.C. Bar #479572), Adam T. Severt, Ryan S. Struve (D.C. Bar #495406), Aaron G. Brodsky,

Attorneys, United States Department of Justice, Antitrust Division, Networks and Technology Enforcement Section, 600 E. Street, NW., Suite 9500, Washington, DC 20530, (202) 307–6200.

Dated: February 19, 2008.

United States District Court for the District of Columbia United States of America, Plaintiff, v. The Thomson Corporation and Reuters Group PLC, Defendants.

Case: 1:08–cv–00262.
Assigned To: Hogan, Thomas F.
Assign. Date: 02/19/2008.
Description: Antitrust.

Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on February 19, 2008, and the United States and Defendant The Thomson Corporation (''Thomson'') and Defendant Reuters Group PLC (''Reuters'') (collectively ''Defendants''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

And whereas, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the Defendants, it is *ordered, adjudged and decreed:*

1. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the Defendants to this action. The Complaint states a claim upon which relief may be granted against Defendants under section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer(s)'' means the entity or entities to whom Defendants divest the Divestiture Assets.

B. ''Reuters'' means defendant Reuters Group PLC, a United Kingdom corporation with its headquarters in London, England, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Thomson'' means defendant The Thomson Corporation, an Ontario, Canada corporation with its headquarters in Stamford, Connecticut, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''Closing Date'' means the date on which the transfer of the Thomson Fundamentals Divestiture Assets, the Reuters Estimates Divestiture Assets, or the Reuters Aftermarket Research Divestiture Assets, as applicable, has been completed as provided in the purchase agreement between the divesting party and the Acquirer(s).

E. ''Divestiture Assets'' means the Thomson Fundamentals Divestiture Assets, the Reuters Estimates Divestiture Assets, and the Reuters Aftermarket Research Divestiture Assets, individually or collectively as context may require.

F. ''Estimates'' mean predictions by sell-side and independent analysts regarding the future financial performance of a company or security, typically with respect to key earnings metrics such as annual or quarterly earnings per share.

G. ''Aftermarket Research'' means reports prepared by sell-side and independent analysts that include an analysis of a security, company, or industry (including company-specific reports and industry-wide reports) and that are no longer restricted (''embargoed'') as to recipients by the authoring firm and are generally available for sale to all interested purchasers.

H. ''Fundamentals'' means data pertaining to companies and their financial performance, such as reportable financial statement data (e.g., balance sheet, cash flow and income statements), calculated financial ratios (e.g., annual and five-year averages for growth rates, profitability, leverage, asset utilization), textual profile information (e.g., address, identity of officers and directors), and per share data (e.g., earnings per share, book value per share, cash flow per share), that are derived from company filings and financial statements.

I. ''Third-Party Owned Fundamentals'' means Fundamentals over which a contributor maintains an intellectual property right.

J. ''Third-Party Owned Estimates'' means Estimates over which a contributor maintains an intellectual property right.

K. ''Third-Party Owned Research'' means Aftermarket Research over which a contributor maintains an intellectual property right.

L. ''Thomson Fundamentals Divestiture Assets'' means the tangible and intangible assets described in Schedule I Paragraphs A, B and G.

M. ''Reuters Estimates Divestiture Assets'' means the tangible and intangible assets described in Schedule I Paragraphs C, D and G.

N. ''Reuters Aftermarket Research Divestiture Assets'' means the tangible and intangible assets described in Schedule I Paragraphs E, F and G.

O. ''Direct Content Datafeeds'' means datafeeds delivered using FTP (file transfer protocol), CD or DVD media, or other industry standard technology, offering data within a discrete content set (i.e., Thomson Fundamentals or Reuters Estimates), including such data delivered by or through redistributors, where (i) the datafeed can be disaggregated from other product(s) provided by the seller without causing significant disruption to the customer's (or redistributor's) operations; and (ii) the customer's (or redistributor's) contract for the purchase of the datafeed allocates a price for such datafeed.

III. Applicability

A. This Final Judgment applies to Thomson and Reuters, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with section iv and VI of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Defendants are ordered and directed, within sixty (60) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer(s) acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants shall use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Unless the United States otherwise consents in writing, Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all financial, operational, technical, and other information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States and the Monitoring Trustee at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer(s), the United States, and the Monitoring Trustee information relating to the personnel involved in the development, production, maintenance, and operation of the Divestiture Assets, as described in Schedule 2, to enable the Acquirer(s) to make offers of employment. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel described in Schedule 2 and shall not interfere with any negotiations by the Acquirer(s) to employ any such personnel. With respect to any such personnel who receive an offer of employment from the Acquirer(s), Defendants shall (1) Not prevent, prohibit or restrict or threaten to prevent, prohibit or restrict such personnel from being employed by the Acquirer(s) nor offer any incentive to decline employment with the Acquirer(s); and (2) cooperate with the Acquirer(s) in effecting the transfer of such personnel and amend or waive any provisions of employment agreements, stock options or other employee benefit arrangements so that such personnel do not suffer adverse consequences as a result of their negotiations with or acceptance of employment by the Acquirer(s).

D. For a period of eighteen (18) months from the filing of the Complaint in this matter, Defendants shall not solicit to hire, or hire, any individual described on Schedule 2 hired by the Acquirer(s), unless such individual is terminated or laid off by the Acquirer(s), or the Acquirer(s) agree that Defendants may solicit and employ that individual.

E. Defendants shall warrant to the Acquirer(s) that the copies of the Thomson Fundamentals Databases, Reuters Estimates Databases, and Reuters Aftermarket Research Databases (as defined in Schedule 1) provided as part of the Divestiture Assets are the complete, identical database(s) as maintained by Defendants in the ordinary course of their business, subject to any exclusion for third-party content as permitted by this Final Judgment, and that such copies shall be in an industry-standard format that allows the Acquirer(s) to access and use the data. Defendants shall also warrant that all other Divestiture Assets,

including copies of software, documents, documentation and data, are complete and accurate copies of the materials as maintained by the Defendants in the ordinary course of their business.

F. Defendants shall not take any action that will impede in any way the operation or divestiture of the Divestiture Assets or the operation of any agreement(s) for transitional support services described in section IV.K herein.

G. Unless the United States in its sole discretion provides written consent, the Defendants shall not enter any new exclusive contribution agreements with contributors of Estimates or Aftermarket Research, nor expand the scope or degree of exclusivity of any existing such exclusive contribution agreements, nor renew any such agreement for a term that exceeds one (1) year duration, from the date of filing of this Final Judgment until two (2) years after the date of entry of this Final Judgment.

H. With respect to each investment bank or other contributor that, as of the date of filing of the Complaint and pursuant to contract, provides (1) Aftermarket Research; (2) Estimates; or (3) other third-party contributor data used by Reuters to compile, produce, operate, or maintain the Reuters Estimates Databases or the Reuters Aftermarket Research Databases (as defined in Schedule 1), Defendants shall use their best efforts (which obligation shall not require Defendants to overcome commercially unreasonable refusals to consent to assignment) to procure the assignment of such contract to the Acquirer(s) on or before the Closing Date. In the case of any investment bank or other contributor unwilling to consent to assignment or whose contract cannot otherwise be assigned to an Acquirer on or before the Closing Date, Defendants shall:

1. Assist the Acquirer(s) in reaching contribution agreements directly with such investment bank or other contributor as promptly as possible, including waiving any exclusivity provisions with such investment bank or other contributor as needed; and

2. grant the Acquirer(s) redistribution rights to the contributed content to the maximum extent allowable under the contributor's contract with Reuters, assisting the Acquirer(s) to put into place any arrangements for the Acquirer's redistribution of the contributed content, including seeking all needed consents. Provided, however, that Reuters may terminate such redistribution rights with respect to a particular third party once the Acquirer concludes any arrangement for the supply of the contributed content directly from that third party.

The Defendants' obligations pursuant to subparagraphs I and 2 above shall cease at the earlier of: (1) The date on which the Acquirer(s) of the Reuters Estimates Divestiture Assets and the Reuters Aftermarket Research Divestiture Assets have contribution agreements with eighty percent (80%) of the firms that provided Aftermarket Research and/or Estimates to Reuters pursuant to contract as of the filing date of the Complaint, twenty-two (22) of the twenty-five (25) contributors listed on Schedule 3 (as to the Acquirer of the Reuters Estimates Divestiture Assets), and twenty-two (22) of the twenty-five (25) contributors listed on Schedule 4 (as to the Acquirer of the Reuters Aftermarket Research Divestiture Assets); or (2) two (2) years after the date of entry of this Final Judgment. The Defendants shall not charge the Acquirer(s) for any redistribution rights pursuant to subparagraph 2 above, except that the Acquirer(s) shall pay any fee imposed by the investment bank or other contributor for distribution of such content, and the non-price terms of such redistribution arrangements shall be consistent with the most favorable (to the redistributor) non-price terms of Reuters' agreements with other redistributors of similar content.

I. With respect to any contracts for the provision of Fundamentals or other third-party contributor data that Thomson uses in the compilation, production, operation, updating or maintenance of the Thomson Fundamentals Databases as of the date of filing of the Complaint, Defendants shall use their best efforts (which obligation shall not require Defendants to overcome commercially unreasonable refusals to consent to assignment) to procure the assignment of such contracts to the Acquirer on or before the Closing Date. In the case of any third party unwilling to consent to assignment or whose contract cannot otherwise be assigned to an Acquirer on or before the Closing Date, for a period of two years from the filing date of the Complaint, Defendants shall:

1 . Assist the Acquirer in reaching a supply agreement directly with such third party as promptly as possible, including waiving any exclusivity provisions with such third party as needed; and

2. Grant the Acquirer redistribution rights to the contributed content to the maximum extent allowable under the contributor's contract with Thomson, assisting the Acquirer(s) to put into place any arrangements for the Acquirer's redistribution of the contributed content, including seeking all needed consents.

Provided, however, that Thomson may terminate such redistribution rights with respect to a particular third party once the Acquirer concludes any arrangement for the supply of the contributed content directly from that, third party.

J. Defendants shall provide for delivery of contracts for the contribution of Aftermarket Research, Estimates, and/or Fundamentals, and for copies of Third-Party Owned Aftermarket Research, Estimates, Fundamentals, or other third-party contributor data as described above to the Acquirer(s) as follows:

1 . To the extent the necessary third party consents are obtained on or before the Closing Date, the contracts and copies of contributed content shall be delivered to the Acquirer(s) as part of the Divestiture Assets;

2. To the extent the necessary third party consents are not obtained on or before the Closing Date, Defendants shall preserve copies of the contributed content for release to the Acquirer(s) upon receipt of the necessary third party consents. Defendants' obligation to preserve such copies shall terminate at the earlier of: (i) The date that all preserved copies have been provided to the Acquirer(s); or (ii) Defendants' satisfaction of their obligations pursuant to section IV.H and IV.I of this Final Judgment; and

3. For each contributor from whom consent is obtained after the Closing Date but before Defendants satisfy their obligations pursuant to section IV.H and IV.I of this final judgment, defendants shall deliver to the acquirer(s), the contributor contract, preserved copies of the content and all intervening updates in machine readable form necessary to bring the Acquirer's database current with respect to that contributor.

K. At the option of the Acquirer(s), the Defendants shall enter into a transitional support services agreement on customary and commercially reasonable terms and conditions to be approved by the United States in its sole discretion, for a period of up to twelve (12) months from the Closing Date (and, in the case of the Thomson Fundamentals Divestiture Assets or the Reuters Estimates Divestiture Assets, at the option of the Acquirer(s), for one additional six (6) month period). Such agreement(s) shall be designed to enable the Acquirer(s) to compete effectively in the distribution of Fundamentals, Estimates, or Aftermarket Research for financial data users, specifically including institutional users, and shall

include, to the extent requested by the Acquirer(s):

1. Consulting and support services sufficient to give that Acquirer a full understanding of the structure and content of all Fundamentals, Estimates, and/or Aftermarket Research data divested to that Acquirer; and

2. Regular updates to the Fundamentals, Estimates, and/or Aftermarket Research data divested to that Acquirer, provided on the same schedule and with the same timeliness, content, and quality as the updates are provided to the Defendants' customers receiving Thomson Fundamentals, Reuters Estimates, or Reuters Aftermarket Research, respectively, subject to any redistribution restrictions on any such updates imposed by any third party content owner.

L. Unless the United States otherwise consents in writing, the divestiture(s) pursuant to Section IV or Section VI of this Final Judgment shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer(s) as part of a viable, ongoing business of the distribution of Fundamentals, Estimates, or Aftermarket Research for financial data users, specifically including institutional users. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to section IV or section VI of this Final Judgment,

(1) Shall be made to an Acquirer(s) that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the business of distribution of Fundamentals, Estimates, or Aftermarket Research for financial data users, specifically including institutional users; and

(2) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer(s) and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Monitoring Trustee

A. Upon the filing of this Final Judgment, the United States may, in its sole discretion and in good faith consultation with the European Commission, appoint a Monitoring Trustee, subject to approval by the Court.

B. The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Asset Preservation Stipulation and Order entered by this Court and shall have such powers as this Court deems appropriate. Subject to Section V.D of this Final Judgment, the Monitoring Trustee may hire at the cost and expense of Thomson any consultants, accountants, attorneys, or other persons, who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment.

C. Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

D. The Monitoring Trustee shall serve at the cost and expense of Thomson, on such terms and conditions as the United States approves. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities.

E. The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

F. Defendants shall use their best efforts to assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

G. After its appointment, the Monitoring Trustee shall file monthly reports with the United States and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Asset Preservation Stipulation and Order. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court.

H. The Monitoring Trustee shall serve until the divestiture of all the Divestiture Assets is finalized pursuant to either section IV or section VI of this Final Judgment and any agreement(s) for transitional support services described in section IV.K herein have expired.

VI. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in section IV.A, Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States in good faith consultation with the European Commission and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of sections IV and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to section VI.D of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VII. The

Divestiture Trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) The Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

VII. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and the Monitoring Trustee of any proposed divestiture required by section IV or VI of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants and the Monitoring Trustee. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the Defendants shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under section VI.C of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under section IV or section VI shall not be consummated. Upon objection by Defendants under section VI.C, a divestiture proposed under section VI shall not be consummated unless approved by the Court.

VIII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or VI of this Final Judgment.

IX. Preservation of Assets

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Asset Preservation Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

X. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under section IV or VI, defendants shall deliver to the United States and the monitoring trustee an affidavit as to the fact and manner of its compliance with section IV or VI of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the

limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States and the Monitoring Trustee an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with section IX of this Final Judgment. Defendants shall deliver to the United States and the Monitoring Trustee an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

XI. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XII. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The Defendants have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

Dated:

United States District Judge.

Schedule 1—Description of Divestiture Assets

A. The Thomson Fundamentals Divestiture Assets means copies of all master source Fundamentals databases used in, or in the production of Thomson's Fundamentals products, comprising the complete electronic collection of ''as reported'' Fundamentals that Thomson uses for the ''Enterprise FX'' product and the complete electronic collection of ''standardized'' Fundamentals that Thomson uses for the ''Worldscope File2'' product (individually and collectively, the ''Fundamentals Databases''), and all tangible and intangible assets (or separable portions thereof) that Thomson uses in the compilation, production, operation, updating, or maintenance of the Fundamentals Databases, subject to the exclusions in Paragraphs B and G below, including:

1. A copy of the Fundamentals Databases, including any Third-Party Owned Fundamentals for which any requisite consents are obtained;

2. A copy (including any third-party owned data or materials for which any requisite consents are obtained) of all data, source documents, and other documentary materials used, and all database annotations made, by Thomson in the collection, aggregation, normalization, standardization, updating, indexing, or tagging of the Fundamentals Databases, current as of the Closing Date;

3. A perpetual, worldwide, assignable, sublicensable, transferable, royalty-free, non-exclusive license to market, distribute, and prepare derivative works of the Fundamentals Databases, data and documentary materials described in sub-paragraphs A.I and A.2 above (and to manufacture, reproduce, and have reproduced such derivative works), subject to the third-party consents described therein, without further compensation to Thomson and without any restriction other than those permitted in Paragraph B.5 below;

4. A perpetual, worldwide, assignable, sublicensable, transferable, royalty free, nonexclusive license of all intellectual property rights, formulations, specifications, trade secrets, know-how, and technical information embodied in

the Fundamentals Databases or used in their compilation, production, operation, updating, or maintenance, subject to the third-party consents described above;

5. Copies of and a perpetual, worldwide, assignable, non-licensable, transferable, royalty-free, non-exclusive license to use and to prepare derivative works of (and to manufacture, reproduce, or have reproduced such derivative works) all training and other manuals, workflow documents, business processes, data definitions, and instructions used by Thomson in connection with the above-described databases, including all business logic used to map between ''as reported'' and ''standardized'' data, including a guide to standardized data definitions;

6. At the option of the Acquirer, copies of and a perpetual, worldwide, assignable, non-licensable, transferable, royalty-free, non-exclusive license to use and to prepare derivative works of (and to manufacture, reproduce, or have reproduced such derivative works) the following software (including source code and all documentation relating thereto):

i. All software used to compile, produce, operate, update, or maintain the Fundamentals Databases, including without limitation (a) software for collection, aggregation, normalization, standardization, updating, indexing, or tagging of Fundamentals, and (b) software providing ''click-through'' functionality to access the source documents underlying the Thomson Fundamentals Databases; and

ii. Any improvements, research or developments regarding the software described in Paragraph 6(i) above in existence at any time between January 1, 2007 and the Closing Date;

7. To the extent assignable, all Thomson customer contracts or assignable portions thereof for Direct Content Datafeed delivery of Fundamentals, including any contracts for delivery to clients by or through redistributors; and

8. To the extent assignable as set forth in Section IV.I of the Final Judgment, all contracts for the supply to Thomson of Fundamentals or other third-party contributor data (including industry standard symbology such as CUSIP, SEDOL, classification codes such as ICB sector codes, price and corporate action data, ADR information and currency exchange rates) that Thomson uses in the compilation, production, operation, updating, or maintenance of the Fundamentals Databases.

B. Exclusions: The Thomson Divestiture Assets do not include:

1. Any commercially available hardware or software (including any superseded hardware or software for which more recent compatible versions are available), except to the extent of custom software modifications made by or for Thomson;

2. Any Thomson trademarks, service marks or brands or any licenses thereto (including without limitation any rights to use the names ''Thomson'' or ''Worldscope,'' alone or in connection with any of the Thomson Fundamentals Divestiture Assets); 3. any proprietary identification systems of Thomson that are used to produce non-Worldscope offerings and that are not necessary to the compilation, production, operation, updating, or maintenance of the Fundamentals Databases;

4. Any customer contracts other than those assigned pursuant to Paragraph A.7 above, any customer lists, or any customer account information except as needed to effectuate the assignment of contracts described in Paragraph A.7 above; and

5. Where Thomson uses any formulation, specification, trade secret, software program, patent, or source data (other than the contents of the Fundamentals Databases) described above substantially in the production or distribution of offering(s) other than Worldscope or Enterprise FX, Defendants may limit the Acquirer's transferable license to use of such intellectual property solely in activities relating to the field of Fundamentals data.

C. The Reuters Estimates Divestiture Assets means copies of all master source Estimates databases used in, or in the production of Reuters Estimates offerings, comprising the complete collection of ''detailed'' and ''consensus'' Estimates as included in the Reuters Knowledge Direct—Estimates product (individually and collectively, the ''Estimates Databases''), and all tangible and intangible assets (or separable portions thereof) that Reuters uses in the compilation, production, operation, updating, or maintenance of the Estimates Databases, subject to the exclusions in Paragraphs D and G below, including:

1. A copy of the Estimates Databases, including any Third-Party Owned Estimates for which any requisite consents are obtained;

2. A copy (including any third-party owned data or material for which any requisite consents are obtained) of all data, notes and other documentary material and source documents (as such source documents are used and maintained in the ordinary course of business in' connection with the Estimates Databases) used, and all database annotations made, by Reuters in the aggregation, verification, annotation, standardization, updating, indexing or tagging of Estimates, current as of the Closing Date, such as data relating to inclusions/exclusions of Estimates from consensus values, accounting treatments of particular earnings or charges, and collection practices, current as of the Closing Date;

3. A perpetual, worldwide, assignable, sublicensable, transferable, royalty-free, non-exclusive license to market, distribute, and prepare derivative works of the Estimates Databases, data and documentation described in Paragraphs C.I and C.2 (and to manufacture, reproduce, and have reproduced such derivative works), subject to the third-party consents described therein, without further compensation to Reuters and without any restriction other than those permitted in Paragraph D.6 below;

4. A perpetual, worldwide, assignable, sublicensable, transferable, royalty free, non-exclusive license of all intellectual property rights, formulations, specifications, trade secrets, know-how, and technical information embodied in the Estimates Databases or used in their compilation, production, operation, updating, or maintenance, subject to the third-party consents described above;

5. Copies of and a perpetual, worldwide, assignable, non-licensable, transferable, royalty-free, non-exclusive license to use and to prepare derivative works of (and to manufacture, reproduce, or have reproduced such derivative works) all training and other manuals, workflow documents, business processes, data definitions, and instructions used by Reuters in connection with the Estimates Databases, including all information and processes used to calculate consensus estimates;

6. At the option of the Acquirer, copies of and a perpetual, worldwide, assignable, non licensable, transferable, royalty-free, non-exclusive license to use and to prepare derivative works of (and to manufacture, reproduce, or have reproduced such derivative works) the following software (including source code and all documentation relating thereto):

i. All software used to compile, produce, operate, update, or maintain the Estimates Databases, including without limitation, software for collection, aggregation, verification, annotation, standardization, updating, indexing or tagging of Estimates (including the software components used to implement contributor permissioning of detailed estimates); and

ii. Any improvements, research or developments regarding the software described in Paragraph 5(i) above in existence at any time between January 1, 2007 and the Closing Date;

7. To the extent assignable, all Reuters customer contracts or assignable portions thereof for Direct Content Datafeed delivery of Estimates, including any contracts for delivery to clients by or through redistributors; and

8. To the extent assignable as set forth in Section IV.H of the Final Judgment, all contracts for the supply of Estimates or other third-party contributor data (including corporate actions and currency exchange rates) used by Reuters in the compilation, production, operation, updating, or maintenance of the Estimates Databases.

D. *Exclusions:* The Reuters Estimates Divestiture Assets do not include:

1. Any commercially-available hardware or software (including any superseded hardware or software for which more recent compatible versions are available), except to the extent of custom software modifications made by or for Reuters;

2. Any Reuters trademarks, service marks or brands or any licenses thereto (including without limitation any rights to use the names ''Reuters'' or ''Multex,'' alone or in connection with any of the Reuters Estimates Divestiture Assets);

3. Any Reuters Instrument Codes or license(s) to use or distribute such codes, or any other proprietary identification systems of Reuters that are used to produce Reuters offerings other than Reuters Knowledge Direct—Estimates and that are not necessary to the compilation, production, operation, updating, or maintenance of the Estimates Databases;

4. Any customer contracts, except those assigned pursuant to Paragraph C.7 above;

5. Customer lists or customer account information, except as needed to effectuate the assignment of contracts described in Paragraph C.7 above;

6. Where Reuters uses any formulation, specification, trade secret, software program, patent, or source data (other than the contents of the Estimates Databases) described above substantially in the production or distribution of offering(s) other than the Estimates Databases, Defendants may limit the Acquirer's transferable license to use of such intellectual property solely in activities relating to the field of Estimates data.

E. The Reuters Aftermarket Research Divestiture Assets means copies of all master source databases containing Aftermarket Research used in, or in the production of Reuters Aftermarket Research offerings, comprising the complete collection of Aftermarket Research as included in the Reuters Knowledge product, but excluding any research reports in such databases which' Reuters is not licensed to sell as Aftermarket Research (individually and collectively, the ''Aftermarket Research Databases''), and all tangible and intangible assets (or separable portions thereof) that Reuters uses in the compilation, production, operation, updating, or maintenance of the Aftermarket Research Databases, subject to the exclusions in Paragraphs F and G below, including:

1. A copy of the Aftermarket Research Databases, including any Third-Party Owned Aftermarket Research for which any requisite consents are obtained, and including any Aftermarket Research described in Schedule 5 for which the Acquirer agrees to the most favorable (to the redistributor) terms, including royalty rate, then provided by the owner of such Aftermarket Research to any other redistributor as of the Closing Date;

2. A copy (including any third-party owned data or material for which any requisite consents are obtained) of all data and other documentary material used, and all database annotations made, by Reuters in the collection, aggregation, normalization, standardization, updating, indexing or tagging of Aftermarket Research, including all data (subject to any requisite third-party consents) used to implement ''embargo'' periods, to block certain classes of users from accessing certain subsets of Aftermarket Research, or for purchase tracking, reporting and billing;

3. A perpetual, worldwide, assignable, sublicensable, transferable, royalty-free, non-exclusive license to market, distribute, and prepare derivative works of the Aftermarket Research Databases, data and documentation described in Paragraphs E.1 and E.2 (and to manufacture, reproduce, and have reproduced such derivative works), subject to the third-party consents described therein and any agreement(s) described in Paragraph E. I above, without further compensation to Reuters and without any restriction other than as agreed to in Paragraph E.1 above or permitted in Paragraph F.5 below;

4. A perpetual, worldwide, assignable, sublicensable, transferable, royalty free, non-exclusive license of all intellectual property rights, formulations, specifications, trade secrets, know-how, and technical information embodied in the Aftermarket Research Databases or used in their compilation, production, operation, updating, or maintenance, subject to the third-party consents described above;

5. Copies of and a perpetual, worldwide, assignable, non-licensable, transferable, royalty-free, non-exclusive license to use and to prepare derivative works of (and to-manufacture, reproduce, or have reproduced such derivative works) all training and other manuals, workflow documents, business processes, data definitions, and instructions used by Reuters in connection with the Aftermarket Research Databases; and

6. At the option of the Acquirer, copies of and a perpetual, worldwide, assignable, non-licensable, transferable, royalty-free, non-exclusive license to use and to prepare derivative works of (and to manufacture, reproduce, or have reproduced such derivative works) the following software (including source code and all documentation relating thereto):

i. All software used to compile, produce, operate, update, or maintain the Aftermarket Research Databases, including without limitation software for collection, aggregation, normalization, standardization, updating, indexing, or tagging of Aftermarket Research (including any software component used to implement ''embargo'' periods, to block certain classes of users from accessing certain subsets of Aftermarket Research, or for purchase tracking, reporting and billing), and

ii. Any improvements, research or developments regarding the software described in subparagraph 6(i) above in existence at any time between January 1, 2007 and the Closing Date;

7. To the extent assignable as set forth in Section N.H of the Final Judgment, all contracts for the supply of Aftermarket Research used by Reuters in the compilation, production, operation, updating, or maintenance of the Aftermarket Research databases; and

8. A license to redistribute updates, additions, or future versions of any Aftermarket Research described in Schedule 5, on the most favorable (to the redistributor) terms, including royalty rate, then provided by the owner of such Aftermarket Research to any other redistributor as of the Closing Date.

F. *Exclusions:* The Reuters Aftermarket Research Divestiture Assets do not include:

1. Any commercially-available hardware or software (including any superseded hardware or software for which more recent compatible versions are available), except to the extent of custom software modifications made by or for Reuters;

2. Any Reuters trademarks, service marks or brands or any licenses thereto (including without limitation any rights to use the names ''Reuters'' or ''Multex,'' alone or in connection with any of the Reuters Aftermarket Research Divestiture Assets);

3. Any Reuters Instrument Codes or license(s) to use or distribute such codes or any other proprietary identification systems of Reuters that are used to produce Reuters offerings other than Aftermarket Research and that are not necessary to the compilation, production, operation, updating, or maintenance of the Aftermarket Research Databases;

4. Customer contracts, customer lists, or customer account information other than (i) information about contributors' embargo periods and billing arrangements as described in Paragraph E.2 above or (ii) information needed to effectuate the assignment of contracts in E.7 above; and

5. Where Reuters uses any formulation, specification, trade secret, software program, patent, or source data (other than the contents of the Aftermarket Research Database) described above substantially in the production or distribution of offering(s) other than Aftermarket Research, Defendants may limit the Acquirer's transferable license to use of such intellectual property solely in activities relating to the field of Aftermarket Research.

G. General Exclusions: The Divestiture Assets do not include:

1. Land and buildings;

2. Goodwill;

3. Advertising materials;

4. Backup or archival copies of software, data or documents to the extent they duplicate the materials being delivered to the relevant Acquirer(s) pursuant to Paragraphs A, C or E;

5. Personnel other than such employees described in Schedule 2; and

6. Any obligation to support or maintain any software or other intellectual property transferred to the Acquirer except as set forth herein or in any agreement for transitional services described in Section IV of the Final Judgment or in the Asset Preservation Stipulation and Order entered by this Court.

H. For the avoidance of doubt, the parties shall not be required to divest any desktop product, including RMDS, ThomsonOnc, Thomson Datastream, Reuters Knowledge desktop interface, or Reuters 3000Xtra, except any component thereof to the limited extent, if any, that such component is included in the definition of Divestiture Assets, in which case such component(s) shall be subject to Paragraphs B.5, D.6, and F.5, as applicable.

SCHEDULE 2.—KEY PERSONNEL

Role	Description of role	Location (number)
1. FUNDAMENTALS [REDACTED]		
2. RESEARCH AND ESTIMATES [REDACTED]		

ADDITIONAL PERSONNEL

	Bangalore	Manila	Cardiff	Other	Total
1. FUNDAMENTALS [REDACTED]					

ADDITIONAL PERSONNEL—Continued

	Bangalore	Manila	Cardiff	Other	Total
Total					

Role	Description of role	Location (number)
2. ESTIMATES [REDACTED]		

SCHEDULE 3

[REDACTED]

SCHEDULE 4

[REDACTED]

SCHEDULE 4—Continued

SCHEDULE 5

Lipper Fact Sheets
Lipper Mutual Fund Research
Lipper Hedge Fund Research
Reuters Company Research
Reuters Investment Profiles
StockVal Research Reports*

* Discontinued in 2005.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. The Thomson Corporation and Reuters Group PLC, Defendants.

Case No.:

Competitive Impact Statement

Plaintiff United States of America, pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant The Thomson Corporation (''Thomson'') and Defendant Reuters Group PLC (''Reuters'') entered into a dual-listing agreement, dated May 15, 2007, pursuant to which Thomson will control approximately 70% of the combined businesses. The United States filed a civil antitrust Complaint on February 19, 2008, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for the distribution and sale of: (1) Fundamentals data; (2) earnings estimates data; and (3) aftermarket research reports in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would result in increased prices for customers.

At the same time the Complaint was filed, the United States also filed an Asset Preservation Stipulation and Order (''Stipulation'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest copies of Thomson's fundamentals database, Reuters' earnings estimates database, and Reuters' aftermarket research reports and all associated tangible and intangible assets necessary to operate and distribute the databases in a competitive manner (hereafter the ''Divestiture Assets''). Under the terms of the Stipulation, Defendants will take steps to ensure that the Divestiture Assets are preserved, maintained and operated as economically viable and ongoing competitive businesses.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

Thomson and Reuters are information services companies with a substantial presence in the distribution and sale of financial data, software, and associated services to financial professionals. Thomson is a Canadian corporation with its principal place of business in Stamford, Connecticut—Of Thomson's 2007 annual revenue of $7.3 billion, $2.2 billion came from the collection and distribution of a wide variety of financial data including securities prices, company profile and financial information (known as ''fundamentals''), financial news, earnings estimates, analyst research, and economic data. Thomson's leading brands include Thomson ONE terminals, FirstCall estimates and research, IIB/E/S estimates, and Worldscope fundamentals. Thomson has operations in all of the World's major markets and has customers around the globe.

Reuters is a British public limited company with its principal place of business in London, England. Though Reuters is best known to consumers through its global media brand, $3.6 billion of the approximately $3.9 billion annual revenue through September 30, 2007, came from the sale of financial data products, services, and software. Like Thomson, Reuters collects and aggregates a broad range of financial and economic data, including fundamentals data, earnings estimates data, and aftermarket research reports. Reuters' major brands include its 3000 Xtra, Trader, and Station terminals; Reuters Market Data System software for disseminating data feeds throughout enterprises; Reuters Fundamentals (formerly Multex Fundamentals); and Reuters Estimates (formerly Multex Estimates). Reuters has operations and significant revenues in all major markets around the world.

The proposed transaction, as initially agreed by Defendants on May 15, 2007, would lessen competition substantially in the markets for fundamentals data, earnings estimates data, and aftermarket research reports. This acquisition is the subject of the Complaint and proposed Final Judgment filed by the United States on February 19, 2008.

B. The Competitive Effects of the Transaction on the Relevant Markets for Fundamentals Data, Earnings Estimates Data, and Aftermarket Research Reports

1. Financial Data

Investment managers, investment bankers, traders, corporate managers, and others (''institutional financial data users'') use financial data to support investment decisions and to provide advice to their firms or clients. These data include relevant news information, pricing information on various types of investment vehicles, and descriptive and predictive data about individual companies, market sectors, and the economy. Although some financial information, such as delayed stock prices and basic news, is available for no charge on public web sites, most institutional financial data users need, and are willing to pay for, higher quality data such as real-time securities prices, real-time standardized earnings estimates, comprehensive and error-checked fundamentals data, pricing data for fixed-income securities, financial, analytic tools, and proprietary news and analysis.

Financial data firms such as Thomson and Reuters deliver financial data and other products to their institutional financial data users through a variety of distribution channels. The largest is the so-called ''terminals'' channel, whereby financial data providers package a number of different types of financial data, such as quotes and prices for a variety of financial instruments, fundamentals data, earnings estimates data, macroeconomic data, and real-time and aftermarket research: reports, as well as news, charting, and other analytic tools—These types of financial data, analytic tools, and news, sold in a variety of packaged configurations with optional content and features, are delivered through customized graphical user interfaces to institutional financial data users' desktop computers: These products are sold by subscription, generally on a per-user or enterprise basis, with pricing generally based on a single price for the bundled products and separately priced optional additions.

Financial data providers like Thomson and Reuters also deliver financial data through electronic data feeds. Some such feeds are sold directly to institutional financial data users, allowing those users to assemble their own package of financial data, analytic tools, and news; integrate the data with its own applications; and distribute the data within its own organization to users' desktops. Feeds are also sold on a wholesale basis to third parties, along with redistribution rights allowing those firms to distribute the data to their own terminal or internet-based customers. Thomson and Reuters have competed to redistribute such data to third party providers of financial data terminals to institutional financial data users; These third party providers of financial data terminals rely on access to certain types of financial data, for which Thomson or Reuters are the principal providers.

2. Relevant Product Markets

The Complaint alleges that the combination of Thomson and Reuters,—as initially agreed to by Defendants, would cause competitive harm in the markets for the distribution and sale of fundamentals data, earnings estimates data, and aftermarket research reports.

a. Fundamentals Data

Fundamentals are data concerning the financial performance and other attributes of companies, including information from financial statements, calculated financial ratios, per share data, product information, and company profile data. Fundamentals data can pertain to both publicly traded or privately held companies and both U.S. and foreign companies. Financial data providers produce their fundamentals data by harvesting ''as reported'' information from the financial statements of thousands of companies and inputting the information in a database. The as-reported financial data then undergo processes of ''normalization'' into a consistent language and format, and ''standardization'' to a common accounting convention so that institutional financial data users can compare companies across currencies, geographies, and accounting standards. Financial data providers add additional value by combining the company data with share data from stock exchanges, calculating a variety of financial ratios, error-checking the data, and maintaining electronic distribution systems to reach subscribers.

Institutional financial data users place significant value on fundamentals data that is available for a long time period using a consistent methodology. Many financial analysts and designers of electronic trading programs (sometimes known as ''algorithmic traders'') use statistical methods to decide when to buy or sell securities. Such institutional financial data users rely on the availability of many years of uniformly calculated, error-checked fundamentals data with which to develop and test their statistical models.

Fundamentals data constitute a relevant antitrust market under section

7 of the Clayton Act. A hypothetical monopolist of fundamentals data would be able to impose a small but significant, non-transitory increase in price without losing sufficient sales to make the price increase unprofitable.

b. Earnings Estimates Data

An earnings estimate is a prediction of a company's earnings, often expressed in terms of quarterly or yearly earnings per share. Financial data providers collect earnings estimates from broker reports on an ongoing basis. Collecting earnings estimates data involves obtaining the research reports from a wide range of brokerage houses and other financial institutions. Some firms maintain databases of published earnings estimates going back years or decades. Errors in the data are corrected, and as-reported data is normalized according to common accounting conventions. Financial data providers also calculate various consensus estimates across industries or sectors. These functions add significant value.

Institutional financial data users use earnings estimates data when they decide whether to trade or invest in individual securities. Some institutional financial data users use historical earnings estimates data to evaluate investment strategies. For example, an analyst with a quantitative model for evaluating stock investments may back-test the proposed model with ten years of earnings history data to determine whether the model would have accurately predicted past price movements.

The distribution and sale of earnings estimates data is a relevant antitrust market under Section 7 of the Clayton Act. A hypothetical monopolist in the distribution of earnings estimates data would be able to impose a small but significant, non-transitory increase in price without losing sufficient sales to make the price increase unprofitable.

c. Aftermarket Research Reports

Research reports are detailed research documents prepared by analysts at investment banks and brokerage firms which evaluate the prospects of specific securities. These reports explain analysts' opinions and include financial projections, such as the company's projected earnings per share of stock at the end of the company's next fiscal quarter.

A financial institution typically provides research reports to its customers immediately, so that customers can use the research in trading—Such customers may obtain reports through a financial data terminal, by email, or from authorized password-protected websites. Later, after an embargo period of days or weeks, banks and brokerages typically allow their reports to be released, sometimes for a fee, to other third parties.

Financial data providers aggregate and distribute research reports from hundreds of investment banks and brokerages, distribute them in real-time to entitled customers of the authoring investment banks and brokerages upon publication, and offer to sell them to other third parties once they are no longer embargoed (i.e., in the ''aftermarket''). As relevant here, in order to provide their aftermarket research distribution services, financial data providers have developed infrastructure including a database of the reports and an electronic distribution system. These finis also create and maintain indices, tables of contents, and search tools so that third parties interested in purchasing research in the aftermarket can locate and compare the research reports available for purchase without having to contact individual banks and brokerages.

The distribution and sale of aftermarket research reports constitutes a relevant antitrust market under section 7 of the Clayton Act. A hypothetical monopolist in the distribution and sale of such reports would be able to impose a small but significant, non-transitory increase in price without losing sufficient sales to make the price increase unprofitable.

3. Relevant Geographic Market

Fundamentals data, earnings estimates data, and aftermarket research reports are purchased and sold throughout the world by firms that offer their products on a global basis. The world constitutes a relevant geographic market for the distribution and sale of fundamentals data, earnings estimates data, and aftermarket research reports.

4. Anticompetitive Effects

a. Fundamentals Data

Defendants are two of the world's top four providers of fundamentals data. Their products, Thomson Worldscope and Reuters Fundamentals, are highly regarded and well-accepted among institutional financial data users, including investment bankers, traders, money managers, and corporate managers. For institutional financial data users who require global coverage and significant historical content, Thomson's and Reuters' fundamentals products are each others' closest competitive substitutes. The loss of head-to-head competition between Thomson and Reuters will make it likely that Thomson will unilaterally increase the price of fundamentals data. The combined firm likely would increase price both to institutional financial data users to whom they sell fundamentals data directly, either via data feed or as part of a financial data terminal product sold by Thomson or Reuters, as well as to institutional financial data users to whom Thomson and Reuters sell indirectly, via resellers that offer financial data terminals in competition with Thomson and Reuters. The combined firm would have the incentive and ability to increase the cost of data sold to resellers, or to discontinue such supply of fundamentals data altogether.

The response of other financial data providers will not prevent or undo the competitive harm that will likely result from the proposed merger. To the extent other providers rely on fundamentals data acquired from Thomson or Reuters, the combined firm would control the cost and availability of such data. Responses by firms with independent access to fundamentals data also would be unlikely to prevent or undo the transaction's competitive share. A significant number of institutional financial data users regard the products of Thomson and Reuters as their first and second choices when purchasing fundamentals data, and consider fundamentals data products offered by other financial data providers to be distant third choices. An insufficient number of institutional financial data users would switch to a competing fundamentals data product to defeat a price increase imposed unilaterally by the merged firm. Nor would entry or expansion by other financial data providers be sufficient to defeat the likely anticompetitive effects of Thomson's proposed acquisition of Reuters because entry into the market for fundamentals data is difficult, time consuming and costly.

Thomson and Reuters currently constrain each others' prices in the market for fundamentals data, and the elimination of competition between them will cause competitive harm in the form of an increased likelihood of higher prices and reduced quality for fundamentals data in violation of section 7 of the Clayton Act.

b. Earnings Estimates Data

Defendants are two of the three largest suppliers of earnings estimates data in the world, with a combined market share in excess of 70%. Moreover, for institutional financial data users that require earnings estimates data with broad, global, and historical coverage,

Defendants' earnings estimates products are each others' closest competitive substitutes. The loss of head-to-head competition between Thomson and Reuters will make it likely that Thomson will unilaterally increase the price of earnings estimates data. The combined firm likely would increase the price of earnings estimates data both to institutional financial data users to whom they sell estimates data directly, either via data feed or as part of a financial data terminal product sold by Thomson or Reuters, as well as to institutional financial data users to whom Thomson and Reuters sell indirectly, via resellers that offer financial data terminals in competition with Thomson and Reuters. The combined firm would have the incentive and ability to increase the cost of data sold to resellers, or to discontinue such supply of earnings estimates data altogether.

The response of other financial data providers will not prevent or undo the competitive harm that will likely result from the proposed merger. To the extent other financial data providers rely on earnings estimates data acquired from Thomson or Reuters, the combined firm would control the cost and availability of such data. Responses by firms with independent access to earnings estimates data also would be unlikely to prevent or undo the transaction's competitive harm. A significant number of institutional financial data users regard the products of Thomson and Reuters as their first and second choices when purchasing earnings estimates data, and consider earnings estimates data offered by other financial data providers to be distant third choices. An insufficient number of institutional financial data users would switch to a competing earnings estimates data product to defeat an anticompetitive price increase. Nor would entry or expansion by other financial data providers be sufficient to defeat the likely anticompetitive effects of Thomson's proposed acquisition of Reuters because entry into the market for earnings estimates data is difficult, time consuming and costly.

Thomson and Reuters currently constrain each others' prices in the market for earnings estimates data, and the elimination of competition between them will cause competitive harm in the form of an increased likelihood of higher prices and reduced quality for earnings estimates data in violation of section 7 of the Clayton Act.

c. Aftermarket Research Reports

Defendants are the number one and two distributors of aftermarket research reports in the world, with a combined market share in excess of 90%. Both are significantly larger than the third largest distributor of aftermarket research reports. Thomson and Reuters are each others' two closest substitutes in the distribution and sale of aftermarket research reports. The loss of head-to-head competition between Thomson and Reuters will make it likely that Thomson will unilaterally increase the price of aftermarket research reports.

The responses of other financial data providers would not prevent or undo the competitive harm that will likely result from the proposed merger. Other firms lack the requisite relationships with hundreds of investment banks and brokerage fines and a comprehensive collection of research reports, which is both highly valued by institutional financial data users and extremely costly to duplicate. A significant number of financial data users regard the products distributed by Thomson and Reuters as their first and second choices when purchasing aftermarket research reports, and consider aftermarket research report distribution offered by other financial data providers to be distant third choices. An insufficient number of institutional financial data users would switch to a competing aftermarket research report distributor to defeat a price increase imposed unilaterally by the merged firm. Nor would entry or expansion by other financial data providers be sufficient to defeat the likely anticompetitive effects of Thomson's proposed acquisition of Reuters because entry into the market for aftermarket research reports is difficult, time consuming, and costly.

Thomson and Reuters currently constrain each others' prices in the market for aftermarket research reports, and the elimination of competition between them will cause competitive harm in the form of an increased likelihood of higher prices and reduced quality for aftermarket research reports in violation of section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

A. The Divestiture Assets

The Divestiture Assets, described in detail in Schedule 1 to the proposed Final Judgment, include all of the assets necessary for an Acquirer(s) that possesses the capability to service institutional financial data users to provide independent and economically viable competition to the merged firm in the markets for distribution and sale of fundamentals data, earnings estimates data, and aftermarket research reports. The sale of the Divestiture Assets to a qualified Acquirer(s) will thus remedy the anticompetitive effects alleged in the Complaint.

The Divestiture Assets have been carefully tailored to maintain the level of competition that currently exists while avoiding significant and unnecessary disruption for Defendants' customers that purchase bundled terminal services and respecting the intellectual property rights of third parties. The Divestiture Assets include (1) Intellectual property (copies of databases, along with software and technical information), (2) rights to hire necessary personnel, (3) assignment of contributor contracts, (4) assignment of certain customer contracts that will provide the Acquirer(s) access to an on-going revenue stream, and (5) a variety of transitional support services. Specifically, the Defendants are required to divest copies of the source databases of (1) Thomson's Worldscope fundamentals products, (ii) Reuters' earnings estimates products, and (iii) Reuters' aftermarket research products (which together encompass all of the data and/or research contained in the databases used by Thomson or Reuters to compete in the relevant markets), along with all tangible and intangible assets that an Acquirer(s) would need to operate and maintain the databases and promptly use them to produce competitively viable fundamentals, earnings estimates, and aftermarket research products. The proposed Final Judgment requires the Defendants to provide the Acquirer(s) rights to intellectual property, such as software or trade secrets, used to produce and maintain fundamentals data, earnings estimates data, or aftermarket research reports, even if Thomson or Reuters also use those assets for products that are not being divested. With respect to those Divestiture Assets that Defendants make substantial use of for products other than those relating to fundamentals, earnings estimates, and aftermarket research, the Defendants may restrict the use by the Acquirer(s) of such assets to the field of fundamentals, earnings estimates, and aftermarket research, as appropriate. Finally, the proposed Final Judgment does not require the Defendants to divest certain tangible and intangible assets used in connection with the Defendants' fundamentals, earnings estimates, and aftermarket research products the divestiture of which would not advance the ability of the Acquirer(s) to compete effectively in the pertinent market, given that the Acquirer(s) would have its own access

to such assets. For example, the Defendants need not divest commercially available hardware and software, their trademarks, or land and buildings.

B. Selected Provisions of the Proposed Final Judgment

The proposed Final Judgment requires Defendants to take several steps to assist the Acquirer(s) in using the Divestiture Assets in order to enable the Acquirer(s) to provide prompt and effective competition in the relevant markets. Paragraph IV(C) provides that the Defendants must provide the Acquirer(s) with information about key personnel, identified in Schedule 2 to the proposed Final Judgment, involved in operating the Divestiture Assets, so that the Acquirer(s) can make offers of employment to such persons. That Paragraph also prohibits Defendants from interfering with any negotiations by the Acquirer(s) to employ such personnel Paragraph IV(D) prohibits the Defendants from re-hiring any such persons for a period of 18 months from the date of filing of the Complaint.

Because the Acquirer(s) may need assistance in developing a detailed understanding of the databases and software comprising the Divestiture Assets, and may need time to develop their own capabilities to update the databases on an ongoing basis, Paragraph IV(K) of the proposed Final Judgment gives the Acquirer(s) the option to enter into a transitional support agreement for up to one year for aftermarket research reports and up to 1.8 months for fundamentals and earnings estimates data. At the option of the Acquirer(s), such a transitional support agreement may require the combined firm to provide consulting and support services as well as regular updates to the databases comparable to those made by the combined firm to its own comparable databases.

In order to enable the Acquirer(s) to become a viable competitor in the markets for earnings estimates data and aftermarket research, Paragraph N(G) of the proposed Final Judgment, for a period of two (2) years, prohibits Defendants from entering into any new exclusive agreements with third-party contributors of such data, and limits the terms and conditions under which Defendants may renew existing exclusive agreements with third-party contributors of such data.

Other provisions of the proposed Final Judgment also take into account that the fundamentals, earnings estimates, and aftermarket research databases to be divested contain material contributed by third parties over which those third parties assert continuing intellectual property rights pursuant to contracts with the Defendants. The proposed Final Judgment gives the Acquirer(s) access to such third-party contributed data in a manner that respects the third parties' rights. Specifically, Paragraph IV(H), regarding earnings estimates data and aftermarket research reports, requires that the Defendants use their best efforts to assign to the Acquirer(s) all contracts with third parties for contributed data. Where the Defendants obtain assignment of the contribution contracts to the Acquirer(s) (or otherwise obtain the third parties' consent), copies of the third-party content will pass to the Acquirer(s) as part of the Divestiture Assets. Where such assignments or other third-party consent are not obtained on or before the sale of the applicable Divestiture Assets, Defendants must continue to use their best efforts to obtain assignments of such contracts until the earlier of (1) The date on which the Acquirer(s) of the Reuters earnings estimates and aftermarket research databases have contribution agreements with eighty percent (80%) of all third-party contributors and 22 of the 25 most significant contributors (identified in Schedules 3 and 4 to the proposed Final Judgment) that provided earnings estimates data and/or aftermarket research reports to Reuters pursuant to contract as of the filing date of the Complaint; or (2) two years after the date of entry of the Final Judgment. Paragraph IV(I) contains similar requirements relating to the assignment of third-party contracts for fundamentals data. To the extent necessary third-party consents for fundamentals data, earnings estimates data, or aftermarket research reports are not obtained before Defendants complete the sale of the applicable Divestiture Assets, Paragraph IV(J) obligates the Defendants to maintain copies of third-party content, which will be provided to the Acquirer(s), with all intervening updates, at the same time as needed consents are obtained.

Paragraph V of the proposed Final Judgment permits the appointment of a Monitoring Trustee by the United States in its sole discretion and in good faith consultation with the European Commission, subject to the Court's approval. If appointed, the Monitoring Trustee will have the power and authority to monitor Defendants' compliance with the terms of the Final Judgment and the Stipulation. The Monitoring Trustee will have access to all personnel, books, records, and information necessary to monitor such compliance, and will serve at the cost and expense of Thomson. The Monitoring Trustee will file monthly reports with the United States and the Court setting forth Defendants' efforts to comply with their obligations under the proposed Final Judgment and the Stipulation.

1. The European Commission (''EC'') conducted a parallel investigation of the proposed acquisition of Reuters by Thomson. To remedy competition concerns in Europe, the Defendants have entered into Commitments to the EC to restore competition in certain markets, including those for fundamentals data, earnings estimates data, and aftermarket research reports. Although the substantive provisions of the proposed Final Judgment and the EC Commitments are much the same, there will be a need for consultations between the Department of Justice and EC regarding certain events such as the selection of the Monitoring Trustee, Old Divestiture Trustee, if necessary, and approval of the Acquirer(s).

When the United States seeks a divestiture to remedy an antitrust harm in the context of an acquisition, it requires that the divestiture be completed within the shortest period of time reasonable under the circumstances. Paragraph IV(A) of the proposed Final Judgment requires the Defendants to complete the sale of the Divestiture Assets within 60 calendar days after the filing of the Complaint, or five calendar days after notice of the entry of this Final Judgment by the Court, whichever is later.

2. The proposed Final Judgment also provides that this 60-day time period may be extended by the United States in its sole discretion for a total period not exceeding 60 calendar days, and that the Court will receive prior notice of any such extension.

Sale of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the assets will remain viable and the divestiture of the assets will remedy the competitive harm alleged in the Complaint. The assets must be divested in such a way as to satisfy the United States in its sole discretion that the assets can and will be used by the Acquirer(s) as part of a viable, ongoing business that can compete effectively in the relevant markets. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

Paragraph VI of the proposed Final Judgment provides that, in the event the Defendants do not accomplish the divestitures within the periods prescribed in the proposed Final Judgment, the Court will appoint a Divestiture Trustee, selected by the United States in good faith consultation with the European Commission, to effect the divestitures. If a Divestiture Trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the Divestiture Trustee. The Divestiture Trustee's fee arrangement will be structured so as to provide an incentive for the Divestiture Trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the Divestiture Trustee will file monthly reports with the Court and the United States setting forth his or her efforts to accomplish the divestitures. At the end of six months, if the divestitures have not been accomplished, the Divestiture Trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the Divestiture Trustee's appointment.

Taken together, the assets to be divested and the other obligations imposed by the proposed Final Judgment will enable a qualified Acquirer(s) with a demonstrated ability to distribute financial data to institutional financial data users to provide prompt and effective competition with the combined firm in the markets for fundamentals data, earnings estimates data, and aftermarket research, both by distributing such data directly to institutional financial data customers on a stand-alone basis, and by ensuring that providers of financial data terminal services have access to such data front a source other than the combined fine and are thus able to distribute such data to institutional financial data customers that purchase such data through financial data terminals.

C. Asset Presentation: Stipulations and Order

Defendants have entered into the Stipulation, filed simultaneously with the Court, to ensure that, pending the divestitures, the Divestiture Assets are maintained as ongoing, economically viable, and active business concerns, and Defendants will accomplish the divestitures required by the proposed Final Judgment. The Stipulation will ensure that the Assets are preserved and maintained in a condition that allows the divestitures to be effective. It specifically requires that the Defendants not take any steps to disrupt the provision of data to firms that resell such data in competition with them until the Acquirer(s) are able to be a viable alternative source for such data. It also requires that the parties independently price the stand-alone sale of any relevant product; Defendants' compliance with these provisions will be monitored by the independent Monitoring Trustee and enforced by the Court.

The Stipulation does not more broadly require the Defendants to operate their own products that include the databases to be divested as separate and independent businesses: The United States concluded in the unique circumstances of this case that such a requirement was not necessary to ensure effective relief or protect competition pending the completion of the required divestitures.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment will have no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: James J. Tierney, Chief, Networks and Technology Enforcement Section, Antitrust Division, United States Department of Justice, 600 E Street, NW., Suite 9500, Washington, DC 20530.

The proposed Fit-tat Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Thomson's acquisition of Reuters. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the distribution and sale of fundamentals data, earnings estimates data and aftermarket research reports. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under The APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies

actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(c)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to 'broad discretion to settle with the defendant within the reaches of the public interest,'' *United States* v. *Microsoft Corp.*; 56 F.3d 1448, 1461 (D.C. Cir. 1995); see generally *United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C 2007) (assessing public interest standard under the Tunney Act).

3. The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C.. 16(e)(1) (2006); see also SBCCommc'ns, 489 F. Supp. 2d at 1 t (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review);

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v *BNS,* Inc., 858 F.2d 456, 462 (9th Cir. 1988) (citing United States', Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981)); see also.Microsoft, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.*, 152 F. Supp. 2d 37.40 (D.D.C. 2001). Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).4 In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the ''remedies perfectly match the alleged violations' '' SBC Commc'ns, 489 F. Stipp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies'); *United States* v. *Archer-Daniels , Midland Co.*, 272 F. Supp., 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

4. Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree'); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3 d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd *sub norn. Maryland* v. *United States, 460 U.S. 100 1 (1983); see* also *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp.. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' SBCCoinmc'ns, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue: Id. at 1459–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBCL'ornmc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process-.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp, 2d at 11.

5. See *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973)(''Where the public interest can be meaningfully evacuated simply on the basis of beefs and oral arguments, that

is the approach that should be utilized.''); United States v. Hid-Ant. Dairymen, Inc., 1977–1 Trade Cas. (CCH) § 61,508; at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should ... carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances'').

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: February 19, 2008.

Respectfully submitted,

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DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,630]

Llink Technologies, LLC; Brown City, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By applications dated March 3, 2008, a company official requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The denial notice was signed on January 29, 2008, and published in the **Federal Register** on February 13, 2008 (73 FR 8370).

The initial investigation resulted in a negative determination based on the finding that imports of interior trim automotive components and subassemblies did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding the subject firm customers.

The Department has carefully reviewed the requests for reconsideration and the existing record and determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the applications, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 11th day of March, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

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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 *March 3 through March 7, 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–62,582; Smurfit Stone, El Paso, TX: December 11, 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–62,739; Plymouth Rubber Co. LLC, Canton, MA: February 22, 2008.

TA–W–62,765; Unisys Corp., Payment Systems Division, Plymouth, MI: January 29, 2007.

TA–W–62,776; Tree Top, Inc., Cashmere Plant, On-Site Workers From Labor Ready, Cashmere, WA: January 29, 2007.

TA–W–62,844; St. George Crystal Limited, On-Site Leased Workers From Carol Harris Staffing, Jeannette, PA: February 12, 2007.

TA–W–62,935; WestPoint Home, Inc., Bed Division, Biddeford, ME: December 6, 2007.

TA–W–62,619; OEM/Erie, Inc., On-Site Leased Worker From Career Concepts Staffing Services, Erie, PA: December 13, 2006.

TA–W–62,717; EGS Electrical Group, Sola/Hevi Duty Division, Celina, TN: January 22, 2007.

TA–W–62,729; McComb Mill Manufacturing Company, Inc., McComb, MS: January 22, 2007.

TA–W–62,826; Sights Denim Systems, Inc., Henderson, KY: February 11, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,763; Joseph T. Ryerson and Son, Inc., A Subsidiary of Ryerson, Inc., Brite Line Plant, Chicago, IL: January 28, 2007.

TA–W–62,795; McNeil-PPC, Inc., McNeil Consumer, ABM Clean, Canteen, Cintas, etc., Lititz, PA: February 1, 2007.

TA–W–62,820; Huntsman International, LLC, Textile Effects Division, High Point, NC: February 5, 2007.

TA–W–62,831; Gaming Partners International USA, A Subsidiary of Gaming Partners International Corp., Las Vegas, NV: February 8, 2007.

TA–W–62,877; Rayloc Division, A Subsidiary of Genuine Parts Company, Hancock, MD: February 7, 2007.

TA–W–62,878; Murata Power Solutions, Formerly Known as C and D Technologies, Inc., Tucson, AZ: February 19, 2007.

TA–W–62,884; Hart and Cooley, Inc., A Subsidiary of Tomkins PLC, On-Site Leased Workers From West Staff, Tucson, AZ: February 21, 2007.

TA–W–62,903; Perry Manufacturing Company, Mount Airy, NC: February 14, 2007.

TA–W–62,906; Von Weise, Inc., Nappanee, IN: February 25, 2007.

TA–W–62,741; Corel, Inc., Eden Prairie, MN: January 22, 2007.

TA–W–62,747; RM Acquisition, LLC, d/b/a Rand McNally, Irvine, CA: January 25, 2007.

TA–W–62,748; Panasonic Primary Battery Corporation of America, Columbus, GA: January 25, 2007.

TA–W–62,788; Amity/Rolfs, Inc., Subsidiary of Tandy Brands Accessories, Inc., West Bend, WI: January 31, 2007.

TA–W–62,836; A. T. Cross Company, Qualified Resources, Lincoln, RI: March 11, 2008.

TA–W–62,883; Alcatel-Lucent, Inc., Lucent Technologies Div., Columbus, OH: April 18, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–62,772; Ramtex Yarns and Fabrics, LLC, Defender Services, Ramseur, NC: March 14, 2008.

TA–W–62,810; BioTech Industries, LLC, Newton, NC: February 6, 2007.

TA–W–62,874; Fine Pitch Technologies, Inc., A Division of Solectron, On-Site Leased Workers of Aerotech, Wilmington, MA: February 20, 2007.

TA–W–62,900; Ibiden Circuits of America, Manpower, Elgin, IL: February 22, 2007.

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.

None.

The Department has determined that criterion (2) of Section 246 has not been

met. Workers at the firm possess skills that are easily transferable.

TA–W–62,582; Smurfit Stone, El Paso, TX.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,721; Kirby Lester, LLC, Stamford, CT.

TA–W–62,858; Household Utilities, Inc., Kiel, WI.

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–62,637; Arcelor Mittal USA Weirton, Inc., Division of Arcelor Mittal USA, Inc., Weirton, WV.

TA–W–62,674; Fiber Yarns and Fillers, Inc., Philadelphia, PA.

TA–W–62,702; Merix Corporation, On-Site Leased Workers From Kelly Services, Wood Village, OR.

TA–W–62,742; Edgebuilder Wall Panels, Inc., Formerly Norse Building Systems, Ladysmith, WI.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–62,921; Advance America, Reading, PA.

The investigation revealed that criteria of Section 222(b)(2) have 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 *March 3 through March 7, 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: March 11, 2008.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–5727 Filed 3–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 31, 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 March 31, 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 12th day of March 2008.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX—.48 TAA PETITIONS INSTITUTED BETWEEN 3/3/08 AND 3/7/08

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
62928	SAS Shoemakers (State)	Pittsfield, ME	03/03/08	02/15/08
62929	EMS Springhill—Delphi Plant (Comp)	Columbia, TN	03/03/08	02/20/08
62930	ACE Style Intimate Apparel, Inc. (Wkrs)	New York, NY	03/03/08	02/19/08
62931	Laser Tek Industries, Inc. (Comp)	Richmond, IL	03/03/08	02/29/08
62932	Keeper Corporation (State)	North Windham, CT	03/03/08	02/28/08
62933	Gordon Garment (Comp)	Bristol, VA	03/03/08	02/28/08
62934	Steel Craft Industries, LLC (Comp)	Miami, OK	03/03/08	02/29/08
62935	WestPoint Home, Inc. (Comp)	Biddeford, ME	03/03/08	02/29/08
62936	Bradford Dyeing Association, Inc. (Comp)	Bradford, RI	03/03/08	02/28/08
62937	Fulflex Elastomerics Worldwide (Comp)	Greeneville, TN	03/03/08	02/28/08
62938	Alcatel-Lucent (Comp)	North Andover, MA	03/03/08	02/28/08
62939	Johnson Rubber Company (Union)	North Baltimore, OH	03/03/08	03/01/08
62940	Two Star Dog, Inc. (State)	Berkeley, CA	03/04/08	02/05/08
62941	PMI/Diversco (State)	Duluth, GA	03/04/08	03/03/08
62942	Hi Specialty America (Comp)	Irwin, PA	03/04/08	02/29/08
62943	Bekaert Corporation (IUECWA)	Rome, GA	03/04/08	02/27/08

APPENDIX—.48 TAA PETITIONS INSTITUTED BETWEEN 3/3/08 AND 3/7/08—Continued

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
62944	Trius Products, LLC (Comp)	Cleves, OH	03/04/08	03/03/08
62945	Federal Mogul (IBEW)	Boyertown, PA	03/04/08	03/03/08
62946	Plaster Group/Pioneer Tool and Mold (16505)	Erie, PA	03/04/08	02/03/08
62947	Norcal Pottery (Comp)	Richmond, CA	03/04/08	02/27/08
62948	Superior Studs and Glide Stud Mill (Wkrs)	Roseburg, OR	03/04/08	02/25/08
62949	Freescale Semiconductor, Inc. (Wkrs)	Tempe, AZ	03/04/08	02/27/08
62950	Key Plastics (Wkrs)	York, PA	03/04/08	03/03/08
62951	Best King Fashions, Inc. (Wkrs)	New York, NY	03/05/08	01/22/08
62952	Newpage Corporation (Comp)	Niagara, WI	03/05/08	03/03/08
62953	Sensata Technologies (formerly Airpax) (State)	Frederick, MD	03/05/08	03/03/08
62954	Fiesta Gas Grills, LLC (Wkrs)	Dickson, TN	03/05/08	02/22/08
62955	Pitney Bowes (State)	Danbury, CT	03/05/08	03/04/08
62956	General Mills, Inc. (Comp)	Poplar, WI	03/05/08	03/03/08
62957	Lear Corporation (Comp)	Louisville, KY	03/05/08	02/28/08
62958	Auburn Hosiery Mills, Inc. (Comp)	Auburn, KY	03/05/08	02/28/08
62959	O'Sullivan Films, Inc. (Comp)	Lebanon, PA	03/05/08	03/04/08
62960	Russell Corporation (Comp)	Sussex, WI	03/05/08	03/05/08
62961	Dura Automotive Systems, Inc. (Comp)	Moberly, MO	03/05/08	02/27/08
62962	Copeland Corporation (Rep)	Shelby, NC	03/06/08	02/28/08
62963	Lexington Rubber Group/Lexington Inc. (IUECWA)	Vienna, OH	03/06/08	03/04/08
62964	Starlo Fashions/G-III Fashions (Comp)	New York, NY	03/06/08	02/19/08
62965	K-Ply, Inc. (IAMAW)	Port Angeles, WA	03/06/08	03/03/08
62966	Sanmina-Sci, Inc. (Comp)	Rapid City, SD	03/06/08	02/27/08
62967	Riverside Manufacturing Company (State)	Wadley, GA	03/06/08	03/05/08
62968	The Longaberger Company (Wkrs)	Newark, OH	03/06/08	03/02/08
62969	Tyco Electronics (Comp)	Rochester, NY	03/07/08	02/29/08
62970	Maine Moccasin (State)	Lewiston, ME	03/07/08	03/05/08
62971	Southern Furniture, Inc. (Comp)	Conover, NC	03/07/08	03/04/08
62972	Edwards Vacuum, Inc. (Rep)	Tempe, AZ	03/07/08	03/03/08
62973	Griffin Manufacturing (Comp)	Fall River, MA	03/07/08	03/05/08
62974	Legget and Platt, Inc. (Wkrs)	Ferndale, MI	03/07/08	02/15/08
62975	Catherine Coatney Design (Wkrs)	San Francisco, CA	03/07/08	03/06/08

[FR Doc. E8–5726 Filed 3–20–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,232]

Philips Lighting Company; Lamps Division, Danville, KY; Notice of Revised Determination on Reconsideration

On January 2, 2008, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Philips Lighting Company, Lamps Division, Danville, Kentucky (subject firm). The Department's Notice of Determination was published in the **Federal Register** on January 11, 2008 (73 FR 2068). The subject firm produces glass envelopes used in incandescent lamps and glass envelopes used in (Christmas) ornaments. Workers are not separately identifiable by product line.

The initial negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm (issued on November 9, 2007) was based on the Department's findings that, during the relevant period, the subject firm did not shift glass envelope production to a foreign country, and neither the subject firm nor its customers imported articles like or directly competitive with those produced by the subject firm.

The request for administrative reconsideration filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (Union), dated December 20, 2007, alleges that ''the production of the company's incandescent bulbs would be transferred to the company's Monterey, Mexico facility;'' that the subject firm ''manufactures and imports Compact Fluorescent Light Bulbs in Poland, which competes with incandescent bulbs;'' that two major competitors ''manufacture Compact Fluorescent light bulbs in China and import these products to the U.S.;'' and that the subject firm's single largest customer of glass envelopes used in ornaments ceased purchasing from the subject firm ''because that company now imports all of their finished goods.''

The Union's support documentation included the following: a copy of an August 10, 2007 letter from a company official to the Union (with a memorandum attached); a copy of a September 10, 2007, letter from a company official to the Union; an undated document titled ''Partial Sampling of Legislation Impacting Incandescent Lamps;'' a copy of an article titled ''Is It Time to Ban the Bulb?'' (TED Magazine, March 2007); a copy of an article titled ''Lamps NA Briefing'' (Philips, March 14, 2007); a copy of an e-mail exchange between a company official and the Union on December 19, 2007; and a copy of an e-mail exchange between a company official and the Union on December 20, 2007.

Under Section 223(a) of the Trade Act of 1974, as amended, TAA certification may be issued for primary workers if the following criteria are met:

Section (a)(2)(A)—

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or

partially separated, or are threatened to become totally or partially separated; *and*

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; *and*

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

Section (a)(2)(B)—

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; *and*

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; *and*

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States; *or*

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; *or*

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

During the reconsideration investigation, the Department confirmed that the subject workers produce glass envelopes used in incandescent lamps and glass envelopes used in ornaments, and that the workers are not separately identifiable by product line.

The Department also confirmed that the subject firm imports neither glass envelopes for incandescent lamps nor glass envelopes used in ornaments, and that the article imported into the United States by the subject firm are finished incandescent lamps (an article neither like nor directly competitive with the glass envelopes produced by the subject workers). As such, the Department determines that the criteria set forth in Section (a)(2)(A) has not been met.

The Department also confirmed that the glass envelopes used in incandescent lamps produced at the Danville, Kentucky facility have always been sent to an affiliated facility in Mexico for further processing (into incandescent lamps), that the glass envelopes produced by the subject workers are being replaced by envelopes produced by both domestic and foreign vendors (which are sent to Mexico to be further processed into incandescent lamps), and that the subject firm did not shift production of glass envelopes used in ornaments to a foreign country. As such, the Department determines that the criteria set forth in Section (a)(2)(B) has not been met.

Although the Union's request for reconsideration did not allege that the subject workers were adversely affected as secondary workers (workers of a firm that supply component parts to a TAA-certified company or finished or assembled for a TAA-certified company), the Department expanded the investigation to determine whether they would be eligible to apply for TAA on this basis. Such a certification, under Section 223(b)(2), must be based in the certification of a primary firm.

The reconsideration investigation revealed that the subject firm supplies component parts for glass Christmas ornaments and that the loss of business with this manufacturer contributed importantly to the separation or threat of separation of workers at the subject firm. As such, the Department determines that Section 223(b)(2) has been met.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA. The Department has determined in this case that the group eligibility requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the information obtained during the reconsideration investigation, I determine that workers and former workers of Philips Lighting Company, Lamps Division, Danville, Kentucky, qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended.

In accordance with the provisions of the Act, I make the following certification:

''All workers of Philips Lighting Company, Lamps Division, Danville, Kentucky, who became totally or partially separated from employment on or after September 28, 2006, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 11th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–5729 Filed 3–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,749]

Industrial Wire Products, Sullivan, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 28, 2008 in response to a worker petition filed on behalf of workers of Industrial Wire Products, Sullivan, Missouri.

The petition regarding the investigation has been deemed invalid. One of the petitioners was separated from employment more then twelve months prior to the petition date. Additionally, each of the petitioners provided separation dates that would render them covered by a certification previously issued for this worker group. All workers of Industrial Wire Products, Inc., Sullivan, Missouri, separated from employment on or after October 4, 2004 through November 14, 2007, are eligible to apply for worker adjustment assistance (TAA) and alternative trade adjustment assistance (ATAA) under petition number TA–W–58,079.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 11th day of March 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–5731 Filed 3–20–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,889]

Robert Bosch Tool Corporation, Lincolnton, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 25, 2008, in response to a worker petition filed by a company official on behalf of workers at Robert Bosch Tool Corporation, Lincolnton, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–5725 Filed 3–20–08; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

NOTICE: (08—023).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA, Sharon Mar, Office of Information and Regulatory Affairs; Room 10236, New Executive Office Building, Washington, DC 20503, (202) 395–6466, *Sharon_Mar@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Contractors performing research and development are required by statutes, NASA implementing regulations, and OMB policy to submit reports of inventions, patents, data, and copyrights, including the utilization and disposition of same. The NASA New Technology Summary Report reporting form is being used for this purpose.

II. Method of Collection

NASA FAR Supplement clauses for patent rights and new technology encourage the contractor to use an electronic form and provide a hyperlink to the electronic New Technology Reporting Web (eNTRe) site *http://invention.nasa.gov*. This Web site has been set up to help NASA employees and parties under NASA funding agreements (i.e., contracts, grants, cooperative agreements, and subcontracts) to report new technology information directly, via a secure Internet connection, to NASA.

III. Data

Title: NASA FAR Supplement, Part 1827, Patents, Data, and Copyrights.

OMB Number: 2700–0052.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Number of Respondents: 1,016.

Estimated Time per Response: 812 hours × .166 + 8 hours × 407 hours = 3,391 hours.

Estimated Total Annual Burden Hours: 3,391.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Associate Chief Information Officer (Acting).

[FR Doc. E8–5693 Filed 3–20–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (08—024)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA, Sharon Mar, Office of Information and Regulatory Affairs; Room 10236, New Executive Office Building, Washington, DC 20503, (202) 395–6466, *Sharon_Mar@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE0000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is an application form to be considered for a summer internship. Students are required to submit an application package consisting of an application form, a personal essay describing career goals, a parent/guardian permission form for parents to sign approving the child's participation, and a teacher recommendation.

II. Method of Collection

NASA will utilize a Web-base application form with instructions and other application materials also on-line. However, once the application form and other application materials are down loaded and filled out, the package is mailed in to NASA.

III. Data

Title: Patents—Grants and Cooperative Agreements.

OMB Number: 2700–0048.

Type of review: Extension of currently approved collection.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Number of Respondents: 5451.

Estimated Time per Response: 4,361 negative responses/0.166 Hour, 1090 responses/8 Hours.

Estimated Total Annual Burden Hours: 9,444.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,

Associate Chief Information Officer (Acting).

[FR Doc. E8–5698 Filed 3–20–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (08–025)]

NASA Advisory Council; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council. The agenda for the meeting includes updates from each of the Council committees, including discussion and deliberation of potential recommendations. The Council Committees address NASA interests in the following areas: Aeronautics, Audit and Finance, Space Exploration, Human Capital, Science, and Space Operations.

DATES: Thursday, April 17, 2008, 8:30 a.m. to 4:15 p.m.

ADDRESSES: Bienville Room, Le Pavillon Hotel, 833 Poydras Street, New Orleans, Louisiana 70112–1040.

FOR FURTHER INFORMATION CONTACT: Mr. Paul A. Iademarco, Designated Federal Official, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1318.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: March 17, 2008.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E8–5699 Filed 3–20–08; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (1110).

Date and Time: April 17, 2008—8:30 a.m.–5 p.m.

April 18, 2008—9 a.m.–12 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Charles Liarakos, Senior Advisor, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Tel No.: (703) 292–8400.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda:

- FY '09 Budget—Life in Transition
- Biology in the Federal Science Enterprise
- Leading Edge
- Undergraduate Biology Education

Dated: March 18, 2008.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E8–5714 Filed 3–20–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Wednesday, March 26, 2008, at 8:30 a.m.; and Thursday, March 27, 2008, at 8:30 a.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

STATUS: Some portions open, some portions closed.

OPEN SESSIONS:

March 26, 2008
8:30 a.m.–9 a.m.
9 a.m.–10:30 a.m.
10:30 a.m.–11 a.m.
1 p.m.–2 p.m.
2 p.m.–3:30 p.m.
5 p.m.–5:20 p.m.

March 27, 2008
9 a.m.–9:45 a.m.
9:45 a.m.–10:15 a.m.
10:15 a.m.–12 noon
1:45 p.m.–2:30 p.m.

CLOSED SESSIONS:

March 26, 2008
11 a.m.–12 noon
3:30 p.m.–5 p.m.

March 27, 2008
8:30 a.m.–9 a.m.
1 p.m.–1:30 p.m.
1:30 p.m.–1:45 p.m.

AGENCY CONTACT: Dr. Robert E. Webber, *rwebber@nsf.gov*, (703) 292–7000, *http://www.nsf.gov/nsb/.*

MATTERS TO BE DISCUSSED:

Wednesday, March 26, 2008

CSB Task Force on Cost Sharing

Open Session: 8:30 a.m.–9 a.m.

• Approval of February Minutes.
• Task Force Chairman's Remarks.
• Discussion of Planned Roundtable Discussions on Cost Sharing.
• Discussion of Web-based Survey on Cost Sharing.

EHR Subcommittee on Science & Engineering Indicators

Open Session: 9 a.m.–10:30 a.m.
• Approval of February Minutes.
• Chairman's Remarks.
• Report on Luncheon Meeting with Government-University-Industry Research Roundtable.
• SRS Presentation on Efforts to Develop New Data and Indicators for *Science and Engineering Indicators 2010* and Beyond.
• Additional Activities Relating to *Science and Engineering Indicators 2010.*
• *Presentation on Electronic ''Digest''.*
• Presentation on State Data Tool.
• Chairman's Summary.

Committee on Strategy and Budget

Open Session: 10:30 a.m.–11 a.m.
• Approval of February Minutes.
• Committee Chairman's Remarks.
• Status Report: CSB Task Force on Cost Sharing.
• Discussion of NSF Policies regarding Limitations on the Number of Proposal Submissions to a given solicitation by a Single Institution.

CPP Subcommittee on Polar Issues

Closed Session: 11 a.m.–12 noon
• *NSB Action Item:* Request for Proposal and Award of a Support Contract for the United States Antarctic Program.

Committee on Education and Human Resources

Open Session: 1 p.m.–2 p.m.
• Approval of December 2007 Minutes.
• Committee Chairman's Remarks.
• Educational Programs and the University of Hawaii-Hilo.
• Status of Subcommittee on Science and Engineering Indicators.
• Discussion: Preparing the Next Generation of STEM Innovators.
• Board Executive Officer's Report.

Committee on Programs and Plans

Open Session: 2 p.m.–3:30 p.m.
• Approval of February Minutes.
• Committee Chairman's Remarks.
• Status Report: Subcommittee on Polar Issues.
■ Approval of February SOPI Minutes.
• *NSB Information Item:* DataNet.
• *NSB Information Item:* Science of Learning Centers (SLC) Programmatic Update.
• *NSB Information Item:* General Social Survey (GSS).
• *NSB Information Item:* Competition for the Management and Operation of the National Center for Atmospheric Research (NCAR).
• Discussion Item: Follow up to the NSB Report to Congress on Pre-construction Funding and Maintenance and Operations Costs Associated with Major Research Equipment and Facilities at the National Science Foundation.

Committee on Programs and Plans

Closed Session: 3:30 p.m.–5 p.m.
• *NSB Information Item:* High Performance Computing (HPC) Program Updates.
• *NSB Action Item:* Request for Proposal and Award of a Support Contract for the United States Antarctic Program.
• *NSB Action Items:* LIGO Operations and Maintenance/AdvLIGO Construction.

Executive Committee

Open Session: 5 p.m.–5:20 p.m.
• Approval of February Minutes.
• Executive Committee Chairman's Remarks.
• Updates or New Business from Committee Members.

Thursday, March 27, 2008

Audit and Oversight Committee

Closed Session: 8:30 a.m.–9 a.m.
• Pending Investigations.
Open Session: 9 a.m.–9:45 a.m.
• Approval of February Minutes.
• Committee Chairman's Opening Remarks.
• NSF Human Capital Management Update.
• Chief Financial Officer's Update.
• Briefing on FY 2008 Financial Statement Audit.

CPP Task Force on Sustainable Energy

Open Session: 9:45 a.m.–10:15 a.m.
• Approval of February Minutes.
• Task Force Co-Chairmen's Remarks.
• Review of February 8, 2008 Roundtable Discussion.
• Discussion of Upcoming Task Force Activities.

Committee on Programs and Plans

Open Session: 10:15 a.m.–12 noon
• Status Report: Task Force on Sustainable Energy.
• NSF Update on the Working Group on Facilitating Transformative and Interdisciplinary Research (FacTIR).
• Discussion Item: Report to Congress on Interdisciplinary Research.
• Science Presentation: ''The Breadth of NSF Mathematical and Physical Sciences''.

Plenary Executive Closed

Closed Session: 1 p.m.–1:30 p.m.
• Approval of February Minutes.
• Elections for *ad hoc* Committee on Nominating for NSB Elections.
• Approval of Alan T. Waterman Award Recipient.

Plenary Closed

Closed Session: 1:30 p.m.–1:45 p.m.
• Approval of February Minutes.
• Awards and Agreements.
• Closed Committee Reports.

Plenary Session

Open Session: 1:45 p.m.–2:30 p.m.
• Approval of February Minutes.
• Resolution to Close May 2008 Meeting.
• Chairman's Report.
• Director's Report.
• Open Committee Reports.

Russell Moy,
Attorney-Advisor.

[FR Doc. E8–5757 Filed 3–20–08; 8:45 am]
BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Renewal Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) for a period of two years.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the charter for the Advisory Committee on the Medical Uses of Isotopes for the two year period commencing on March 17, 2008 is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the ACMUI is to provide advice to NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The

members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; nuclear pharmacy; State medical regulation; patient's rights and care; health care administration; and Food and Drug Administration regulation.

FOR FURTHER INFORMATION CONTACT: Ashley Tull, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 415–5294; e-mail *Ashley.Tull@nrc.gov.*

Dated: March 18, 2008.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. E8–5788 Filed 3–20–08; 8:45 am]

BILLING CODE 7590–01–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: Form 40–F, OMB Control No. 3235–0381, SEC File No. 270–335.

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 the request for approval of extension of the previously approved collection of information discussed below.

Form 40–F (17 CFR 249.240f) is used by certain Canadian issuers to register securities pursuant to Section 12 of the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78*l*) or an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)). The information required under cover of Form 40–F can be used by security holders, investors, broker-dealers, investment banking firms, professional securities analysts and others in evaluating securities and making investment decisions with respect to securities of certain Canadian companies. All information provided to the Commission is available for public review. Information provided by Form 40–F is mandatory. Form 40–F takes approximately 427 hours per response and is filed by approximately 205 respondents. We estimate that 25% of the 427 hours per response (106.75 hours) is prepared by the issuer for a total reporting burden of 21,884 (106.75 hours per response × 205 responses).

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, 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: March 13, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5675 Filed 3–20–08; 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: Form CB, OMB Control No. 3235–0518, SEC File No. 270–457.

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 the request for extension of the previously approved collection of information discussed below.

Form CB (17 CFR 239.800) is a tender offer statement filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) (17 CFR 240.13e–4(h)(8)) and a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c) (17 CFR 240.14d–1(c)). Form CB is also used by a subject company pursuant to Exchange Act Rule 14e–2(d) (17 CFR 240.14e–2(d)). This information is made available to the public. Information provided on Form CB is mandatory. Form CB takes approximately .5 hours per response to prepare and is filed by 200 issuers annually. We estimate that 25% of the .5 hours per response (.125 hours) is prepared by issuer for an annual reporting burden of 25 hours (.125 hours per response × 200 responses).

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an 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, Virginia 22312; or send an e-mail: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 13, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5676 Filed 3–20–08; 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: Regulations 14D and 14E, OMB Control No. 3235–0102, SEC File No. 270–114 Schedule 14D–9.

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 the request for extension of the previously approved collection of information discussed below.

Regulation 14D (17 CFR 240.14d–1—240.14d–11) and Regulation 14E (17 CFR 240.14e–1—240.14e–8) and related Schedule 14D–9 (17 CFR 240.14d–101) require information important to security holders in deciding how to respond to tender offers. This information is made available to the public. Information provided on Schedule 14D–9 is mandatory. Schedule 14D–9 takes approximately 258 hours per response to prepare and is filed by 600 companies annually. We estimate that 25% of the 258 hours per response (64.5 hours) is prepared by the company for an annual reporting burden of 38,700 hours (64.5 hours per response × 600 responses).

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an 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 e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 13, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5678 Filed 3–20–08; 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: Schedule TO, OMB Control No. 3235–0515, SEC File No. 270–456.

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 the request for extension of the previously approved collection of information discussed below.

Schedule TO (17 CFR 240.14d–100) must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under Section 12 of the Exchange Act (15 U.S.C. 78*l*) (which offer, if consummated, would cause that person to own over 5% of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. This information is made available to the public. The information provided on Schedule TO is mandatory. Schedule TO takes approximately 43.5 hours per response and is filed by approximately 2,500 issuers annually. We estimate that 50% of the 43.5 hours per response (21.75 hours) is prepared by the issuer for an annual reporting burden of 54,375 hours (21.75 hours per response × 2,500 responses).

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an 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, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 13, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5679 Filed 3–20–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57502; File No. SR–Amex–2008–18]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Create a Delta Hedging Exemption From Equity Options Position Limits

March 14, 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 March 4, 2008, the American Stock Exchange, LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Amex. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 904 to establish a delta hedge exemption from equity options position limits. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *www.amex.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, Amex included statements concerning the purpose of and basis for the

[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).

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

All options contracts listed and traded on the Exchange are subject to position and exercise limits as set forth in Amex Rules 904 and 905. Position limits restrict the number of options contracts that an investor, or a group of investors acting in concert, may own or control in one particular option class or the security or securities that underlie that option class. Similarly, exercise limits prohibit the exercise of more than a specified number of contracts on a particular instrument within five business days. The Exchange does provide various hedge exemptions to permit certain ''hedged'' positions greater position limits than the applicable standard position limit.[5]

Over the past several years, the Exchange as well as the other self-regulatory organizations (''SROs'') have increased in absolute terms the size of the options position and exercise limits as well as the size and scope of available exemptions for ''hedged'' positions.[6] The exemptions for hedged positions generally require a one-to-one hedge (*i.e.*, one stock option contract must be hedged by the number of shares covered by the options contract, typically 100 shares). In practice, however, many firms do not hedge their options positions in this way. Rather, these firms engage in what is known as ''delta hedging,'' which varies the number of shares of the underlying security used to hedge an options position based upon the relative sensitivity of the value of the option contract to a change in the price of the underlying security.[7] The Amex believes that delta hedging is widely accepted for net capital and risk management purposes.

In 2002, the Commission approved amendments to Amex Rule 904 providing an expansion to the hedging strategies exempt from the standard position and exercise limits.[8] In addition, in 2004, the Commission approved a proposal of the National Association of Securities Dealers, Inc. (''NASD'') providing for a delta hedging exemption from stock options position and exercise limits for positions held by affiliates of NASD members approved by the Commission as ''OTC derivatives dealers.'' [9] At that time, the Commission reiterated its ''support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.'' [10]

Proposed Delta Neutral-Based Hedge Exemption

The Exchange proposes to adopt a new exemption from equity options position and exercise limits for positions held by Amex members and certain of their affiliates that are ''delta neutral'' [11] under a ''permitted pricing model'' (as defined below), subject to certain conditions (''Exemption''). The proposed Exemption would only apply to equity options, *i.e.* stock options and options on Exchange Traded Fund Shares. Any equity option position that is not ''delta neutral'' would be subject to position and exercise limits, subject to the availability of other exemptions. Only the ''options contract equivalent of the net delta'' [12] of a hedged options position would be subject to the appropriate position limits.

Only financial instruments relating to the security underlying an equity options position could be included in any determination of an equity options position's net delta or whether the options position is delta neutral. In addition, members could not use the same equity or other financial instrument position in connection with more than one hedge exemption. Accordingly, a stock position used as part of a delta hedging strategy could not also serve as the basis for any other equity hedge exemption.

Permitted Pricing Model

Under this proposal, the calculation of the delta for any equity option position, and the determination of whether a particular equity option position is delta neutral, is required to be made using a ''Permitted Pricing Model.'' A ''Permitted Pricing Model'' is defined in proposed Commentary .10(e) to Rule 904 to mean the pricing model maintained and operated by The Options Clearing Corporation (''OCC'') and the pricing models used by: (1) A member or its affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3–1 under the Act; [13] (2) a financial holding company (''FHC'') or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision; [14] (3) a Commission-registered OTC

[5] *See* Commentary .09 to Amex Rule 904.

[6] *See* Securities Exchange Act Release Nos. 51316 (March 3, 2005), 70 FR 12251 (March 11, 2005) (SR–Amex–2005–029); 45312 (January 18, 2002), 67 FR 3752 (January 25, 2002) (SR–Amex–2001–42); and 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR–Amex–98–22). *See also* Securities Exchange Act Release No. 45650 (March 26, 2002), 67 FR 15638 (April 2, 2002) (SR–Amex–2001–72).

[7] For example, an option with a delta of .5 will move $0.50 for every $1.00 move in the underlying stock.

[8] *See supra* note 6.

[9] *See* Securities Exchange Act Release No. 50748 (November 29, 2004), 69 FR 70485 (December 6, 2004) (SR–NASD–2004–153).

[10] *Id.* at 70486.

[11] ''Delta neutral'' is defined in proposed Commentary .10(a) to Rule 904 as an equity options position that has been fully hedged, in accordance with a ''Permitted Pricing Model,'' by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change in response to incremental changes in the price of the security underlying the option position.

[12] ''Net delta'' is defined in proposed Commentary .10(b) to Rule 904 to mean ''the number of shares (either long or short) required to offset the risk that the value of an equity options position will change with incremental changes in the price of the security underlying the options position, as determined in accordance with a Permitted Pricing Model.'' ''Options Contract Equivalent of the Net Delta'' is defined in proposed Commentary .10(c) to Rule 904 to mean the net delta divided by the number of shares underlying the options contract.

[13] Use of such pricing model would be required to be consistent with the requirements of Appendices E or G, as applicable, to Rules 15c3–1 and 15c3–4 under the Act in connection with the calculation of risk-based deductions from capital or capital allowances for market risk thereunder. *See* proposed Commentary .10(e)(2) to Rule 904.

[14] An FHC's affiliate that is part of the FHC's consolidated supervised holding company group would be eligible to use this part of the Exemption. An FHC's (or an affiliate's) use of a proprietary model would have to be consistent with either: (i) *The* requirements of the Board of Governors of the Federal Reserve System, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Board of Governors of the Federal Reserve System; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where ''principal regulator'' means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company. *See* proposed Commentary .10(e)(3) to Rule 904. It is important to note that the U.S. activities of entities subject to the Basel standards are overseen by the Federal Reserve Board, and the Exchange would be relying upon that oversight in extending exemptive relief to such entities.

derivatives dealer;[15] and (4) a national bank under the National Bank Act.[16]

Aggregation of Accounts

Members and non-member affiliates relying on the Exemption would be required to ensure that the Permitted Pricing Model applies to all positions in, or relating to, the security underlying the relevant options position that are owned or controlled by the member or its affiliates.

However, the net delta of an options position held by an entity entitled to rely on this Exemption, or by a separate and distinct trading unit of such entity, could be calculated without regard to positions in or relating to the security underlying the option held by an affiliated entity or by another trading unit within the same entity, provided that: (1) the entity demonstrates to the Exchange's satisfaction that no control relationship, as defined in Commentary .08 to Rule 904, exists between such affiliates or trading units; and (2) the entity has provided the Exchange written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of this Exemption.[17]

The Exchange has set forth in the proposed Information Circular the conditions under which it will deem no control relationship to exist between entities and between separate and distinct trading units within the same entity.

Any member or non-member affiliate relying on the Exemption would be required to designate, by prior written notice to the Exchange, each trading unit or entity whose options positions are required by Exchange rules to be aggregated with the options positions of such member or non-member affiliate relying on the Exemption for purposes of compliance with Exchange position or exercise limits.

Obligations of Members and Affiliates

Any member relying on the Exemption would be required to provide a written certification to the Exchange stating that it is using a Permitted Pricing Model as defined in proposed Commentary .10(e) to Rule 904 for purposes of the Exemption. In addition, by such reliance, such member or member organization would authorize any other person carrying for such member or member organization an account, including, or with whom such member has entered into, a position in or relating to a security underlying the relevant option position to provide to the Exchange or OCC such information regarding such account or position as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any net delta calculation under this Exemption.[18]

The options positions of a non-member affiliate relying on the Exemption would have to be carried by a member with whom it is affiliated. A member carrying an account that includes an equity option position for a non-member affiliate that intends to rely on the Exemption would be required to obtain from such non-member affiliate a written certification sufficient that it is using a Permitted Pricing Model as defined in the Rule for purposes of the Exemption.[19]

Position Reporting

Under proposed Commentary .10(h) to Rule 904, each member or member organization relying on the Exemption would be required to report, in accordance with Rule 906,[20] (i) all equity option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to proposed Commentary .10(f) to Rule 904, for each such account that holds an equity option position subject to the Exemption in excess of the levels specified in Rule 904, the net delta and the options contract equivalent of the net delta of such position.

The Exchange and other SROs are working on modifying the Large Options Position Reporting system and/or the OCC reports to allow a member to indicate that an equity options position is being delta hedged.

Records

Under proposed Commentary .10(i) to Rule 904, each member and member organization relying on the Exemption would be required to (i) retain, and would be required to undertake reasonable efforts to ensure that any non-member affiliate of the member or member organization relying on the Exemption retains, a list of the options, securities and other instruments underlying each options position net delta calculation reported to the Exchange hereunder, and (ii) produce such information to the Exchange upon request.[21]

Reliance on Federal Oversight

As provided under proposed Commentary .10(e) to Rule 904, a Permitted Pricing Model includes proprietary pricing models used by members or member organizations and affiliates that have been approved by the Commission, the Federal Reserve Board or another federal financial regulator. In adopting the proposed Exemption, the Exchange would be relying on the rigorous approval processes and ongoing oversight of a federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether a member or member organization's use of a proprietary pricing model is appropriate or yielding accurate results.

The Exchange will announce the operative date of the proposed rule change in an Information Circular to be distributed no later than sixty days following the notice of filing in the **Federal Register**. The operative date shall be no later than thirty days following distribution of the

[15] An OTC derivative dealer's use of a proprietary model would be required to be consistent with the requirements of Appendix F to Rule 15c3–1 and Rule 15c3–4 under the 1934 Act in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a member) would be able to rely upon this particular part of the Exemption. *See* proposed Commentary .10(e)(4) to Rule 904.

[16] The use of a proprietary model by a national bank would be required to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. An affiliate of a national bank (including an Exchange member) would not be permitted to rely on this part of the Exemption. *See* proposed Commentary .10(e)(5) to Rule 904.

[17] *See* proposed Commentary .10(f) to Rule 904.

[18] *See* proposed Commentary .10(g) to Rule 904.

[19] In addition, the member or member organization would be required to obtain from such non-member affiliate a written statement confirming that such non-member affiliate: (a) *Is* relying on the Exemption; (b) will use only a Permitted Pricing Model for purposes of calculating the net delta of the option positions for purposes of the Exemption; (c) will promptly notify the member or member organization if it ceases to rely on the Exemption; (d) authorizes the member or member organization to provide to the Exchange or the OCC such information regarding positions of the non-member affiliate as the Exchange or OCC may request as part of the Exchange's confirmation or verification of the accuracy of any ''net delta'' calculation under the Exemption; and (e) if the non-member affiliate is using the OCC Model, has duly executed and delivered to the Exchange such documents as the Exchange may require to be executed and delivered to the Exchange as a condition to reliance on the Exemption. *See* proposed Commentary .10(g)(3) to Rule 904.

[20] Amex Rule 906 requires, among other things, that members and member organizations report to the Exchange aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of options contracts dealt in on the Exchange.

[21] A member would be authorized to report position information of its non-member affiliate pursuant to the written statement required under proposed Commentary .10(g)(3)(ii)(d).

Information Circular announcing the notice of filing in the **Federal Register**, or such later date as may be necessary to ensure completion of the required technology changes by the OCC and the Securities Industry Automation Corporation.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed delta neutral-based hedge exemption from equity options position and exercise limits is appropriate in that it is based on a widely accepted risk management method used in options trading. In addition, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.[24]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[25] and Rule 19b–4(f)(6) thereunder.[26]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[27] However, Rule 19b–4(f)(6)(iii)[28] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to implement the delta hedging exemption from equity options position limits without needless delay. The Commission notes that it recently approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated.[29] The Commission believes that Amex's proposal to create a delta hedging exemption from equity options position limits raises no new issues. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.[30]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-Amex-2008–18 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-Amex-2008–18. 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 am and 3 pm. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2008–18 and should be submitted on or before April 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5674 Filed 3–20–08; 8:45 am]

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[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (S7–30–97) (adopting rules relating to OTC Derivatives Dealers).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

[28] *Id.*

[29] *See* Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007) (SR–CBOE–2007–99).

[30] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57506; File No. SR–Amex–2008–19]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Retroactive Application of the Options Fee Cap Pilot Program for Dividend Strategies, Merger Spreads, and Short Stock Interest Spreads

March 14, 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 March 7, 2008, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to retroactively apply the Fee Cap Pilot Program (the ''Fee Cap Program'') for dividend strategies, merger spreads, and short stock interest spreads from February 2, 2008 through February 18, 2008.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to retroactively apply the current Fee Cap Program from February 2, 2008 through February 18, 2008. The current Fee Cap Program expired on February 1, 2008. The Exchange inadvertently failed to extend the Fee Cap Program at that time. Subsequently, the Exchange filed to extend the lapsed Fee Cap Program from February 19, 2008 through February 1, 2009.[3] This filing would permit the Fee Cap Program effectively to be in effect without interruption.

The Fee Cap Program provides that specialists, registered options traders, non-member market makers, firms, and member and non-member broker-dealers option transaction, comparison and floor brokerage fees are limited to an aggregate fee of $100 for all dividend strategies, merger spreads, and short stock interest spreads executed on the same trading day in the same option class.[4] Additionally, such fees are also limited to $12,500 per month per initiating firm.

To date, the Exchange believes that the current Fee Cap Program has been beneficial, and submits that the retroactive application from February 2, 2008 through February 18, 2008 is warranted so that the Fee Cap Program effectively operates without interruption.

Accordingly, the proposal seeks to retroactively apply the Fee Cap Program from February 2, 2008 through February 18, 2008.

2. Statutory Basis

The Exchange submits that the proposed fee change is consistent with Section 6(b)(4) of the Act[5] regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities. The Exchange believes that the proposed retroactive application of the current Fee Cap Program is beneficial to market participants by providing an uninterrupted Fee Cap Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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 at *http://www.sec.gov/rules/sro.shtml;* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2008–19 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 No. SR–Amex–2008–19. 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 the Exchange. All

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57401 (February 29, 2008), 73 FR 12233 (March 6, 2008) (SR–Amex–2008–12).

[4] These fees are charged only to Exchange members.

[5] 15 U.S.C. 78f(b)(4).

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–Amex–2008–19 and should be submitted on or before April 11, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change.

After careful consideration, the Commission finds that the Exchange's proposal to retroactively apply the Fee Cap Program from February 2, 2008 through February 18, 2008 is consistent with the requirements of the Section 6 of the Act[6] and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act, which requires, among other things, that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.[8]

The Amex has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will allow the Amex to continue to operate the Fee Cap Program on an uninterrupted basis and thus, should benefit market participants by ensuring continuity of the Exchange's rules. The Commission notes that no comments were received in connection with the approval of the Fee Cap Program and no comments have been received during the operation of the Fee Cap Program. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[9] for approving the proposed rule change prior to the thirtieth day after publication of the notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change, (SR–Amex–2008–19), is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5694 Filed 3–20–08; 8:45 am]

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[6] 15 U.S.C. 78f.

[7] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57514; File No. SR–Amex–2008–02]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Amendment No. 2 to Proposed Rule Change and Order Granting Accelerated Approval of Such Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Rules Permitting the Listing and Trading of Managed Fund Shares, Fees Applicable to Such Managed Fund Shares, and the Listing and Trading of Shares of the Bear Stearns Current Yield Fund

March 17, 2008.

I. Introduction

On February 7, 2008, 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 seeking to: (1) Adopt new Amex Rules 1000B, 1001B, 1002B, and 1003B to permit the listing and trading of securities (''Managed Fund Shares'') issued by an actively managed, open-end investment management company; (2) list and trade the shares (''Shares'') of the Bear Stearns Current Yield Fund (''Fund''), an investment portfolio of the Bear Stearns Active ETF Trust (''Trust''), pursuant to those rules; and (3) amend its original listing and annual listing fees to include Managed Fund Shares and make certain other changes. The proposed rule change was published for comment in the **Federal Register** on February 14, 2008.[3] On February 20, 2008, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On March 14, 2008, the Exchange filed Amendment No. 2 to the proposed rule change.[5] The Commission received no comments regarding the proposal. This order provides notice and solicits comments from interested persons regarding Amendment No. 2 to the proposed rule change and approves the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to add new Amex Rules 1000B, 1001B, 1002B, and 1003B to permit the listing and trading of Managed Fund Shares. Pursuant to these new rules, the Exchange proposes to list and trade the Shares. Amex states that the Shares will conform to the initial and continued listing criteria under proposed Amex Rules 1000B, 1001B, and 1002B. The Exchange also proposes to amend its original listing and annual listing fees in Sections 140 and 141 of the Amex *Company Guide* to include Managed Fund Shares and make certain other technical and conforming changes in the Amex rules to incorporate references to the new Amex rules proposed herein.

Proposed Listing Rules

Proposed new Amex Rules 1000B, 1001B (for initial listing), and 1002B (for continued listing) define and establish listing standards for Managed Fund Shares. Proposed Amex Rule 1000B(b) sets forth the relevant definitions. In particular, proposed Amex Rule 1000B(b)(1) defines ''Managed Fund Share'' as a security that: (a) Represents an interest in a registered investment company (''Investment Company''), organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57297 (February 8, 2008), 73 FR 8723 (''Notice'').

[4] In Amendment No. 1, Amex made several clarifying corrections to the definitions of ''Disclosed Portfolio'' and ''Portfolio Indicative Value'' and conforming changes to Form 19b–4 and Exhibit 1 thereto to account for such corrections. Because Amendment No. 1 to the proposed rule change is technical in nature, it is not subject to notice and comment.

[5] In Amendment No. 2, Amex added Commentary .06 to proposed Amex Rule 1000B which would require: (1) the investment adviser to the Investment Company (as defined herein) issuing Managed Fund Shares to erect a ''firewall'' around personnel who have access to information concerning the composition and/or changes to the Investment Company portfolio; and (2) personnel who make decisions on the Investment Company's portfolio composition to be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio. In addition, Amex provided a representation describing the ethical and fiduciary requirements under the Investment Advisers Act of 1940 (''Advisers Act''), as they apply to Bear Stearns Asset Management, Inc., the investment adviser of the Fund.

Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value (''NAV''); and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request for a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

Proposed Amex Rule 1000B(b)(2) defines Disclosed Portfolio as the securities and other assets in the Investment Company portfolio that will form the basis for the Investment Company's calculation of its NAV. The term ''Portfolio Indicative Value,'' set forth in proposed Amex Rule 1000B(b)(3), is defined as the estimated indicative value of a Managed Fund Share based on updated information regarding the value of the securities in the Disclosed Portfolio. Proposed Amex Rule 1000B(b)(4) defines ''Reporting Authority'' to mean the Exchange, a subsidiary of the Exchange, or an institution or service designated by the Exchange or its subsidiary as the official source for determining and reporting the information relating to a series of Managed Fund Shares, including, but not limited to, the Portfolio Indicative Value, the Disclosed Portfolio, the amount of any cash distribution to holders of Managed Fund Shares, NAV, or other information relating to the issuance, redemption, or trading of Managed Fund Shares.

Proposed Commentaries .01 through .05 to proposed Amex Rule 1000B substantially mirror Commentaries .05, .02(j), .06, .08, and .09 to current Amex Rule 1000A–AEMI, respectively. Specifically, proposed Commentaries .01(a), (b), (c), and (d) are substantively identical to Commentaries .05(d), (f), (e), and (c), respectively, to Amex Rule 1000A–AEMI. The proposed Commentary provisions relate to minimum price variation, hours of trading, listing fees, and surveillance procedures. In addition, the substance of Commentary .05(a) to Amex Rule 1000A–AEMI is set forth in proposed Amex Rule 1000B(b)(3) in connection with the dissemination of information. Proposed Commentary .06 to Amex Rule 1000B is similar to Commentary .02(b)(i) and (iii) to Amex Rule 1000A–AEMI,[6] except that the required ''firewall'' to be established around certain personnel and procedures designed to prevent such personnel from using and disseminating material non-public information reflect restricted access and dissemination of the Investment Company's portfolio, as opposed to an underlying benchmark index, as is the case with index-based exchange-traded funds (''ETFs'').

Proposed Commentary .02 to Amex Rule 1000B is substantively identical to existing Commentary .02(j) to Amex Rule 1000A–AEMI, which relates to international or global portfolio creations/redemptions. With respect to a Managed Fund Share based on an international or global portfolio, this provision requires that the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 (''1940 Act'') for the series of Managed Fund Shares state that such series will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

Proposed Commentary .03 to Amex Rule 1000B is substantively identical to Commentary .06 to Amex Rule 1000A–AEMI in connection with Exchange obligations for those Managed Fund Shares that receive an exemption from certain prospectus delivery requirements under Section 24(d) of the 1940 Act. Proposed Commentary .04 to Amex Rule 1000B, relating to the limitation of entering multiple limit orders by members and member organizations, is also substantively identical to Commentary .09 to Amex Rule 1000A–AEMI. Proposed Commentary .05 to Amex Rule 1000B relating to ''trading ahead'' is substantively identical to Commentary .09 to Amex Rule 1000A–AEMI. Lastly, proposed Commentary .06 to Amex Rule 1000B provides that the investment adviser of the Investment Company must erect a ''firewall'' around its personnel who have access to information regarding the composition and/or changes to the Investment Company's portfolio.[7] In addition, proposed Commentary .06 further requires that personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Investment Company's portfolio.

With respect to the initial listing standards for Managed Fund Shares, proposed Amex Rule 1001B(i) provides that the Exchange will establish a minimum number of shares outstanding at the time of commencement of trading. In addition, proposed Amex Rule 1001B(ii) requires that the Exchange obtain a representation from the issuer of each series of Managed Fund Shares that the NAV per share for the series will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Proposed Commentary .01 to Amex Rule 1001B specifically provides that each series of Managed Fund Shares, prior to listing and/or trading, is required to submit for Commission review and approval, a proposed rule change pursuant to Section 19(b) of the Act. Accordingly, each series of Managed Fund Shares will require Commission review and approval prior to listing and trading.

The proposed continued listing criteria set forth in proposed Amex Rule 1002B(iii) provides for the delisting of the Shares under any of the following circumstances:

[6] *See* Commentary .02(b)(i) and (iii) to Amex Rule 1000A–AEMI (providing that: (1) if the index on which a series of Index Fund Shares is based is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor must erect a ''firewall'' around the personnel who have access to information concerning changes and adjustments to the index, and the index must be calculated by a third party who is not a broker-dealer or fund advisor; and (2) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index or portfolio composition, methodology, and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index).

[7] The Exchange states that an Investment Company's investment adviser, which is required to be registered under the Advisers Act, would be subject to the provisions of Rule 204A–1 under the Advisers Act (17 CFR 275.204A–1) relating to codes of ethics for investment advisers. Rule 204A–1 requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, the Exchange notes that ''firewall'' procedures, as well as procedures designed to prevent the misuse of non-public information by an investment adviser, must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act (17 CFR 275.206(4)–7) makes it unlawful for an investment adviser to provide investment advice to clients, unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the rules thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of such policies and procedures and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering such policies and procedures. *See also* Section 204A of the Advisers Act (15 U.S.C. 80b–4a) (requiring investment advisers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such investment adviser or any person associated with such investment adviser).

• If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of the Managed Fund Shares for 30 or more consecutive trading days;

• If the value of the Portfolio Indicative Value is no longer calculated or available, or the Disclosed Portfolio is not made available to all market participants at the same time;

• If the Trust has not filed, on a timely basis, any required filings with the Commission, or if the Exchange becomes aware that the Trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to or otherwise applicable to the Trust; or

• If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Managed Fund Shares on the Exchange inadvisable.

Proposed Amex Rule 1002B also sets forth the continued listing criteria relating to the Portfolio Indicative Value and the Disclosed Portfolio. Specifically, proposed Amex Rule 1002B(i) requires that the Portfolio Indicative Value for a Managed Fund Share be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the Managed Fund Shares are traded on the Exchange. Proposed Amex Rule 1002B(ii)(a) provides that the Disclosed Portfolio be disseminated at least once daily to all market participants at the same time. Further, proposed Amex Rule 1002B(ii)(b) requires that the Reporting Authority for the Disclosed Portfolio implement and maintain, or be subject to, ''firewall'' procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Disclosed Portfolio.

Pursuant to proposed Amex Rule 1002B(iv), the Exchange will halt trading under the following circumstances:

• If the circuit breaker parameters of Amex Rule 117 have been reached, the Exchange will halt trading in a series of Managed Fund Shares.

• If the Portfolio Indicative Value of the Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

• If a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series if the primary listing market halts trading in that series of Managed Fund Shares because the Portfolio Indicative Value applicable to that series of Managed Fund Shares is not being disseminated as required.

• If the Exchange becomes aware that the NAV or Disclosed Portfolio related to a series of Managed Fund Shares is not being disseminated to all market participants at the same time, the Exchange will halt trading in such Managed Fund Shares. The Exchange may resume trading in the Managed Fund Shares only when the NAV or Disclosed Portfolio is disseminated to all market participants at the same time.

• Finally, in exercising its discretion to halt or suspend trading in Managed Fund Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b), in addition to other factors that may be relevant.

Proposed Amex Rule 1003B would limit Exchange liability in connection with potential claims, damages, losses, or expenses regarding a Managed Fund Share. The Exchange states that proposed Amex Rule 1003B is substantially similar to current Amex Rule 1003A.

Original and Annual Listing Fees

The Exchange seeks to amend its rules relating to listing fees to include Managed Fund Shares. As proposed, Amex's original listing fee applicable to the listing of series of Managed Fund Shares will be $5,000, but may be deferred, waived, or rebated upon transfer to Amex from another marketplace. In addition, the annual listing fee applicable under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of Shares outstanding at the end of each calendar year. In connection with Section 140 of the *Company Guide,* the Exchange proposes to make a technical revision so that ''Trust Units'' are also included among the types of securities whose initial listing fees may be deferred, waived, or rebated upon transfer to Amex from another marketplace.

Description of the Fund

The Fund, an exchange-traded fund, is the sole investment portfolio of the Trust. The Trust is organized as a Delaware statutory trust and is an open-end fund registered under the 1940 Act.[8] The investment objective of the Fund is to seek as high a level of current income as is consistent with the preservation of capital and liquidity. The Fund will be actively managed by its portfolio manager, who will have discretion to choose securities for the Fund's portfolio consistent with the Fund's investment objective.[9] The Fund's portfolio manager seeks to attain the Fund's objective by investing primarily in short-term debt obligations, including U.S. government securities, bank obligations, corporate debt obligations, mortgage-backed and asset-backed securities, municipal obligations, foreign bank obligations (U.S. dollar denominated), foreign corporate debt obligations (U.S. dollar denominated), repurchase agreements, and reverse repurchase agreements.

The Exchange proposes to list and trade the Fund Shares pursuant to proposed Amex Rules 1000B, 1001B, and 1002B. Amex represents that the Shares will conform to the initial and continued listing criteria under such proposed rules.[10] The Registration Statement, including the Prospectus and Statement of Additional Information (''SAI''), provides a detailed description of the Fund including, but not limited to, the structure of the Fund, cash-only creation and redemption processes, investment objective and policies, characteristics, tax status, and distributions.[11]

Availability of Information Regarding the Fund and the Shares

The daily NAV for the Fund will be calculated and disseminated publicly each Business Day[12] to all market participants at the same time. In addition, prior to the opening each Business Day, the Fund will make

[8] The Exchange states that the Fund is not a ''money market fund'' and is not subject to certain rules and regulations under the 1940 Act governing money market funds.

[9] The Exchange states that the Fund's investment objective may be changed without shareholder approval upon 30 days' written notice to shareholders.

[10] The Exchange represents that, for initial and/or continued listing, the Shares must also be in compliance with Section 803 of the Amex *Company Guide* and Rule 10A–3 under the Act (17 CFR 240.10A–3). In addition, the Exchange represents that Bear Stearns Asset Management, Inc. (''Bear Stearns Asset Management''), the investment adviser of the Fund, and its related personnel are subject to Rule 204A–1 under the Advisers Act. *See supra* note 7.

[11] *See* the Trust's Form N–1A/A filed with the Commission on August 6, 2007 (File Nos. 333–141421 and 811–22038). Additional information regarding arbitrage opportunities relating to the Shares can be found in the Notice. *See* Notice, *supra* note 3.

[12] ''Business Day'' is defined as a day in which the Trust will sell and redeem Creation Units of the Fund.

publicly available on its Web site the Disclosed Portfolio, which is the file of all the portfolio securities held by the Fund and the quantities thereof, including, as applicable, the specific types and amounts of short-term debt securities and the amount of cash held in the portfolio of the Fund, as of the close of business on the prior Business Day, reflecting all securities bought and sold on such prior Business Day.[13] This information will be available to all investors and market participants at the same time and will form the basis for the Fund's calculation of NAV as of the close of regular trading on the Exchange (ordinarily 4 p.m. Eastern Time).

Amex will disseminate at least every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association (''CTA''), the Portfolio Indicative Value. An independent pricing service will calculate the Portfolio Indicative Value during the hours of trading on the Exchange by *dividing* the ''Estimated Fund Value'' as of the time of the calculation by the total Shares outstanding. ''Estimated Fund Value'' is the *sum* of the estimated amount of cash held in the Fund's portfolio, the estimated value of the securities held in the Fund's portfolio, and the estimated amount of accrued interest, *minus* the estimated amount of liabilities.[14]

The Web site for the Fund will display the Prospectus, the SAI, and additional quantitative information that is updated on a daily basis, including, among other things, the following information, on a per-Share basis: (a) the prior Business Day's NAV, the reported mid-point of the bid-ask spread at the time of NAV calculation (''Bid-Ask Price''), and a calculation of the premium or discount of the Bid-Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Amex also intends to disseminate a variety of data with respect to the Shares on a daily basis, by means of CTA and Consolidated Quotation High Speed Lines, including quotation and last sale data, information of the previous day's close with respect to NAV, and the number of Shares outstanding. In addition, as with other ETFs, information regarding secondary market prices and volume of the Shares will be broadly available in real-time throughout the trading day.

Trading Rules

The Shares are equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity, and precedence of orders, specialist responsibilities, account opening, and customer suitability (Amex Rule 411). Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205–AEMI) will also apply. Specialist transactions of the Shares made in connection with the creation and redemption of Shares will not be subject to the prohibitions of Rule 190.[15]

Amex Rules 154–AEMI(c)(ii) (Election by Quotation of Stop and Stop Limit Orders) and 126A–AEMI (Protected Bids and Offers of Away Markets) will apply to the trading of the Shares. In addition, Exchange members and member organizations will be subject to proposed Commentary .04 to Amex Rule 1000B prohibiting such member or member organizations from entering into the Exchange's order routing system multiple limit orders as agent (*i.e.*, customer agency orders). Further, proposed Commentary .05 to Rule 1000B provides that it may be considered inconsistent with just and equitable principles of trade for a member or person associated with a member to ''trade ahead'' of a related customer order in Managed Fund Shares based on material, non-public information obtained from such customer order.

Information Circular

The Exchange will distribute an Information Circular to Exchange members and member organizations prior to the commencement of trading of the Shares that describes the prospectus delivery requirements and, as relevant, the application of proposed Commentary .03 to Amex Rule 1000B. The Exchange notes that investors purchasing Shares directly from the Fund by delivery of a Creation Unit will receive a Prospectus.

In addition, the Information Circular will inform Exchange members and member organizations that procedures for purchases and redemptions of Shares in Creation Units are described in the Fund's Prospectus and SAI, and that Shares are not individually redeemable, but are redeemable only in Creation Units or multiples thereof. The Exchange will also inform members and member organizations of the characteristics of the Fund and the Shares and of applicable Exchange rules, as well as of the suitability requirements of Amex Rule 411 (Duty to Know and Approve Customers).

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

III. Discussion

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.[16] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Proposed Listing Rules for Managed Fund Shares

The Commission finds that Amex's proposal contains adequate rules and procedures to govern the listing and trading of Managed Fund Shares on the Exchange.[18] Prior to listing and/or

[13] The Exchange states that the Trust will comply with its obligations to disclose in its SAI its policies and procedures with respect to the Disclosed Portfolio and state in its Prospectus that a description of the Fund's policies and procedures is available in the SAI. *See* Investment Company Act Release No. 26418 (April 16, 2004), 69 FR 22300 (April 23, 2004).

[14] The Exchange states that the methodology used to calculate the Portfolio Indicative Value for the Fund is similar to those used by some existing ETFs listed on the Exchange that track fixed-income securities indices, as well as numerous fixed-income mutual funds.

[15] Commentary .04 to Amex Rule 190 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market. *See* Commentary .04 to Amex Rule 190.

[16] In approving this proposed 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).

[17] 15 U.S.C. 78f(b)(5).

[18] The Commission believes that the proposed rules and procedures are adequate with respect to the Fund Shares. However, the Commission notes that other proposed series of Managed Fund Shares may require additional Exchange rules and procedures to govern their listing and trading on the

Continued

trading on the Exchange, Amex must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Managed Fund Shares. All such securities listed and/or traded under proposed Amex Rule 1000B will be subject to the full panoply of Amex rules and procedures that currently govern the trading of equity securities on the Exchange.

For the initial listing of each series of Managed Fund Shares under proposed Amex Rule 1001B, the Exchange must establish a minimum number of Managed Fund Shares required to be outstanding at the commencement of trading on the Exchange. In addition, the Exchange must obtain a representation from the issuer of Managed Fund Shares that the NAV per share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

The Commission believes that the proposed continued listing and trading standards under proposed Amex Rule 1002B are adequate to ensure transparency of key values and information regarding the securities. For continued listing of each series of Managed Fund Shares, the Portfolio Indicative Value must be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange. Further, the Disclosed Portfolio must be disseminated at least once daily and made available to all market participants at the same time.

The Commission finds that the Exchange's rules with respect to trading halts under proposed Amex Rule 1002B(iv) should help ensure the availability of key values and information relating to Managed Fund Shares. If the Portfolio Indicative Value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption of such value persists past the trading day in which it occurred, the Exchange must halt trading no later than the beginning of the trading day following the interruption.[19] In addition, if the Exchange becomes aware that the NAV or Disclosed Portfolio related to a series of Managed Fund Shares is not being disseminated to all market participants at the same time, the Exchange will halt trading in such series of Managed Fund Shares. The Exchange may resume trading in such series of Managed Fund Shares only when the NAV or Disclosed Portfolio is disseminated to all market participants.

The Exchange may also consider the suspension of trading in, or removal from listing of, a series of Managed Fund Shares if: (1) Following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of the Managed Fund Shares for 30 or more consecutive trading days; (2) the value of the Portfolio Indicative Value is no longer calculated or available, or the Disclosed Portfolio is not made available to all market participants at the same time; (3) the Trust has not filed, on a timely basis, any required filings with the Commission, or if the Exchange becomes aware that the Trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to or otherwise applicable to the Trust; or (4) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Managed Fund Shares on the Exchange inadvisable.

The Commission believes that the foregoing requirements of proposed Amex Rules 1001B and 1002B should help to prevent trading when a reasonable degree of transparency cannot be assured and to maintain a fair and orderly market for Managed Fund Shares.

The Commission believes that the proposed listing and trading rules for Managed Fund Shares, many of which track existing Exchange rules relating to Index Fund Shares, are reasonably designed to promote a fair and orderly market for such Managed Fund Shares by, among other things, requiring disclosure of information that may be necessary to price Managed Fund Shares. The proposed rules also prescribe ''trading ahead'' restrictions,[20] require surveillance procedures,[21] establish trading guidelines,[22] and prospectus and/or product description requirements.[23] In addition, Commentary .06 to proposed Amex Rule 1000B requires: (1) The investment adviser of the Investment Company to erect a ''firewall'' around its personnel who have access to information regarding the composition and/or changes to the Investment Company's portfolio; and (2) personnel, who make decisions on the Investment Company's portfolio composition, to be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Investment Company's portfolio. Lastly, proposed Amex Rule 1002B(ii)(b) requires that the Reporting Authority that provides the Disclosed Portfolio implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

Amendments to Original and Annual Listing Fees

As proposed, Amex's original listing and annual listing fees will be applicable to a series of Managed Fund Shares under Sections 140 and 141 of the Amex *Company Guide*. In connection with Section 140 of the *Company Guide*, the Exchange also proposes to make a technical revision so that ''Trust Units'' are also included among the types of securities whose initial listing fees may be deferred, waived, or rebated upon transfer to Amex from another marketplace. The Commission finds that the changes made to Amex's original listing and annual listing fees to include Managed Fund Shares, and the technical revision to add ''Trust Units'' to Section 140 of the Amex *Company Guide*, are reasonable and promote transparency of the fees to be imposed with respect to a series of Managed Fund Shares and Trust Units.

Proposal To List and Trade the Shares of the Fund

The Exchange proposes to list and trade the Fund Shares pursuant to proposed Amex Rules 1000B, 1001B, and 1002B. Amex represents that the Shares will conform to the initial and continued listing criteria under such proposed rules.

The Commission believes that the proposal to list and trade the Shares of the Fund on the Exchange is consistent

Exchange. For example, in the case of a proposed series of Managed Fund Shares that are based on a portfolio, at least in part, of non-U.S. securities, rules relating to comprehensive surveillance sharing agreements and quantitative initial and continued listing standards may be required.

[19] Under proposed Amex Rule 1002B(iv)(c), if a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series if the primary listing market halts trading in that series of Managed Fund Shares because the Portfolio Indicative Value applicable to that series of Managed Fund Shares is not being disseminated as required.

[20] *See* Commentary .05 to proposed Amex Rule 1000B.

[21] *See* Commentary .01 to proposed Amex Rule 1000B. *See also supra* note 18.

[22] *See, e.g.,* Commentaries .01 and .04 to proposed Amex Rule 1000B.

[23] *See* Commentaries .02 and .03 to proposed Amex Rule 1000B.

with Section 11A(a)(1)(C)(iii) of the Act,[24] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information for the Shares will be disseminated by means of CTA and Consolidated Quotation High Speed Lines. In addition, the Portfolio Indicative Value will be disseminated at least every 15 seconds throughout Amex's trading hours, in accordance with proposed Amex Rule 1002B(i). Amex will also disseminate via CTA and Consolidated Quotation High Speed Lines various other data, including information of the previous day's close with respect to NAV and the number of Shares outstanding. The daily NAV for the Fund will be calculated and disseminated publicly each Business Day to all market participants at the same time, and, prior to the opening each Business Day, the Fund will make the Disclosed Portfolio available to all market participants at the same time on its Web site. The Fund's Web site will also contain a variety of other information for the Shares, including a display of the Prospectus and SAI and quantitative information on a per-Share basis.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange is required to obtain a representation from the Trust, prior to listing, that the NAV per Share for the Fund will be calculated daily, and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[25] The Exchange may consider the suspension of trading in, or removal from listing of, the Shares if the value of the Portfolio Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time. Commentary .05 to proposed Amex Rule 1000B restricts members or persons associated with members who have knowledge of all material terms and conditions of an order being facilitated or orders being crossed to enter, based on such knowledge, an order to buy or sell a Share that is the subject of the order, an order to buy or sell the overlying option class, or an order to buy or sell any related instrument[26] until all the terms of the order are disclosed to the trading crowd or the trade is no longer imminent in view of the passage of time since the order was received. Commentary .06 to proposed Amex Rule 1000B restricts certain personnel of Bear Stearns Asset Management with respect to access, use, and dissemination of information concerning the composition and/or changes to the Fund's portfolio.[27] In addition, proposed Amex Rule 1002B(ii)(b) requires that the Reporting Authority that provides the Disclosed Portfolio implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

For the reasons discussed above, the Commission believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Proposed Amex Rule 1002B(iv)(a) provides that the Exchange will halt trading in the Shares if the circuit breaker parameters of Amex Rule 117 have been reached. In addition, proposed Amex Rule 1002B(iv)(b) provides that, if the Portfolio Indicative Value applicable to the Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[28] In addition, if the Exchange becomes aware that the NAV or Disclosed Portfolio related to the Shares is not being disseminated to all market participants at the same time, the Exchange will halt trading in the Shares. The Exchange may resume trading in the Shares only when the NAV or Disclosed Portfolio is disseminated to all market participants. Finally, in exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) and other relevant factors.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Amex's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Shares will conform to the initial and continued listing criteria under proposed Amex Rules 1000B, 1001B, and 1002B.

(2) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares.[29]

(3) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular regarding the prospectus delivery requirements and, as relevant, the application of Commentary .03 to Amex Rule 1000B. The Information Circular will also provide guidance with regard to the characteristics of the Fund and the Shares and of applicable Exchange rules, including the suitability requirements of Amex Rule 411. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's Prospectus and SAI, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

(4) The Exchange represents that the Trust is required to comply with Section 803 of the Amex *Company Guide* and Rule 10A–3 under the Act[30] for the initial and continued listing of the Shares.

This approval order is based on the Exchange's representations.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the proposed rule change, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, is consistent with the Act. Comments may be submitted by any of the following methods:

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] *See* proposed Amex Rule 1001B(ii).

[26] For purposes of Commentary .05, an order to buy or sell a ''related instrument'' means an order to buy or sell securities that have been disclosed as comprising 10% or more of the weight of the Managed Fund Share portfolio. *See* Commentary .05 to proposed Amex Rule 1000B.

[27] *See supra* notes 7 and 10.

[28] *See supra* note 19 and accompanying text.

[29] *See supra* note 18.

[30] 17 CFR 240.10A–3. *See supra* note 10.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2008–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–02. 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–Amex–2008–02 and should be submitted on or before April 11, 2008.

V. Accelerated Approval

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2 thereto, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 2 in the **Federal Register**. In Amendment No. 2, Amex provided additional safeguards in Commentary .06 to proposed Amex Rule 1000B that relate to restricted access and dissemination of key information regarding the composition of, and changes to, the Investment Company portfolio, including the requirement of ''firewalls'' to be erected around certain personnel of the investment adviser to the Investment Company and procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In addition, the Exchange represented that Bear Stearns Asset Management, the investment adviser of the Fund, would be subject to such requirements and is already subject to the provisions of Rule 204A–1 under the Advisers Act.[31] The Commission notes that Commentary .06 is based on, and substantially similar to, Commentary .02(b)(i) and (iii) to Amex Rule 1000A–AEMI.[32] The Commission believes that Amendment No. 2 strengthens the proposal by promoting fair disclosure of Investment Company portfolio information and raises no new regulatory issues. Accordingly, the Commission finds good cause for approving the proposal, as modified by Amendment Nos. 1 and 2 thereto, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–Amex–2008–02), as modified by Amendment Nos. 1 and 2 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Jill M. Peterson,

Assistant Secretary.

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[31] *See supra* notes 7 and 10.

[32] *See supra* note 6 and accompanying text.

[33] 15 U.S.C. 78s(b)(2).

[34] *See* 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57503; File No. SR–BSE–2008–10]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Create a Delta Hedging Exemption From Equity Options Position Limits

March 14, 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 February 27, 2008, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by BSE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BSE proposes to amend the rules of the Boston Options Exchange (''BOX''). The proposal would create a new exemption from equity options position and exercise limits for positions held by BOX Participants under the BOX Rules. The text of the proposed rule change is available at BSE, the Commission's Public Reference Room, and *http://www.bostonstock.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, BSE 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. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit expanded hedge positions pursuant to a carefully crafted delta hedge exemption from equity options position limits in Section 7 of Chapter III of the BOX Rules.

All options traded on BOX are subject to position and exercise limits, as provided under Sections 7 and 9 of Chapter III of the BOX Rules. Position limits are imposed, generally, to maintain fair and orderly markets for options and other securities by limiting the amount of control one or more

[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).

affiliated persons or entities may have over one particular options class or the security or securities that underlie that options class. BOX Rules also contain various hedge exemptions to allow certain hedged positions in excess of the applicable standard position limit.[5]

In recent years, options exchanges have increased the size of options position and exercise limits, as well as the size and scope of available hedge exemptions to the applicable position limits.[6] These hedge exemptions generally require a one-to-one hedge, *i.e.*, one stock option contract must be hedged by the number of shares underlying the options contract, typically 100 shares. In practice, however, many firms do not hedge their options positions in this manner. Instead, these firms engage in what is commonly known as ''delta hedging.'' Delta hedging varies the number of shares of the underlying security used to hedge an options position based upon the relative sensitivity of the value of the option contract to a change in the price of the underlying security.[7]

BOX proposes to adopt a new exemption from equity options position and exercise limits[8] for positions held by BOX Participants and certain of their affiliates that are ''delta neutral''[9] under a ''permitted pricing model'' (as defined below), subject to certain conditions (''Exemption''). The proposed Exemption would only apply to equity stock options and options on exchange-traded funds (''ETFs'').

Any equity position that is not delta neutral would be subject to position and exercise limits, subject to the availability of other exemptions. Only the ''option contract equivalent of the net delta'' of such position would be subject to the appropriate position limit.[10]

Only financial instruments relating to the security underlying an equity options position could be included in any determination of an equity options position's net delta, or in determining whether the options position is delta neutral. In addition, BOX Participants could not use the same equity or other financial instrument position in connection with more than one hedge exemption. Therefore, a stock position used as part of a delta hedging strategy could not also serve as the basis for any other equity hedge exemption.

Permitted Pricing Model. Under the proposed rule, the calculation of the delta for any equity option position, and the determination of whether a particular equity option position is delta neutral, must be made using a permitted pricing model. A ''permitted pricing model'' is defined in proposed Section 8(b)(iii) of Chapter III, to mean the pricing model maintained and operated by the Options Clearing Corporation (''OCC'') and the pricing models used by: (i) A Participant or its affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3–1 under the Act; (ii) a financial holding company (''FHC'') or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision;[11] (iii) a Commission-registered OTC derivatives dealer;[12] and (iv) a national bank.[13]

Aggregation of Accounts. Participants and non-Participant affiliates relying on the Exemption would be required to ensure that the permitted pricing model is applied to all positions in or relating to the security underlying the relevant options position that are owned or controlled by the Participant, or its affiliates.

However, the net delta of an options position held by an entity entitled to rely on the Exemption, or by a separate and distinct trading unit of such entity, could be calculated without regard to positions in or relating to the security underlying the option position held by an affiliated entity or by another trading unit within the same entity, provided that: (i) the entity demonstrates to the satisfaction of Boston Options Exchange Regulation (''BOXR''), the regulatory subsidiary of BSE, that no control relationship, as defined in Section 7(e) of Chapter III of the BOX Rules, exists between such affiliates or trading units, and (ii) the entity has provided BOXR written notice in advance that it intends to be considered separate and distinct from any affiliate, or, as applicable, which trading units within the entity are to be considered separate and distinct from each other for purposes of the Exemption.[14]

Any Participant or non-Participant affiliate relying on the Exemption would be required to designate, by prior written notice to BOXR, each trading unit or entity whose options positions

[5] *See* Section 8 of Chapter III of the BOX Rules (Exemptions from Position Limits).

[6] *See, e.g.*, Securities Exchange Act Release Nos. 55176 (January 25, 2007), 72 FR 4741 (February 1, 2007) (SR–CBOE–2007–08); 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (SR–CBOE–2003–30); and 45603 (March 20, 2002), 67 FR 14751 (March 27, 2002) (SR–CBOE–00–12).

[7] For example, a stock option contract with a delta of .5 will move $0.50 for every $1.00 move in the underlying stock.

[8] The proposed rule change does not change the BOX Rules options exercise limits in Section 9 of Chapter III of the BOX Rules (Exercise Limits) because such exercise limits only apply to the extent that position limits under Section 7 of Chapter III of the BOX Rules are imposed. Thus, as delta neutral positions would be exempt from position limits under the proposed rule change, such positions also would be exempt from exercise limits. Similarly, for positions held that are not delta neutral, only the option contract equivalent of the net delta of such positions would be subject to exercise limits.

[9] The term ''delta neutral'' would be defined as an equity option position that is hedged, in accordance with a permitted pricing model, by a position in the underlying security or one or more instruments relating to the underlying security, for the purpose of offsetting the risk that the value of the option position will change in response to incremental changes in the price of the security underlying the option position. *See* proposed Section 8(b)(i) of Chapter III of the BOX Rules.

[10] Under the proposed rule, ''option contract equivalent of the net delta'' would mean the net delta divided by the number of shares underlying the option contract. ''Net delta'' would mean, at any time, the number of shares (either long or short) required to offset the risk that the value of an equity option position will change with incremental changes in the price of the security underlying the option position, as determined in accordance with a permitted pricing model. *See* proposed Section 8(b)(ii) of Chapter III of the BOX Rules.

[11] The pricing model of an FHC or of an affiliate of an FHC would have to be consistent with: (i) The requirements of the Board of Governors of the Federal Reserve System (''FRB''), as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the FRB, provided that the Participant or affiliate of a Participant relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group; or (ii) the standards published by the Basel Committee on Banking Supervision, as amended from time to time and as implemented by such company's principal regulator, in connection with the calculation of risk-based deductions or adjustments to or allowances for the market risk capital requirements of such principal regulator applicable to such company—where ''principal regulator'' means a member of the Basel Committee on Banking Supervision that is the home country consolidated supervisor of such company—provided that the Participant or affiliate of a Participant relying on this exemption in connection with the use of such model is an entity that is part of such company's consolidated supervised holding company group. *See* proposed Section 8(b)(iii)(3) of Chapter III of the BOX Rules.

[12] The pricing model of a Commission-registered OTC derivatives dealer would have to be consistent with the requirements of Appendix F to Rules 15c3–1 and 15c3–4 under the Act, as amended from time to time, in connection with the calculation of risk-based deductions from capital for market risk thereunder. Only an OTC derivatives dealer and no other affiliated entity (including a Participant) would be able to rely on this part of the Exemption. *See* proposed Section 8(b)(iii)(4) of Chapter III of the BOX Rules.

[13] The pricing model of a national bank would have to be consistent with the requirements of the Office of the Comptroller of the Currency, as amended from time to time, in connection with the calculation of risk-based adjustments to capital for market risk under capital requirements of the Office of the Comptroller of the Currency. Only a national bank and no other affiliated entity (including a Participant) would be able to rely on this part of the Exemption. *See* proposed Section 8(b)(iii)(5) of Chapter III of the BOX Rules.

[14] *See* proposed Section 8(b)(iv)(2) of Chapter III of the BOX Rules.

are required by BOX Rules to be aggregated with the options positions of such Participant or non-Participant affiliate relying on the Exemption for purposes of compliance with BOX position or exercise limits.[15]

Obligations of Participants and Affiliates. Any Participant relying on the Exemption would be required to provide a written certification to BOXR that it is using a permitted pricing model as defined in BOX Rules for purposes of the Exemption. In addition, by such reliance, such Participant would authorize any other person carrying for such Participant an account including, or with whom such Participant has entered into, a position in or relating to a security underlying the relevant option position to provide to BOXR or OCC such information regarding such account or position as BOXR or OCC may request as part of BOXR's confirmation or verification of the accuracy of any net delta calculation under this Exemption.[16]

The options positions of a non-Participant affiliate relying on the Exemption would have to be carried by a Participant with which it is affiliated.[17] A Participant carrying an account that includes an equity option position for a non-Participant affiliate that intends to rely on the Exemption would be required to obtain from such non-Participant affiliate a written certification that it is using a permitted pricing model as defined in the BOX Rules for purposes of the Exemption.[18]

Reporting. Under proposed Section 8(b)(vi) of Chapter III of the BOX Rules, each Participant relying on the Exemption would be required to report, in accordance with Section 10 of Chapter III of the BOX Rules, (i) all equity option positions (including those that are delta neutral) that are reportable thereunder, and (ii) on its own behalf or on behalf of a designated aggregation unit pursuant to Section 8(c)(iv) of Chapter III, for each such account that holds an equity option position subject to the Exemption in excess of the levels specified in Section 7, the net delta and the options contract equivalent of the net delta of such position. The Exchange and other self-regulatory organizations are working on modifying the Large Options Position Report system and/or OCC reports to allow a Participant to indicate that an equity options position is delta neutral.

Records. Under proposed Section 8(b)(vii) of Chapter III of the BOX Rules, each Participant relying on the Exemption would be required to (i) retain, and would be required to undertake reasonable efforts to ensure that any non-Participant affiliate of the Participant relying on the exemption retains, a list of the options, securities and other instruments underlying each options position net delta calculation reported to the BOXR hereunder, and (ii) produce such information to BOXR upon request.

Reliance on Federal Oversight. As provided under proposed Section 8(b)(iii) of Chapter III of the BOX Rules, a permitted pricing model includes proprietary pricing models used by Participants and affiliates that have been approved by the Commission, the FRB or another federal financial regulator. In adopting the proposed Exemption, the Exchange would be relying upon the rigorous approval processes and ongoing oversight of a federal financial regulator. The Exchange notes that it would not be under any obligation to verify whether a Participant's or its affiliate's use of a proprietary pricing model is appropriate or yielding accurate results.

The Exchange will announce the operative date of the proposed rule change in a regulatory circular to be published no later than 30 days after the Commission issues a release regarding the proposal herein, or such later date as may be necessary to ensure completion of the required technology changes by the OCC and the Securities Industry Automation Corporation.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed delta neutral-based hedge exemption from equity options position and exercise limits is appropriate in that it is based on a widely accepted risk management method used in options trading. Also, the Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.[21]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[24] However, Rule 19b–4(f)(6)(iii)[25] permits the Commission to designate a shorter time if such action

[15] *See* proposed Section 8(b)(iv)(3) of Chapter III of the BOX Rules.

[16] *See* proposed Section 8(b)(v)(1) of Chapter III of the BOX Rules.

[17] *See* proposed Section 8(b)(v)(2) of Chapter III of the BOX Rules.

[18] In addition, the Participant would be required to obtain from such non-Participant affiliate a written statement confirming that such non-Participant affiliate: (a) Is relying on the Exemption; (b) will use only a permitted pricing model for purposes of calculating the net delta of its option positions for purposes of the Exemption; (c) will promptly notify the Participant if it ceases to rely on the Exemption; (d) authorizes the Participant to provide to BOXR or the OCC such information regarding positions of the non-Participant affiliate as BOXR or OCC may request as part of BOXR's confirmation or verification of the accuracy of any net delta calculation under the Exemption; and (e) if the non-Participant affiliate is using the OCC model, has duly executed and delivered to BOXR such documents as Participant may require as a condition to reliance on the Exemption. *See* proposed Section 8(b)(v)(3) of Chapter III of the BOX Rules.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (S7–30–97) (adopting rules relating to OTC Derivatives Dealers).

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing notice requirement.

[25] *Id.*

is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to implement the delta hedging exemption from equity options position limits without needless delay. The Commission notes that it recently approved a substantially similar proposal filed by the Chicago Board Options Exchange, Incorporated.[26] The Commission believes that BSE's proposal to create a delta hedging exemption from equity options position limits raises no new issues. For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.[27]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2008–10 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–BSE–2008–10. 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 BSE. 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–BSE–2008–10 and should be submitted on or before April 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

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[26] *See* Securities Exchange Act Release No. 56970 (December 14, 2007), 72 FR 72428 (December 20, 2007) (SR–CBOE–2007–99).

[27] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57504; File No. SR–NASD–2007–52]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the NASD Rule 9700 Series To Streamline the Procedural Rules Applicable to General Grievances Related to FINRA Automated Systems

March 14, 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 23, 2007, the National Association of Securities Dealers, Inc. (''NASD'') (n/k/a Financial Industry Regulatory Authority, Inc. (''FINRA'')) 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 FINRA.[3] On February 7, 2008, FINRA 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

FINRA proposes to amend the NASD Rule 9700 Series to streamline the existing procedural rules applicable to general grievances related to FINRA automated systems, to provide discretionary review by the National Adjudicatory Council (''NAC''), acting through the NAC's Review Subcommittee,[4] and to delete certain text that is no longer necessary. The text of the proposed rule change is available at the principal office of FINRA, the Commission's Public Reference Room and *http://www.finra.org.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD Rule 9700 Series, Procedures on Grievances Concerning the Automated Systems, provides

[3] On July 26, 2007, the Commission approved a proposed rule change filed by the NASD to amend the NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR–NASD–2007–053).

[4] For purposes of the proposed rule change, the term ''Review Subcommittee'' will have the meaning set forth in NASD Rule 9120(aa).

redress, where justified, for persons aggrieved by the operations of any automated quotation, execution or communication system owned or operated by FINRA that is not otherwise provided for under the Code of Procedure (''Rule 9000 Series'') or the Uniform Practice Code (''Rule 11000 Series''). The Rule 9700 Series was established to ensure adequate procedural protections to users of FINRA systems.[5] Although by its terms the Rule 9700 Series has potentially broader application, it historically has been used only for appeals of staff Over-the-Counter Bulletin Board (''OTCBB'') eligibility determinations under Rule 6530.[6]

Currently under the Rule 9700 Series, a party that is aggrieved by the operation of a FINRA automated system may request a review by a hearing panel. In accordance with the Rule 9700 Series, the aggrieved party may also request a review of the hearing panel's decision by a Committee designated by the Board.[7] With respect to OTCBB eligibility reviews, both of these reviews pursuant to the Rule 9700 Series are solely to determine whether the issuer filed a complete report by the applicable due date and, thus, whether the security of the issuer is eligible for continued quotation. There is no discretion to grant extensions of time for ineligible securities to become eligible or any other form of relief.

Given that these reviews focus on one narrow issue, FINRA now proposes to amend the Rule 9700 Series to streamline the review process. Specifically, reviews of staff determinations under the Rule 9700 Series would be adjudicated by a Hearing Officer[8] appointed by FINRA's Office of Hearing Officers (''OHO''), subject to discretionary review by the NAC, acting through the NAC's Review Subcommittee.[9]

After the review hearing, the Hearing Officer will prepare a written decision and provide it to the NAC's Review Subcommittee, which would have the ability to call the decision for review during certain specified timeframes.[10] As is currently the case with most expedited actions under the Rule 9550 Series, aggrieved parties will not have the right to appeal the decision to the NAC's Review Subcommittee.[11] The Hearing Officer decision, if not called for review by the NAC's Review Subcommittee, would constitute final FINRA action on the matter.[12]

If a decision is called for review by the NAC's Review Subcommittee, the NAC or NAC's Review Subcommittee would appoint a Subcommittee[13] of the NAC to conduct a review.[14] Based on its review, the Subcommittee would make a recommendation to the NAC and the NAC, in turn, would issue a decision on the matter. The decision of the NAC would constitute final FINRA action.

An aggrieved party also would continue to have the right to appeal the Hearing Officer's decision, or the NAC decision, as the case may be, to the SEC. FINRA believes that this abbreviated review process is appropriate given the narrow and straightforward issue presented and the experience of OHO and the NAC in adjudicating matters. FINRA further believes the streamlined review process strikes an appropriate balance between the need to ensure fairness to aggrieved parties and the need for expedited action in these instances.

FINRA also proposes to make conforming and non-substantive changes to Rules 6530 and 9120 to reflect the amended review process contained in the Rule 9700 Series. There are no proposed changes to other aspects of the review process relating to OTCBB eligibility determinations under Rule 6530 (*e.g.*, notifications and time periods for requesting review, the scope of review and the applicable fees for such review).[15]

In addition, FINRA proposes to make a technical change to the text of Rule 9710. As noted above, Rule 9710 provides that the scope of the Rule 9700 Series is to provide redress, where justified, for persons aggrieved by the operations of any automated quotation, execution or communication system owned or operated by FINRA that is not otherwise provided for under the NASD Code of Procedure (Rule 9000 Series) or the Uniform Practice Code (Rule 11000 Series). There are certain appeal and procedural rights contained in FINRA Rules other than the Rule 9000 Series or the Rule 11000 Series. For example, within the Alternative Display Facility (''ADF'') Rules (the Rule 4000A Series), there are certain appeals rights and procedures relating to ADF related grievances (*e.g.*, ADF Trading Center excused withdrawals reviews under Rule 4619A). In such cases, given the language in Rule 9710, there may be confusion whether the Rule 9700 Series or the Rule 4000A Series governs such disputes. Therefore, FINRA proposes to amend the text of Rule 9710 to clarify that the scope of the Rule 9700 Series is to address general grievances not otherwise provided for by any other FINRA Rules. FINRA believes that this clarification will alleviate any potential confusion in this regard and is consistent with the history and intent of the Rule 9700 Series.

Finally, FINRA proposes to delete language in Rule 6530(e) that is no longer necessary. Specifically, Rule 6530(e) contains text indicating that periodic filings for reporting periods

[5] *See* Securities Exchange Act Release No. 27867, 55 FR 12978 (April 6, 1990) (order approving SR–NASD–90–6).

[6] The OTCBB is a facility for the publication of quotations in eligible OTC equity securities of issuers that are subject to the filing of financial reports with the Commission (or other appropriate regulator) and are current in their reporting. FINRA staff monitors the submission of such periodic reports to determine an issuer's initial and continued eligibility for quotation on the OTCBB and, pursuant to Rule 6530, restricts the quoting of securities of issuers that are late or delinquent in filing periodic reports.

[7] Currently, the Nasdaq Listing and Hearing Review Council (''NLHRC'') has authority to review hearing panel decisions and has only ever had one such review, which upheld the decision of the hearing panel. NLHRC decisions may be called for further review by FINRA's Board solely upon the request of one or more Governors. Finally, an aggrieved party also has the right to appeal a decision to the Commission.

[8] For purposes of the proposed rule change, the term ''Hearing Officer'' will have the meaning set forth in Rule 9120(p).

[9] Subject to the NAC's discretionary review (acting through the NAC's Review Subcommittee), a Hearing Officer currently acts as the adjudicator in expedited actions involving (1) a failure to pay FINRA dues, fees or other charges and (2) a failure to pay an arbitration award or related settlement, pursuant to Rules 9553 and 9554, respectively.

[10] The NAC's Review Subcommittee will have the right to call an OHO decision for review within 21 days after receipt of such decision, which is consistent with the timeframe for the Review Subcommittee's call right involving expedited actions under the Rule 9550 Series.

[11] Under many of the existing rules with expedited components, respondents may not appeal the matter to a FINRA appellate body, such as the NAC. For example, the decision of the Hearing Officer under Rule 9553 (Failure to Pay Dues, Fees and Other Charges) is not appealable, at the request of a party, to the NAC or any other internal, FINRA appellate body under the existing system.

[12] Currently under Rule 9780, FINRA's Board has a right to review NLHRC decisions issued pursuant to Rule 9770. The proposed rule change would provide the NAC (rather than the Board) with a call right, which is consistent with other expedited actions under the Rule 9550 Series.

[13] For purposes of the proposed rule change, the term ''Subcommittee'' will have the meaning set forth in Rule 9120(cc). The Subcommittee will be comprised as set forth in Rule 9331(a)(1).

[14] If the NAC's Review Subcommittee calls a matter for review, the timelines for such review would be as set forth in proposed Rule 9760.

[15] In accordance with Rule 6530, an aggrieved party requesting a review of an OTCBB eligibility determination by a Hearing Officer will continue to be required to pay a $4,000 fee for such review. Given that aggrieved parties would only have the right to appeal to OHO and any further level of review would be at the discretion of the NAC's Review Subcommittee, the additional $4,000 fee currently provided for in Rule 6530(f)(3) would be eliminated. Also in accordance with Rule 6530, a request for review will stay the OTCBB security's removal until the Hearing Officer issues a decision. If the NAC's Review Subcommittee calls a matter for review, the OTCBB security's removal will be stayed until the NAC issues a decision.

ended before October 1, 2005 will not count toward determining eligibility for quotation on the OTCBB pursuant to paragraph (e). Given that the text relating to the October 1, 2005 timeframe is no longer necessary, FINRA proposes to delete that text as part of this proposed rule change.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change strikes an appropriate balance between the need to ensure fairness to aggrieved parties and the need for expedited action in these instances.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FINRA has not solicited, and does not intend to solicit, comments on this proposed rule change. FINRA has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2007–52 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–NASD–2007–52. 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–NASD–2007–52 and should be submitted on or before April 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5709 Filed 3–20–08; 8:45 am]

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[16] 15 U.S.C. 78o–3(b)(6).

[17] CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57507; File No. SR–ISE–2007–77]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Complex Orders

March 14, 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 August 24, 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 prepared by the ISE. On November 27, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed Amendment No. 2 to the proposed rule change on March 11, 2008.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment Nos. 1 and 2, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend ISE Rule 722 pertaining to Complex Orders to provide an opportunity for marketable complex orders to receive price improvement and to provide more specificity on the mechanics of how complex orders are executed. The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.iseoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 expanded the discussion in the purpose section of the original filing, but did not change the text of the proposed rule change.

[4] Amendment No. 2 modified the original filing to make exposure of marketable complex orders voluntary. Amendment No. 2 replaced the original filing in its entirety.

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

ISE Rule 722 describes execution principles for complex orders, including priority rules regarding the execution of complex orders when there are Public Customer orders resting on the Exchange's limit order book in the options series that comprise the individual leg(s) of a complex order. The Exchange's System automatically executes complex orders in conformance with the requirements of ISE Rule 722, and the Exchange is not proposing any changes to these substantive requirements. Additionally, other ISE rules, such as Rule 717(d) and (e) that require members to expose orders to the marketplace before executing them against proprietary or solicited orders, also apply to the execution of complex orders. The Exchange is not proposing any changes to the application of these other Exchange rules to the execution of complex orders.

The purpose of the proposed rule change is to amend ISE Rule 722 to provide an opportunity for marketable complex orders to receive price improvement and to provide more specificity in the Rule on the mechanics of how complex orders are executed by the System in conformance with the existing requirements of Rule 722.[5] In particular, the Exchange proposes to amend ISE Rule 722 to specify that complex orders: (1) Are executed against orders on the complex order book in price priority and in time priority at the same price; and (2) will be executed against the bids and offers for the individual legs in the Exchange's options market provided the complex order can be executed in full or in a permissible ratio by such bids and offers. The System matches incoming complex orders against contra-side complex orders when possible, and then executes the individual legs of a complex order against the limit order book when possible. In each of these circumstances, the System assures that the requirements of ISE Rule 722 are satisfied. For example, the System will not execute two complex orders against each other if the execution price of the options leg(s) would be below the best price available on the ISE for the options series, nor will it execute two complex orders at a price that matches the best price available on the ISE when there is a Public Customer order on the book unless the specific requirements of ISE Rule 722 are satisfied.

Under the proposal, the Exchange also will allow members to choose to give their marketable complex orders an opportunity for price improvement by introducing a delay of up to one second before automatically executing designated incoming complex orders.[6] During this delay, the complex order will be exposed on the complex order book to give market participants an opportunity to enter contra-side complex orders.[7] While the Exchange is not proposing to conduct an actual auction for an incoming marketable complex order (*i.e.*, there will be no messages sent to members specifically soliciting interest to trade with the complex order), this short delay before executing a marketable complex order will provide an opportunity for the order to receive price improvement. The System will execute the incoming order against interest on the complex order book in price time priority following the delay, so while it is possible that the order will receive price improvement as a result of contra-side orders being entered during the delay, it is also possible that orders will no longer be executable at the end of the delay. Members will be able to mark all complex orders for price improvement, including stock-option orders.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will provide an opportunity for marketable complex orders to receive price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 No. SR–ISE–2007–77 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.

[5] The Exchange also proposes to delete an outdated cross reference from ISE Rule 722. Specifically, ISE Rule 722(b)(5) specifies that the restrictions on order entry contained in two paragraphs of ISE Rule 717 do not apply to Complex Orders. The requirements contained in the two paragraphs have been removed from ISE Rule 717, so the Exchange proposes to delete subparagraph (5) from Rule 722(b).

[6] The Exchange will determine the appropriate length of the delay, not to exceed one second, from time to time. The initial delay period and any subsequent changes to the delay period will be communicated to Members via an Exchange circular.

[7] The complex order book is available to all ISE market participants. However, the application of ISE Rules 717(d) and (e), which require a three-second exposure period, will prohibit the member that entered the complex order from entering contra-side principal orders or orders solicited from other broker-dealers during the proposed one-second (or less) exposure period.

[8] *See* Supplementary Material to ISE Rule 722 regarding execution of the stock legs of stock-option orders.

[9] 15 U.S.C. 78f(b)(5).

All submissions should refer to File No. SR–ISE–2007–77. 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 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 No. SR–ISE–2007–77 and should be submitted on or before April 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5695 Filed 3–20–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57508; File No. SR–ISE–2008–27]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Phase II of the Penny Pilot Program Expansion

March 17, 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 March 12, 2008, 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 ISE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) 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

ISE is proposing to implement Phase II of the Penny Pilot Program expansion. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the ISE's principal office, and at the Commission's Public Reference Room.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 24, 2007, the Commission approved ISE's rule filing, SR–ISE–2006–62, which permits 13 option classes to quote in penny increments in connection with the implementation of an industry-wide, six-month pilot program (the ''Penny Pilot Program'').[6] Under the Penny Pilot Program, the minimum price variation for all 13 option classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQs''), is $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. The QQQQs are quoted in $0.01 increments for all options series.

A subsequent ISE rule filing, SR–ISE–2007–74, initiated a two-phase expansion of the Penny Pilot Program. Phase I of the expansion, which commenced on September 28, 2007,[7] added 22 option classes that are among the most actively traded, multiply-listed option classes based on national average daily volume, and together with the original 13 option classes, represented approximately 35% of the total industry volume.

The Exchange now proposes to implement Phase II of the expansion, which will begin on March 28, 2008 and continue for one year until March 27, 2009. Phase II will add an additional 28 option classes to the Penny Pilot Program on March 28, 2008, bringing the total number of option classes in the Penny Pilot Program to 63. These 28 new option classes are also among the most actively traded, multiply-listed option classes. A Regulatory Information Circular, attached as Exhibit 5 to this proposed rule change, identifies these additional 28 underlying securities.[8] The 35 classes currently in the Penny Pilot Program will continue to be quoted as they are today.

ISE believes that expanding the Penny Pilot Program as proposed by this rule filing will allow the Exchange and the Commission to further analyze, and over a longer period of time, the impact of quoting and trading option classes in penny increments and the impact of the Penny Pilot Program on liquidity, market structure, and quote traffic.

As proposed in the Initial Filing, ISE represents that options trading in penny increments will not be eligible for split pricing, as permitted under ISE Rule 716. In the Initial Filing, the Exchange also made references to quote mitigation strategies that are currently in place and proposed to apply them to the Penny

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] Exhibit 5 to the filing contains a Regulatory Information Circular that constitutes the text of the proposed rule change.

[6] *See* Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (the ''Initial Filing''). The Penny Pilot Program was subsequently extended for an additional two month period, until September 27, 2007. *See* Securities Exchange Act Release No. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007) (SR–ISE–2007–68).

[7] *See* Securities Exchange Act Release No. 56564 (September 27, 2007), 72 FR 56412 (October 3, 2007).

[8] The Exchange notes that on August 27, 2007, Sun Microsystems, Inc. changed its ticker symbol from SUNW to JAVA. The Exchange will amend the Regulatory Information Circular to reflect this change prior to its issuance. In addition, the Exchange will revise the Regulatory Information Circular prior to its issuance to correct a typographical error.

Pilot Program. The Exchange proposes to continue applying those quote mitigation strategies. Specifically, as proposed in ISE Rule 804, ISE will continue to utilize a holdback timer that delays quotation updates for up to, but not longer than, one second. The Exchange's monitoring and delisting policies, as proposed in the Initial Filing, shall also continue to apply.

Finally, ISE intends to submit reports to the Commission analyzing the Penny Pilot Program for the following time periods:

- February 1, 2008—July 31, 2008
- August 1, 2008—January 31, 2009

The Exchange anticipates its reports will analyze the impact of penny pricing on market quality and options system capacity. The Exchange will submit each report within one month following the end of the period being analyzed.

2. Statutory Basis

The basis under the Act for this proposed rule change is found in section 6(b)(5),[9] in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[10] and Rule 19b–4(f)(1) thereunder,[11] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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.[12]

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–2008–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2008–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2008–27 and should be submitted on or before April 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5696 Filed 3–20–08; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

[12] *See* 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57500; File No. SR–MSRB–2008–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Amendment to Rule A–3, on Membership on the Board, and Rule A–4, on Meetings of the Board

March 14, 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 March 5, 2008, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the MSRB. The MSRB has filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3) 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 MSRB is filing with the Commission a proposed rule change consisting of amendments to Rule A–3 to permit greater diversity in considering persons to serve on the Nominating Committee or for Board membership and amendments to Rule A–4 to permit the Chairman of the Board to call a special meeting of the Board directly and more quickly, but with unanimous consent. The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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 Board has been reviewing its Administrative Rules and by-laws to ensure that they are consistent with current good corporate governance practices. Among other things, Rule A–3, on membership on the Board, directs the Board and the Nominating Committee to consider the ''need'' to maintain broad geographic representation on the Board, as well as diversity in the size and type of dealers represented, in considering persons to serve on the Nominating Committee or for Board membership.

The Board has determined to modify this provision in the rule in order to provide greater flexibility in the appointment of persons to the Nominating Committee and the nomination of candidates to the Board. This modification will facilitate the Board and Nominating Committee's consideration of a broader range of factors for nomination and will encourage consideration of well-qualified candidates with diverse backgrounds, unique experience and complementary skills, together with consideration of geographic representation and diversity in the size and type of dealers represented. Further, the modification seeks to prevent the artificial limiting of the field of qualified candidates by permitting the Board and Nominating Committee to consider such broader factors rather than to exclusively select candidates in order to achieve diversity on a narrower set of parameters.

Rule A–4, among other things, provides a process for calling special meetings of the Board, including how the notice of the time and place of the special meeting shall be provided to Board members. The current provision requires the Secretary of the Board to call a meeting at the request of the Chairman of the Board or at the request of not less than three Board members. In addition, the rule provides that the notice of the special meeting shall be mailed to each member not later than the seventh calendar day preceding the date on which the meeting is to be held. The rule provides for a three day notice period for notice by telephone, e-mail or personal delivery.

The Board has determined to modify this provision to clarify and update its rules and bring them into line with modern practice. The Board has modified the rule to enable the Chairman of the Board to call a special meeting of the Board directly, without the assistance of the Secretary of the Board. In addition, the Board has provided that notices for the time and place of a special meeting shall be provided to each member and the Secretary of the Board with three-day's advance notice. Further, the modification permits the Board to waive such advance notice by unanimous consent of all Board members attending such meeting. The modification takes into consideration the realities of modern communications and permits the Board to convene quickly, but with unanimous consent, in the event of, among other things, a market or other emergency.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(I) of the Act,[5] which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB. The MSRB believes that the proposed rule change is consistent with this provision because it is concerned solely with the operation and administration of the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it only applies to the operation and administration of the MSRB.

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.

[5] 15 U.S.C. 78o–4(b)(2)(I).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder[7] because it is concerned solely with the operation and administration of the MSRB. 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.[8]

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–MSRB–2008–02 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–MSRB–2008–02. 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

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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 MSRB. 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–MSRB–2008–02 and should be submitted on or before April 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5704 Filed 3–20–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57499; File No. SR–NYSE–2008–17]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt New Initial and Continued Listing Standards To List Special Purpose Acquisition Companies

March 14, 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 March 6, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II and III below, which items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Listed Company Manual (the ''Manual'') to adopt listing standards for special purpose companies formed for the purpose of raising capital in an initial public offering and entering into an undetermined business combination. The filing also proposes the adoption of requirements that (i) any equity security listing on the Exchange must have a closing price or, if listing in connection with an initial public offering (''IPO''), an IPO price per share of at least $4 at the time of initial listing and (ii) convertible debt issuances listed on the Exchange must have an aggregate market value or principal amount of no less than $10,000,000.

Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

102.01 Minimum Numerical Standards—Domestic Companies—Equity Listings

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102.01B

A Company must demonstrate an aggregate market value of publicly-held shares of $60,000,000 for companies that list either at the time of their initial public offerings (''IPO'') (C) or as a result of spin-offs or under the Affiliated Company standard, and $100,000,000 for other companies (D). *A company must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least $4 at the time of initial listing.*

* * * * *

102.03 Minimum Numerical Standards—Domestic Companies—Debt Listings

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Convertible Bonds

Debt securities convertible into equity securities may be listed only if the underlying equity securities are subject to real-time last sale reporting in the United States. *The convertible debt issue must have an aggregate market value or principal amount of no less than $10,000,000.*

* * * * *

102.06 Minimum Numerical Standards—Acquisition Companies

The Exchange will consider on a case-by-case basis the appropriateness for listing of companies (''acquisition companies'' or ''ACs'') with no prior operating history that conduct an initial public offering of which at least 90% of the proceeds, together with the proceeds of any other concurrent sales of the AC's equity securities, will be held in a trust account'') controlled by an independent custodian until consummation of a business combination in the form of a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or similar business combination with one or more operating businesses or assets with a fair market value equal to at least 80% of the net assets held in trust (net of amounts disbursed to management for working capital purposes and excluding the amount of any deferred underwriting discount held in trust) (a ''Business Combination'').

ACs must demonstrate an aggregate market value of $250,000,000 (A) and a market value of publicly-held shares of $200,000,000 (A) and must comply with the requirements of Section 102.01A. An AC must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least $4 at the time of initial listing.

(A) Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. For ACs that list at the time of their IPOs, if necessary, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the AC's offering in order to determine an AC's compliance with this listing standard.

Under the terms of its constitutive documents or by contract, any AC deemed suitable for listing will be subject to the following minimum requirements:

- *The Business Combination must be approved by a majority of the votes cast by public shareholders at a duly held shareholders meeting;*
- *Each public shareholder voting against the Business Combination will have the right (''Conversion Right'') to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (net of taxes payable, and amounts disbursed to management for working capital purposes), provided that the Business Combination is approved and consummated. It will be permissible for an AC to establish a limit (set no lower than 10% of the shares sold in the AC's IPO) as to the maximum number of shares with respect to which any public shareholder, together with any affiliate of such shareholder or any person with whom such shareholder is acting as a ''group'' (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) may exercise Conversion Rights;*
- *The AC cannot consummate its Business Combination if public shareholders owning in excess of a threshold amount (to be set no higher than 40%) of the shares of common stock issued in the AC's initial public offering exercise their Conversion Rights*

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in connection with such Business Combination;

- *The AC will be liquidated if no Business Combination has been consummated within a specified time period not to exceed three years. The Exchange will promptly commence delisting procedures with respect to any AC that fails to consummate its Business Combination within (i) the time period specified by its constitutive documents or by contract or (ii) three years, whichever is shorter; and*

- *The AC's founding shareholders must waive their rights to participate in any liquidation distribution with respect to all shares of common stock owned by each of them prior to the IPO or purchased in any private placement occurring in conjunction with the IPO, including the common stock underlying any founders' warrants. In addition, the underwriters of the IPO must agree to waive their rights to any deferred underwriting discount deposited in the trust account in the event the AC liquidates prior to the completion of a Business Combination.*

In the event that AC securities are listed as units, the components of the units (other than common stock) will be required to meet the applicable initial listing standards for the security types represented by the components.

In determining the suitability for listing of an AC, the Exchange will consider:

- *The experience and track record of management;*

- *The amount of time permitted for the completion of the Business Combination prior to the mandatory dissolution of the AC;*

- *The nature and extent of management compensation;*

- *The extent of management's equity ownership in the AC and any restrictions on management's ability to sell AC stock;*

- *The percentage of the contents of the trust account that must be represented by the fair market value of the Business Combination;*

- *The percentage of voting publicly-held shares whose votes are needed to approve the Business Combination;*

- *The percentage of the proceeds of sales of the AC's securities that is placed in the trust account; and*

- *Such other factors as the Exchange believes are consistent with the goals of investor protection and the public interest.*

* * * * *

103.01 Minimum Numerical Standards Non-U.S. Companies Equity Listings Distribution

103.01A. A company must meet the following distribution [and] size, and price requirements:

Number of shareholder, holders—5,000 Worldwide of 100 or more shares.

Number of shares publicly held—2.5 million Worldwide.

Market value of publicly held shares (A)—$100 million Worldwide (B) or for companies listing under the Affiliated Company standard— $60 million Worldwide (B).

(A) Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. If a company either has a significant concentration of stock, or if changing market forces have adversely impacted the public market value of a company which otherwise would qualify for listing on the Exchange such that its public market value is no more than 10 percent below $100,000,000, the Exchange will generally consider $100,000,000 in stockholders' equity as an alternate measure of size and therefore, as an alternative basis to list the company.

(B) For companies that list at the time of their initial public offerings (''IPOs''), if necessary, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering in order to determine a company's compliance with this listing standard[s]. Similarly, for spin-offs, the Exchange will rely on a representation from the parent company's investment banker (or other financial advisor) or transfer agent in order to estimate the market value based upon the as disclosed distribution ratio. For purposes of this paragraph, an IPO includes a spin-off and is an offering by an issuer which, immediately prior to its original listing, does not have a class of common stock registered under the Securities Exchange Act of 1934. An IPO includes a carve-out, which is defined for purposes of this paragraph as the initial offering of an equity security to the publicly traded company for an underlying interest in its existing business (may be subsidiary, division, or business unit).

A company must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least $4 at the time of initial listing.

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802.01B Numerical Criteria for Capital or Common Stock

* * * * *

Criteria for REITs and Limited Partnerships

The Exchange will promptly initiate suspension and delisting procedures with respect to REITs and Limited Partnerships if the average market capitalization of the entity over 30 consecutive trading days is below $25,000,000. The Exchange will promptly initiate suspension and delisting procedures with respect to a REIT if it fails to maintain its REIT status (unless the resultant entity qualifies for an original listing as a corporation).

The Exchange will notify the REIT or limited partnership if the average market capitalization falls below $35,000,000 and will advise the REIT or limited partnership of the delisting standard. REITs and limited partnerships are not eligible to follow the procedures outlined in Sections 802.02 and 802.03.

Criteria for Acquisition Companies (''ACs'')

Prior to Consummation of Business Combination

Prior to the consummation by a listed Acquisition Company (an ''AC'') of its Business Combination (as defined in Section 102.06), the Exchange will promptly initiate suspension and delisting procedures:

(i) If the AC's average aggregate global market capitalization is below $125,000,000 or the average aggregate global market capitalization attributable to its publicly-held shares is below $100,000,000, in each case over 30 consecutive trading days. An AC will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to this criterion, and any such AC will be subject to delisting procedures as set forth in Section 804. The Exchange will notify the AC if its average aggregate global market capitalization falls below $150,000,000 or the average aggregate global market capitalization attributable to its publicly-held shares falls below $125,000,000 and will advise the AC of the delisting standard.

(ii) If the AC securities initially listed (either common equity securities or units, as the case may be), fall below the following distribution criteria:

the number of total stockholders (A) is less than—400

OR

the number of total stockholders (A) is less than—1,200 and average monthly trading volume is less than—100,000 shares (for most recent 12 months)

OR

the number of publicly-held shares (B) is less than—600,000 (C).

(A) The number of beneficial holders of stock held in the name of Exchange member organizations will be considered in addition to holders of record.

(B) Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly-held shares.

(C) If the unit of trading is less than 100 shares, the requirement relating to the number of shares publicly held shall be reduced proportionately.

In the case of AC securities traded as a unit, such securities will be subject to suspension and delisting if any of the component parts do not meet the applicable listing standards. However, if one or more of the components is otherwise qualified for listing, such component(s) may remain listed.

For the purposes of determining whether an individual component satisfies the applicable distribution criteria, the units that are intact and freely separable into their component parts shall be counted toward the total numbers required for continued listing of the component. If a component is a warrant, it will be subject to the continued listing standards for warrants set forth in Section 802.01D, including a distribution requirement of 100 holders.

Notwithstanding the foregoing, the Exchange will consider the suspension of trading in, or removal from listing of, any individual component or unit when, in the opinion of the Exchange, it appears that the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or unit, the Exchange will consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue.

(iii) If the AC fails to consummate its Business Combination within the time period specified by its constitutive documents or required by contract, or as provided by Section 102.06, whichever is shorter.

At the Time of the Business Combination

After shareholder approval of a Business Combination, the Exchange will consider whether the continued listing of the AC after consummation of the Business Combination will be in the best interests of the Exchange and the public interest and will have the discretion to suspend and commence delisting proceedings with respect to the AC prior to consummation of the Business Combination. An AC will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to such a delisting determination, and any such AC will be subject to delisting procedures as set forth in Section 804.

After Consummation of Business Combination

After consummation of its Business Combination, a company that had originally listed as an AC will be subject to Section 801 and Section 802.01 in its entirety and will be subject to the continued listing standards applicable to companies that qualify to list under the Earnings Test as set forth above.

''Back Door Listing''

When a listed AC consummates its Business Combination, the Exchange will consider whether the Business Combination gives rise to a ''back door listing'' as described in Section 703.08(E). If the resulting company would not qualify for original listing, the Exchange will promptly initiate suspension and delisting of the AC.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Manual to adopt listing standards for acquisition companies (''ACs'').

An AC is a special purpose company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization or similar business combination with one or more operating businesses or assets (a ''Business Combination''). The securities sold by the AC in its initial public offering are typically units, consisting of one share of common stock and one or more warrants (or a fraction of a warrant) to purchase common stock, that are separable at some point after the IPO. Management generally is granted a percentage of the AC's equity and may be required to purchase additional shares in a private placement at the time of the AC's IPO.

While ACs are not uniform in their structure, the ACs that have come to market in recent times have generally provided the following investor protections:

- Most of the proceeds of the IPO and any other concurrent sales of the AC's equity securities are placed in a trust account controlled by an independent custodian and may only be released for (i) a shareholder-authorized Business Combination or (ii) a return of capital to the shareholders;
- A Business Combination with one or more target businesses that together have a fair market value equal to a threshold percentage (typically 80%) of the assets in the trust account must be completed within a specified time frame (generally 18 months or two years), or the trust account must be liquidated and the shareholders must receive their pro rata share of its contents; and
- The Business Combination must be approved by a majority of the votes cast by the public shareholders at a duly constituted shareholders meeting, and dissenting shareholders must have a right to have their shares redeemed according to a predetermined methodology. The AC cannot consummate its Business Combination if the holders of more than a specified percentage (typically 19.9%) of the shares request redemption.

While the Exchange does not believe that all ACs are suitable for listing on the NYSE, it believes that there may be certain transactions where the quality of the sponsor and the size of the offering proceeds may make ACs suitable for NYSE listing.

Initial Listing Standard

The Exchange does not currently have a financial listing standard under which an AC conducting its IPO could qualify to list. ACs by their nature have no financial history, while all of the Exchange's financial listing standards for operating companies require some period of operations prior to listing. As such, the Exchange proposes to adopt new Section 102.06 of the Manual, requiring ACs to demonstrate a total market value of $250,000,000 and a market value of publicly-held shares of

$200,000,000.[3] The standard would not require any prior operating history, but ACs would have to meet the same distribution criteria as all other IPOs, as set forth in Section 102.01A—400 holders of round lots and 1,100,000 publicly-held shares. All of the Exchange's corporate governance requirements applicable to operating companies will apply to listed ACs.

Under the terms of its constitutive documents or by contract, any AC deemed suitable for listing will be subject to the following minimum requirements:

• At least 90% of the proceeds from the AC's IPO and any other concurrent sales of the AC's equity securities will be held in a trust account controlled by an independent custodian until consummation of the AC's Business Combination;

• The Business Combination must be approved by a majority vote of the votes cast by public shareholders at a duly held shareholders meeting;

• Each public shareholder voting against the Business Combination will have the right (''Conversion Right'') to convert its shares of common stock into a pro rata share of the aggregate amount then on deposit in the trust account (net of taxes payable and amounts disbursed to management for working capital purposes), provided that the Business Combination is approved and consummated. It will be permissible under Section 102.06 for an AC to establish a limit (set no lower than 10% of the shares sold in the AC's IPO) as to the maximum number of shares with respect to which any public shareholder, together with any affiliate of such shareholder or any person with whom such shareholder is acting as a ''group'' (as such term is used in Sections 13(d)[4] and 14(d)[5] of the Act) may exercise Conversion Rights;[6]

• The AC cannot consummate its Business Combination if public shareholders owning in excess of a threshold amount (to be set no higher than 40%) of the shares of common stock issued in the AC's initial public offering exercise their Conversion Rights in connection with such Business Combination;

• The AC will be liquidated if the Business Combination has not been consummated within a specified time period not to exceed three years. The Exchange will promptly commence delisting procedures with respect to any AC that fails to consummate its Business Combination within (i) the time period specified by its constitutive documents or by contract, or (ii) three years, whichever is shorter; and

• The AC's founding shareholders must waive their rights to participate in any liquidation distribution with respect to all shares of common stock owned by each of them prior to the IPO or purchased in any private placement occurring in conjunction with the IPO, including the common stock underlying any founders' warrants. In addition, the underwriters of the IPO must agree to waive their rights to any deferred underwriting discount deposited in the trust account in the event the AC liquidates prior to the completion of a Business Combination.[7]

In the event that AC securities are listed as units, the components of the units (other than common stock) will be required to meet the applicable initial listing standards for the security types represented by the components.[8]

The Exchange intends to consider proposed AC listings on a case-by-case basis and does not necessarily intend to list every AC that meets the minimum requirements for listing.

In determining the suitability for listing of an AC, the Exchange will consider:

• The experience and track record of management;

• The amount of time permitted for the completion of the Business Combination prior to the mandatory dissolution of the AC;

• The nature and extent of management compensation;

• The extent of management's equity ownership in the AC and any restrictions on management's ability to sell AC stock;

• The percentage of the contents of the trust account that must be represented by the fair market value of the Business Combination;

• The percentage of voting publicly-held shares whose votes are needed to approve the Business Combination;

• The percentage of the proceeds of sales of the AC's securities that is placed in the trust account; and

• Such other factors as the Exchange believes are consistent with the goals of investor protection and the public interest.

Continued Listing Standard Applicable to ACs Prior to Business Combination

Prior to the consummation by an AC of its Business Combination, the Exchange will promptly initiate suspension and delisting procedures:

• If the AC's average aggregate global market capitalization is below $125,000,000 or the average aggregate global market capitalization attributable to its publicly-held shares is below $100,000,000, in each case over 30 consecutive trading days. An AC will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to this criterion, and any such AC will be subject to delisting procedures as set forth in Section 804. The Exchange will notify the AC if its average aggregate global market capitalization falls below $150,000,000 or the average aggregate global market capitalization attributable to its publicly-held shares falls below $125,000,000 and will advise the AC of the delisting standard.

• If the AC securities initially listed (either common equity securities or units, as the case may be), fall below the following distribution criteria:

The number of total stockholders[9] is less than—400

OR

The number of total stockholders[9] is less than—1,200

And average monthly trading volume is less than—100,000 shares (for most recent 12 months)

OR

The number of publicly-held shares[10] is less than—600,000.[11]

In the case of AC securities traded as a unit, such securities will be subject to suspension and delisting if any of the

[3] Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. For ACs that list at the time of their IPOs, if necessary, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the AC's offering in order to determine an AC's compliance with this listing standard.

[4] 15 U.S.C. 78m(d).

[5] 15 U.S.C. 78n(d).

[6] For example, an AC which sells 10,000,000 shares in its IPO could limit the exercise of Conversion Rights by any one holder to 10% of that amount, or a maximum of 1,000,000 shares.

[7] In the event of liquidation, the pro rata share of the trust account to be paid to the holder of each publicly-held share would be calculated in accordance with the law of the AC's state of incorporation. However, the actual amount paid to the public shareholders could vary depending on a variety of factors as disclosed in the AC's IPO prospectus, such as liquidation expenses, indemnification obligations, etc.

[8] If a component is a warrant, it will be subject to the initial listing standards for warrants set forth in Section 703.12. *See* telephone conversation between Steve L. Kuan, Special Counsel, Division of Trading and Markets, Commission, and John Carey, Assistant General Counsel, Office of the General Counsel, NYSE Euronext, on March 11, 2008.

[9] The number of beneficial holders of stock held in the name of Exchange member organizations will be considered in addition to holders of record.

[10] Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly-held shares.

[11] If the unit of trading is less than 100 shares, the requirement relating to the number of shares publicly held shall be reduced proportionately.

component parts do not meet the applicable listing standards. However, if one or more of the components is otherwise qualified for listing, such component(s) may remain listed.

For the purposes of determining whether an individual component satisfies the applicable distribution criteria,[12] the units that are intact and freely separable into their component parts shall be counted toward the total numbers required for continued listing of the component.

Notwithstanding the foregoing, the Exchange will consider the suspension of trading in, or removal from listing of, any individual component or unit when, in the opinion of the Exchange, it appears that the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or unit, the Exchange will consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue.

• If the AC fails to consummate its Business Combination within the time period specified by its constitutive documents or required by contract, or three years, whichever is shorter.

The continued listing standards set forth in Sections 801 (''Policy''), 802.01C (''Price Criteria for Capital or Common Stock''), 802.01D (''Other Criteria'') and 802.01E (''SEC Annual Report Timely Filing Criteria'') will also apply to listed ACs, in the same way those provisions apply to other equity securities.

At the Time of the Business Combination

After shareholder approval of a Business Combination, the Exchange will consider whether the continued listing of the AC after consummation of the Business Combination will be in the best interests of the Exchange and the public interest and will have the discretion to suspend and commence delisting proceedings with respect to the AC prior to consummation of the Business Combination. An AC will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to such a delisting determination, and any such AC will be subject to delisting procedures as set forth in Section 804.

Continued Listing Standard Applicable to ACs After Business Combination

After consummation of its Business Combination, a company that had originally listed as an AC will be subject to Section 801 and Section 802.01 in its entirety and will be considered to be below compliance standards if it does not meet the continued listing standards applicable to operating companies listed under the Exchange's Earnings Test as set forth in Section 802.01B of the Manual,[13] *i.e.*, if average global market capitalization over a consecutive 30-day period is less than $75,000,000, and, at the same time, stockholders' equity is less than $75,000,000. Notwithstanding the foregoing, Section 802.01B provides that the Exchange will promptly initiate suspension and delisting procedures with respect to a company if that company is determined to have average global market capitalization over a consecutive 30-day trading period of less than $25,000,000. Section 802.01B provides that a company will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to this criterion.

Application of ''Back Door Listing'' Rule to ACs Upon Consummation of Business Combination

When a listed AC consummates its Business Combination, the Exchange will consider whether the Business Combination gives rise to a ''back door listing'' as described in Section 703.08(E) of the Manual, *i.e.*, whether the transaction in the opinion of the Exchange constitutes an acquisition of the AC by an unlisted company. In applying its back door listing policy, the Exchange gives consideration to all factors, including changes in ownership of the listed company, changes in management, whether the size of the company being ''acquired'' is larger than the listed company, and whether the two businesses are related on a horizontal or a vertical basis. All circumstances will be considered collectively, and weight may be given to compensating factors. In a back door listing, the unlisted company is typically the larger entity, and frequently the unlisted company will be treated as the acquiror for accounting purposes. Where a transaction is determined to be a back door listing, Section 703.08(E) requires that the resulting company meet the standards for original listing. If the resulting company would not qualify for original listing, the Exchange will refuse to list additional shares of the AC for the transaction, and the AC will be delisted. If the Exchange does not determine that an AC's Business Combination is a back door listing, the Exchange will not subject the AC to an original listing analysis at the time of the Business Combination, but rather will simply subject the post-Business Combination company to the continued listing standards for companies that originally listed under the Earnings Test.

Minimum Closing Price Requirement for New Listings

The filing also proposes the adoption of a requirement that any equity security listing on the Exchange, including AC securities, must have a closing price or, if listing in connection with an IPO, an IPO price per share of at least $4 at the time of initial listing. This price test would apply whether a company listed under the domestic company standards of Section 102.01 of the Manual or the standards set forth in Section 103.01 for non-U.S. companies.

Minimum Value of New Listings of Convertible Debt

The Exchange also proposes to adopt a requirement that any convertible debt issuance listed on the Exchange must at the time of listing have an aggregate market value or principal amount of no less than $10,000,000.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] 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. The Exchange believes that the proposed listing standard is consistent with Section 6(b)(5) of the Act[16] in that it

[12] If a component is a warrant, it will be subject to the continued listing standards for warrants set forth in Section 802.01D, including a continued distribution requirement of 100 holders.

[13] Section 802.01B establishes separate continued listing standards for companies that qualified to list under each of the Exchange's four separate initial listing standards for operating companies, *i.e.*, the Earnings Test, the Valuation/Revenue with Cash Flow Test, the Pure Valuation/Revenue Test, and the Affiliated Company Test. As the Exchange cannot predict the standard that would be most appropriate to any specific AC after its Business Combination, we have decided to apply the continued listing standard applicable to companies listed under the Earnings Test to all post-Business Combination ACs.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

contains requirements in relation to the listing of ACs that provide adequate protections for investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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–NYSE–2008–17 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–2008–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–17 and should be submitted on or before April 11, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5673 Filed 3–20–08; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of waiver of the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing product number 6210.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing (Indoor and Outdoor Electrical Lighting Fixtures). The basis for waiver is that no small business manufacturers are supplying this class of product to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATE: This waiver is effective April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Pamela M. McClam, Program Analyst, by telephone at (202) 205–7408; by FAX at (202) 481–4783; or by e-mail at *Pamela.McClam@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code required as a data entry field by the Federal Procurement Data System.

The SBA received a request on February 19, 2008, to waive the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing (Indoor and Outdoor Electrical Lighting Fixtures).

In response, on March 6, 2008, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing (Indoor and Outdoor Electrical Lighting Fixtures). SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this

class of products. No comments were received in response to this notice. SBA has determined that there are no small business manufacturers of this class of products, and is therefore granting the waiver of the Nonmanufacturer Rule for All Other Miscellaneous Electrical Equipment and Component Manufacturing (Indoor and Outdoor Electrical Lighting Fixtures). NAICS code 335999 product number 6210.

Authority: 15 U.S.C. 637(a)(17).

Arthur E. Collins, Jr.,

Director for Government Contracting.

[FR Doc. E8–5736 Filed 3–20–08; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages included in this notice are for new information collections and revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the Agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Submit written comments and recommendations regarding the information collection(s) to the SSA Reports Clearance Officer. Mail, fax or e-mail the information to the address and fax number listed below: (SSA), Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400, E-mail address: *OPLM.RCO@ssa.gov*.

The information collections listed below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. Therefore, submit your comments to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Social Security Benefits Application (Internet, Retirement Survivor & Disability)—20 CFR 404.310–.311, 404.315–.322, 404.330–.333, 404.601.–.603, 404.1501–.1512, Subpart D, Subpart G & Subpart P—0960–0618.* Members of the public seeking Social Security benefits must first file an application for the desired type of payment. The Internet Social Security Benefits Application (ISBA) is an online system that allows members of the public to apply electronically for Retirement Insurance Benefits, Disability Insurance Benefits, and Spouse's Insurance Benefits. This information collection includes the: (1) ISBA; (2) paper forms (forms SSA–1, SSA–2, and SSA–16) for these various benefits; and (3) Modernized Claims System for these benefits, which allows SSA field office employees to enter information in an application system during interviews with applicants in a direct input process. For each part of this information collection, applicants are asked only those questions that are relevant to the specific type of benefit they are seeking. This information collection request (ICR) is for changes we are making to the ISBA application, including: (1) the addition of new race/ethnicity questions; (2) the ability for third parties to complete applications in ISBA; and (3) redesign changes that will make the application less time-consuming. The respondents are applicants for Retirement, Disability, or Spouse's Insurance Benefits or their third-party representatives.

Type of Request: Revision to an OMB-approved information collection.

ISBA BURDEN INFORMATION

Form type	Number of respondents	Frequency of response	Average burden per response (minutes)	Total burden (hours)
ISBA 3rd Party	28,118	1	5	7,030
ISBA Applicant after 3rd Party Completion	28,118	1	5	2,343
First Party ISBA	541,851	1	15	135,463
Totals	598,087			144,836

PAPER FORMS/ACCOMPANYING MCS SCREENS BURDEN INFORMATION

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Total burden (hours)
SSA–1				
MCS	172,200	1	11	31,750
MCS/Signature Proxy	1,549,800	1	10	258,300
Paper	21,000	1	11	3,850
Totals	1,743,000			293,900
SSA–2				
MCS	36,860	1	15	9,215
MCS/Signature Proxy	331,740	1	14	77,406
Paper	3,800	1	15	950

PAPER FORMS/ACCOMPANYING MCS SCREENS BURDEN INFORMATION—Continued

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Total burden (hours)
Totals	372,400			87,571
SSA–16				
MCS	218,657	1	20	72,886
MCS/Signature Proxy	1,967,913	1	19	623,172
Paper	24,161	1	20	8,054
Totals	2,210,732			704,112

2. *Race/Ethnicity Collection System—0960–NEW.* Currently, SSA has no reliable, statistically valid means of capturing race/ethnicity data in our core business process. While SSA collects some race/ethnicity data on Form SS–5 (OMB No. 0960–0066), the Application for Social Security Card, SSA does not receive the data through other means of enumerating individuals, such as the Enumeration at Birth and Enumeration at Entry processes. Moreover, SSA does not collect it during the disability application process. Adding race/ethnicity to SSA's benefits applications will give us data we can use to ensure the benefits decision process is being conducted in a fair manner.

This ICR is for the Race/Ethnicity questions. Note that OMB established the categories of racial/ethnic choices and the descriptions we use. We modified our proposed instructions and explanations to the public based on feedback we received during public focus groups (conducted under the aegis of OMB No. 0960–0765). The respondents are Title II and Title XVI claimants.

Type of Request: New information collection.

Number of Respondents: 7,870,538.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 393,527.

Dated: March 17, 2008.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E8–5716 Filed 3–20–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6143]

Extension of Waiver of Section 907 of the FREEDOM Support Act With Respect to Assistance to the Government of Azerbaijan

Pursuant to the authority contained in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Pub. L. 107–115), Executive Order 12163, as amended by Executive Order 13346, and Delegation of Authority 245, I hereby determine and certify that extending the waiver of section 907 of the FREEDOM Support Act of 1992 (Pub. L. 102–511):

- Is necessary to support United States efforts to counter international terrorism;
- is necessary to support the operational readiness of United States Armed Forces or coalition partners to counter international terrorism;
- is important to Azerbaijan's border security; and
- will not undermine or hamper ongoing efforts to negotiate a peaceful settlement between Armenia and Azerbaijan or be used for offensive purposes against Armenia.

Accordingly, I hereby extend the waiver of section 907 of the FREEDOM Support Act. This determination shall be published in the **Federal Register** and copies shall be provided to the appropriate committees in Congress.

Dated: March 7, 2008.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E8–5754 Filed 3–20–08; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–29251]

Agency Information Collection Activities; Emergency Approval of a New Information Collection: Commercial Vehicle Driver Survey: Truck Driver Hours of Service and Fatigue Management

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) to request an emergency approval process. FMCSA requested approval of this ICR not later than 30 days from the date of publication of this notice. The purpose of this information collection is to analyze the impact of the new Hours-of-Service regulations on drivers and the effects of these regulations on driver fatigue as well as to acquire general demographic information regarding the commercial motor vehicle driving population.

DATES: Please send your comments by April 21, 2008. OMB must receive your comments by this date in order to act quickly on the ICR.

ADDRESSES: You may submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention: DOT/FMCSA Desk Officer.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert Carroll, Senior Transportation Specialist, (202) 385–2388, *robert.carroll@dot.gov,* MC-RRR Federal Motor Carrier Safety Administration,

6th Floor, West Building, 1200 New Jersey Ave., SE., Washington, DC 20590. Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Michelle Yeh, Engineering Psychologist, (617) 494–3459, *yeh@volpe.dot.gov,* Human Factors Division, Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA 02124. Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Commercial Vehicle Driver Survey: Truck Driver Hours of Service and Fatigue Management.

OMB Control Number: 2126–XXXX.

Type of Request: New information collection.

Respondents: Commercial motor vehicle drivers.

Estimated Number of Respondents: 1728 respondents.

Estimated Time per Response: 15 minutes.

Expiration Date: N/A. This is a new information collection.

Frequency of Response: One-time.

Estimated Total Annual Burden: 432 hours [1728 respondents × 15 minutes = 432].

Background: The Federal Motor Carrier Safety Administration (FMCSA) needs a better understanding of the commercial motor vehicle driving population and the perceived effect of its new Hours-of-Service rule. This rule, adopted in August 2005, was intended to align truck drivers' schedules with the normal 24-hour circadian cycle and provide drivers with better opportunities to obtain more restorative sleep. The Hours-of-Service rule is intended to minimize the occurrence of operational errors on the road. However, in July, 2007, two provisions of the Hours-of-Service rule were vacated by the United States Court of Appeals for the District of Columbia Circuit (the Court). The Court held that FMCSA had failed to provide an opportunity to comment on the methodology of its operator-fatigue model, and that it failed to explain the elements of that methodology. Because the model is the basis for the cost-benefit analysis which supports the increase of driving time from 10 to 11 hours and of the 34-hour restart, the Court vacated those two provisions. The Court subsequently stayed its mandate for three months, until December 27, 2007.

FMCSA would like to analyze, in great detail, the impact of the 2005 Hours-of-Service regulations on drivers. Related to this issue is truck driver fatigue. Fatigue mitigation has been a high priority in the Department of Transportation and the FMSCA for many years. The 2005 Hours-of-Service regulations required drivers to take two additional hours off duty every day, allowing them to obtain the 7–8 hours of sleep that most people need to maintain alertness. An understanding of whether the rules are perceived to be having the desired effect on driver sleep is needed. Additionally, understanding drivers' napping habits and other solutions for coping with fatigue would provide input for future solutions and policies to better accommodate these issues.

FMCSA would also like to obtain information on the commercial motor vehicle driving population. Driver-related factors are an important consideration in commercial motor vehicle crashes, but there is no central nationwide source of information describing the population of drivers holding a Commercial Drivers License (CDL). An estimate of the number of commercial drivers and particular subsets of drivers (e.g., short-haul, regional, long-haul) is needed and would benefit FMCSA in assessing the impacts of future initiatives, policies, and rules and the improvement of its safety programs.

The goals of this survey are to obtain commercial motor vehicle drivers' opinions on the new Hours-of-Service regulations and the effects of these regulations on driver fatigue and to acquire general demographic information regarding the commercial motor vehicle driving population. Data for this project will be collected via driver interviews and from a one-time, hard copy, mailed survey. Drivers will provide information regarding the nature of their work, experience, and employment history, their perceptions regarding the effect of the Hours-of-Service regulations, and methods for coping with fatigue. The results of the information collection will be summarized and made available to the public. It will be used to inform future initiatives, policies, and rules; develop a picture of the commercial vehicle driver population for use in future FMCSA research; and contribute to the general literature regarding fatigue management.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued On: March 14, 2008.

Terry Shelton,

Associate Administrator for Research and Information Technology.

[FR Doc. E8–5720 Filed 3–20–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–01–11426, FMCSA–03–16564, FMCSA–05–21711, FMCSA–05–22194, FMCSA–05–23099, FMCSA–06–23773]

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 13 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 April 23, 2008. Comments must be received on or before April 21, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–01–11426, FMCSA–03–16564, FMCSA–05–21711, FMCSA–05–22194, FMCSA–05–23099, FMCSA–06–23773, 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.

Each submission must include the Agency name and the docket number 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 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 13 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Roy L. Allen	Paul D. Gaither	Michael R. Moore.
Lyle H. Banser	Thomas R. Hedden	Richard W. Neyens.
Lloyd J. Botsford	Sergio A. Hernandez	Bill L. Pearcy.
Walter M. Brown	Lucio Leal.	
Charley J. Davis	Earl R. Mark.	

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 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (67 FR 10471; 67 FR 19798; 69 FR 19611; 71 FR 19604; 68 FR 74699; 69 FR 10503; 71 FR 6829; 70 FR 48797; 70 FR 61493; 70 FR 57353; 70 FR 72689; 71 FR 4194; 71 FR 13450; 71 FR 6826; 71 FR 19602). Each of these 13 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 April 21, 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 13 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: March 14, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–5732 Filed 3–20–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008–0024]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before May 20, 2008.

FOR FURTHER INFORMATION CONTACT: Jean McKeever, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5737; FAX 202–366–6988 or e-mail: *jean.mckeever@dot.gov.*

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for Construction Reserve Fund (CRF) and Annual Statements.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0032.

Form Numbers: None.

Expiration Date of Approval: Three years after date of approval by the Office of Management and Budget.

Summary of Collection of Information: The collection consists of an application required for all citizens who own or operate vessels in the U.S. foreign or domestic commerce and desire tax benefits under the Construction Reserve Fund (CRF) program. The annual statement sets forth a detailed analysis of the status of the CRF when each income tax return is filed.

Need and Use of the Information: The information is required in order for MARAD to determine whether the applicant is qualified for the benefits of the CRF program.

Description of Respondents: Owners or operators of vessels in the domestic or foreign commerce.

Annual Responses: 17 responses.

Annual Burden: 153 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://www.regulations.gov*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

Authority: 49 CFR 1.66

By order of the Maritime Administrator.

Dated: March 17, 2008.

Christine S. Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–5721 Filed 3–20–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–21026]

Holland America Line Inc.—Control—Westours Motor Coaches, Inc., Evergreen Trails, Inc., Westmark Hotels of Canada, Ltd., Horizon Coach Lines, Ltd., and Discover Alaska Tours, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: On February 21, 2008, Holland America Line Inc. (HAL), a noncarrier that controls four regulated motor passenger carriers, Westours Motor Coaches, Inc. (Westours), Evergreen Trails, Inc., d/b/a Gray Line of Seattle (Evergreen), Westmark Hotels of Canada, Ltd. (Westmark), and Horizon Coach Lines, Ltd. (Horizon),[1] (collectively, applicants) filed an application under 49 U.S.C. 14303 for acquisition of control by HAL of a new motor passenger carrier, Discover Alaska Tours, Inc. (DAT),[2] and for continuance in control of Westours, Evergreen, Westmark, and Horizon. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by May 5, 2008. Applicants may file a reply by May 20, 2008. If no comments are filed by May 5, 2008, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–21026 to: Surface Transportation Board, 395 E. Street, SW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Jeremy Kahn, 1730 Rhode Island Ave., NW., Suite 810, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395 [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: HAL currently controls four regulated motor

[1] HAL's control of the 4 carriers was approved by the Board in *Holland America Line—Westours, Inc.—Control—Westours Motor Coaches, Inc., Evergreen Trails, Inc., Westmark Hotels of Canada Ltd., and Horizon Coach Lines Ltd.*, STB Docket No. MC–F–20988 (STB served Feb. 22, 2002).

[2] DAT's application for motor passenger carrier authority in MC–636105 is pending.

passenger carriers, Westours (MC–118832), Evergreen (MC–107638), Westmark (MC–405618), and Horizon (MC–144339). Under the proposed transaction, HAL is seeking to acquire control of another motor passenger carrier, DAT, and to continue in control of the above four carriers. Applicants state that the annual aggregate gross operating revenues of the four carriers already controlled by HAL exceed the $2 million jurisdictional threshold of 49 U.S.C. 14303(g).

HAL states that it has decades of experience in operating tour-based services throughout the Pacific Northwest and has created DAT as a new entity to more effectively provide charter bus service in the southeast Alaska tour market, which has specialized service characteristics.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted information, as required by 49 CFR 1182.2(a)(7), to demonstrate that the proposed acquisition of control is consistent with the public interest under 49 U.S.C. 14303(b). Applicants state that the proposed transaction will have no impact on the adequacy of transportation services available to the public, that the operations of the carriers involved will remain unchanged, that there are no fixed charges associated with the proposed transaction, and that no carrier employees will be adversely affected by the transaction. In addition, applicants have submitted all of the other statements and certifications required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from applicants' representative.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this notice will be deemed as having been vacated.

3. This notice will be effective on May 5, 2008, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 950 Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Decided: March 17, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–5772 Filed 3–20–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for HCTC Program Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13929, Health Coverage Tax Credit (HCTC)—Paper Check Request, Form 13562, Health Coverage Tax Credit (HCTC)—General Registration Information Form, and Health Coverage Tax Credit (HCTC)—Administrative Change Form.

DATES: Written comments should be received on or before May 20, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at: *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Health Coverage Tax Credit (HCTC)—Paper Check Request, Health Coverage Tax Credit (HCTC)—General Registration Information Form, and Health Coverage Tax Credit (HCTC)—Administrative Change Form.

OMB Number: 1545–XXXX.

Form Number: Form 13929, Form 13562, HCTC Admin. Change Form.

Abstract: These forms are used to help manage the HCTC program. Health plan administrators will use these forms to submit requests of changes to their account information, waivers from the Federal requirement that mandates all payments to be made via Electronic Funds Transfer (EFT), and to provide the required registration information into the HCTC program.

Current Actions: These are new forms. These forms are being submitted for OMB approval purposes.

Type of Review: New collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 700.

Estimated Time per Respondent: 1 hour 15 minutes.

Estimated Total Annual Burden Hours: 875.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of

public record. 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–5682 Filed 3–20–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Charter Reestablishment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Charter Reestablishment.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463) and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, notice is herby given that the Taxpayer Advocacy Panel's (TAP) charter has been renewed by the Department of the Treasury, for a two-year period. The charter of this advisory committee was filed with the appropriate committees of Congress, the General Services Administration and the Library of Congress on March 17, 2008, and shall expire two years from the original filing date.

SUPPLEMENTARY INFORMATION: This charter is prepared and filed in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463 (5 U.S.C. App.). The establishment and the operation of the advisory committee are authorized pursuant to the authority of the Secretary of the Treasury to administer the internal revenue laws under section 7801 of the Internal Revenue Code. That authority is delegated to the Commissioner of the Internal Revenue. The TAP provides a taxpayer perspective on critical tax administration programs and helps to identify grass roots tax issues. The TAP will operate in accordance with the Federal Advisory Committee Act and its implementing regulations.

FOR FURTHER INFORMATION CONTACT: Bernard E. Coston, Director, Taxpayer Advocacy Panel at (404) 338–8408.

Dated: March 13, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–5677 Filed 3–20–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Application and Termination Notice for Municipal Securities Dealer Principal or Representative

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before May 20, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from John R. Rudolph, (202) 906–6153, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Application and Termination Notice for Municipal Securities Dealer Principal or Representative.

OMB Number: 1550–0NEW.

Form Numbers: MSD–4 and MSD–5.

Regulation Requirement: N/A.

Description: The forms are completed by certain FSA employees that act as municipal securities dealer principals or representatives, and are submitted to OTS. OTS reviews the information to monitor registered persons' entry into, and exit from, municipal securities dealer activities. The information contributes to the OTS's understanding of the FSA and helps to facilitate the supervision of the municipal securities dealer activities.

Type of Review: New Collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2.

Estimated Number of Responses: 14.

Estimated Frequency of Response: Form MSD–4 is 1 hour; MSD–5 is 15 minutes.

Estimated Total Burden: 11 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision,

1700 G Street, NW., Washington, DC 20552.

Dated: March 17, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–5759 Filed 3–20–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2008–0002]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1311]

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA00

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2008–0001]

FARM CREDIT ADMINISTRATION

RIN 3052–AC46

NATIONAL CREDIT UNION ADMINISTRATION

RIN 3133–AD41

Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision, Treasury (OTS); Farm Credit Administration (FCA); National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The OCC, Board, FDIC, OTS, FCA, and NCUA (collectively, the Agencies) are soliciting comment on proposed revisions to the Interagency Questions and Answers Regarding Flood Insurance (Interagency Questions and Answers). To help financial institutions meet their responsibilities under Federal flood insurance legislation and to increase public understanding of their flood insurance regulations, the staffs of the Agencies have prepared proposed new and revised guidance addressing the most frequently asked questions and answers about flood insurance. The proposed revised Interagency Questions and Answers contain staff guidance for agency personnel, financial institutions, and the public.

DATE: Comments must be submitted on or before May 20, 2008.

ADDRESSES: *OCC:* Because paper mail in the Washington, DC area and at the Agencies is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title ''Loans in Areas Having Special Flood Hazards; Interagency Questions and Answers Regarding Flood Insurance'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 1–5, Washington, DC 20219.
- *Fax:* (202) 874–4448.
- *Hand Delivery/Courier:* 250 E Street, SW., Attn: Public Information Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2008–0002'' in your comment. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

Board: You may submit comments, identified by Docket No. OP–1311, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number 3064–ZA00 by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN number. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

OTS: You may submit comments, identified by OTS–2007–0001, by any of the following methods:

- *E-mail: regs.comments@ots.treas.gov.* Please include ID OTS–2008–0001 in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: OTS–2008–0001.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation

Comments, Chief Counsel's Office, Attention: OTS–2008–0001.

• *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be entered into the docket and posted on Regulations.gov without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments Electronically: OTS will post comments on the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*.

Viewing Comments On-Site: You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FCA: We offer a variety of methods for you to submit comments. For accuracy and efficiency reasons, we encourage commenters to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. You may also send comments by mail or by facsimile transmission. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

• *E-mail:* Send us an e-mail at *regcomm@fca.gov*.

• *Agency Web Site: http://www.fca.gov*. Once you are at the Web site, select ''Legal Info,'' then ''Pending Regulations and Notices.''

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

• *Fax:* (703) 883–4477. Posting and processing of faxes may be delayed. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

NCUA: You may submit comments by any of the following methods (Please send comments by one method only):

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments,

• *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html*. Follow the instructions for submitting comments.

• *E-mail:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Flood Insurance, Interagency Questions & Answers'' in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

Public Inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT:

OCC: Pamela Mount, National Bank Examiner, Compliance Policy, (202) 874–4428; or Margaret Hesse, Special Counsel, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Vivian Wong, Senior Attorney, Division of Consumer and Community Affairs, (202) 452–2412; Anjanette Kichline, Senior Supervisory Consumer Financial Services Analyst, (202) 785–6054; or Brad Fleetwood, Senior Counsel, Legal Division, (202) 452–3721, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For the deaf, hard of hearing, and speech impaired only, teletypewriter (TTY), (202) 263–4869.

FDIC: Mira N. Marshall, Senior Policy Analyst (Compliance), Division of Supervision and Consumer Protection, (202) 898–3912; or Mark Mellon, Counsel, Legal Division, (202) 898–3884, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. For the hearing impaired only, telecommunications device for the deaf (TDD): 800–925–4618.

OTS: Ekita Mitchell, Consumer Regulations Analyst, (202) 906–6451; Glenn Gimble, Senior Project Manager, (202) 906–7158; or Richard S. Bennett, Senior Compliance Counsel, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

FCA: Mark L. Johansen, Senior Policy Analyst, Office of Regulatory Policy, (703) 993–4498; or Mary Alice Donner, Attorney Advisor, Office of General Counsel, (703) 883–4033, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090. For the hearing impaired only, TDD: (703) 883–4444.

NCUA: Moisette I. Green, Staff Attorney, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION:

Background

The National Flood Insurance Reform Act of 1994 (the Reform Act) (Title V of the Riegle Community Development and Regulatory Improvement Act of 1994) comprehensively revised the two federal flood insurance statutes, the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. The Reform Act required the OCC, Board, FDIC, OTS, and NCUA to revise their flood insurance regulations and required the FCA to promulgate flood insurance regulations for the first time. The OCC, Board, FDIC, OTS, NCUA, and FCA (collectively, ''the Agencies'') fulfilled these requirements by issuing a joint final rule in the summer of 1996. *See* 61 FR 45684 (August 29, 1996).

In connection with the 1996 joint rulemaking process, the Agencies received a number of requests to clarify specific issues covering a wide spectrum of the proposed rule's provisions. Many of these requests were addressed in the preamble to the joint final rule. The Agencies concluded, however, that given the number, level of detail, and diversity of subject matter of

the requests for additional information, guidance addressing the more technical compliance issues would be helpful and appropriate. Consequently, the Agencies decided to issue guidance to address these technical issues subsequent to the promulgation of the final rule (61 FR at 45685–86). That objective was fulfilled by the initial release of the Interagency Questions and Answers in 1997 (1997 Interagency Questions and Answers) by the Federal Financial Institution Examination Council (FFIEC). 62 FR 39523 (July 23, 1997).

In response to issues that have been brought to the attention of the Agencies in coordination with the Federal Emergency Management Agency (FEMA), the Agencies are releasing for public comment proposed revisions to the 1997 Interagency Questions and Answers.[1] Among the changes the Agencies are proposing are the introduction of new questions and answers in a number of areas, including second lien mortgages, the imposition of civil money penalties, and loan syndications/participations. The Agencies are also proposing substantive modifications to questions and answers previously adopted in the 1997 Interagency Questions and Answers pertaining to construction loans and condominiums. Finally, the Agencies are proposing to revise and reorganize certain of the existing questions and answers to clarify areas of potential misunderstanding and to provide clearer guidance to users. It is the intention of the Agencies that after public comment has been received and considered, and the Interagency Questions and Answers have been adopted in final form, they will supersede the 1997 Interagency Questions and Answers and supplement other guidance or interpretations issued by the Agencies and FEMA.

For ease of reference, the following terms are used throughout this document: ''Act'' refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994 (codified at 42 U.S.C. 4001 *et seq.*). ''Regulation'' refers to each agency's current final rule.[2]

[1] The proposed Interagency Questions and Answers have been prepared by staff from the OCC, Board, FDIC, OTS, NCUA and FCA in consultation with and with the assistance of the FFIEC pursuant to 12 U.S.C. 3305(g).

[2] The Agencies' rules are codified at 2 CFR part 22 (OCC), 12 CFR part 208 (Board), 12 CFR part 339 (FDIC), 12 CFR part 572 (OTS), 12 CFR part 614 (FCA), and 12 CFR part 760 (NCUA).

Section-by-Section Analysis

Section I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance Is Required Under the Act and Regulation

The Agencies propose to eliminate current section I entitled ''Definitions'' and replace it with new proposed section I to address more specific circumstances a lender may encounter when deciding whether a loan should be a designated loan for purposes of flood insurance. The Agencies are proposing to move the questions and answers currently in section I into subsequent sections for better organization. Meanwhile, questions and answers currently in other sections of the 1997 Interagency Questions and Answers that deal with determining when a loan is a designated loan under the Act and Regulation would be included in new section I.

Specifically, proposed question 1, which covers the applicability of the Regulation to a loan in a nonparticipating community, would be moved from current question 1 of section II. Further, the Agencies propose to move current question 2 of section II, discussing whether a loan is a designated loan when a lender purchases a whole loan, to question 3 of new section I. Current question 9 of section I, discussing whether a loan is a designated loan when a lender restructures a loan, would be moved to question 4 of this new section I, and proposed question 5, which addresses table funded loans, would be moved from question 3 of current section II. In addition, minor nonsubstantive changes have been made to these moved questions and answers to provide additional clarity.

The Agencies are also proposing to add two new questions and answers to this section in response to questions the Agencies have received from lenders. Proposed new question 2 explains that, upon a FEMA map change that results in a building or mobile home securing a loan being removed from a special flood hazard area (SFHA), the lender no longer must require mandatory flood insurance; however, the lender may choose to continue to require flood insurance for risk management purposes.

Proposed new question 6 explains that portfolio reviews of existing loans are not required by the Act or Regulation; however, sound risk management practices may lead a lender to conduct periodic reviews. These two new questions and answers are based on current guidance the Agencies have provided to lenders.

Section II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation

Proposed section II would provide guidance on how lenders should determine the appropriate amount of flood insurance to require the borrower to purchase. The Agencies are proposing to retain existing questions 5 and 7 of section II in new section II and renumbering them as proposed questions 12 and 11, respectively. Although minor changes have been made to these two questions and answers for purposes of clarity, the changes are not substantive. Furthermore, part of the guidance currently provided in existing question 7 would be moved to proposed question 22 in section V, as discussed below.

Proposed new question 7 would discuss what is meant by the ''maximum limit of coverage available for the particular type of property under the Act.'' This concept is important because the Regulation states that the amount of flood insurance required ''must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.'' Proposed question 7 would introduce and define the insurance term, ''insurable value,'' as it relates to the determination of the maximum limit of coverage available under the Act. Proposed question 7 would also introduce the terms, ''residential building'' and ''nonresidential building.'' These terms would be more fully defined in proposed new questions 8 and 9 of this section, respectively.

Proposed new question 10 would discuss how much flood insurance is required on a building located in an SFHA in a participating community. It would also provide an example showing how to calculate the amount of required flood insurance on a nonresidential building.

Proposed new question 13 would clarify that a lender can require more flood insurance than the minimum required by the Regulation. The Regulation requires a minimum amount of flood insurance; however, lenders may require more coverage, if appropriate.

Proposed new question 14 would address lender considerations regarding the amount of the deductible on a flood insurance policy purchased by a borrower. Generally, the guidance advises a lender to determine the reasonableness of the deductible on a case-by-case basis, taking into account

the risk that such a deductible would pose to the borrower and lender.

Section III. Exemptions from the mandatory flood insurance requirements

As with current section III, proposed section III would contain only one question and answer, which describes the statutory exemptions from the mandatory flood insurance requirements. Proposed question and answer 15 under section III would be revised to provide greater clarity, with no intended change in substance or meaning.

Section IV. Flood insurance requirements for construction loans

The Agencies are proposing a series of new and revised questions and answers to clarify the requirements regarding the mandatory purchase of flood insurance for construction loans to erect buildings that will be located in an SFHA. The Agencies believe that these questions and answers are necessary in light of recent concerns raised by some regulated lenders regarding borrowers' difficulties in obtaining flood insurance for construction loans at the time of loan origination.

Existing question 2 in section I would be revised to provide greater clarity and would be moved to proposed question 16 under proposed section IV. The proposed answer to question 16 would revise the existing guidance to limit its scope and explain that a loan secured by raw land located in an SFHA is not a designated loan that would require flood insurance coverage. The remaining guidance currently in the answer to existing question 2 in section I would be discussed in subsequent questions and answers in section IV in the proposed document, as detailed below.

Proposed question 17, derived from current question 1 in section I, would address whether a loan secured or to be secured by a building in the course of construction that is located or to be located in an SFHA in which flood insurance is available under the Act is a designated loan. The answer would provide that a lender must make a flood determination prior to loan origination for a construction loan. If the flood determination shows that the building securing the loan will be located in an SFHA, the lender must provide notice to the borrower, and must comply with the mandatory purchase requirements. Proposed question 18 would explain that, generally, a building in the course of construction is eligible for coverage under a National Flood Insurance Program (NFIP) policy, and that coverage may be purchased prior to the start of construction.

Proposed question 19 would address the timing of when flood insurance must be purchased for buildings under the course of construction. The Act and Regulation provide that lenders may not make, increase, extend, or renew any loan secured by improved real estate or a mobile home that is located or to be located in an SFHA unless the building is covered by adequate flood insurance. One way for lenders to comply with the mandatory purchase requirement for a loan secured by a building in the course of construction that is located in an SFHA is to require borrowers to have a flood insurance policy in place at the time of loan origination.

Recently, lenders have informed agency staff, however, that borrowers have been encountering difficulties in obtaining flood insurance for construction loans at the time of loan origination due to insurers' refusals to write policies on undeveloped land until either an elevation certificate has been issued for the structure or at least two walls and a roof for the building have been erected. The Agencies have also received reports that borrowers who are able to obtain flood insurance for construction loans at loan origination often pay the highest premiums possible because elevations for the insured property have not yet been established.

To address these concerns, the Agencies, in the answer to proposed question 19, would provide lenders with flexibility regarding the timing of the mandatory purchase requirement for construction loans by permitting lenders to allow borrowers to defer the purchase of flood insurance until a foundation slab has been poured and/or an elevation certificate has been issued. Lenders, however, must require the borrower to have flood insurance in place before funds are disbursed to pay for building construction on the property securing the loan (except as necessary to pour the slab or perform preliminary site work). A lender who elects this approach and does not require flood insurance at loan origination must have adequate internal controls in place to ensure compliance.

The Agencies also propose to add new question 20 to clarify whether the 30-day waiting period for an NFIP policy applies when the purchase of flood insurance is deferred in connection with a construction loan since there has been confusion among lenders on this issue in the past. Per guidance from FEMA, the answer would provide that the 30-day waiting period would not apply in such cases.[3] The NFIP would rely on the insurance agent's representation that the exception applies unless a loss has occurred during the first 30 days of the policy period.

Section V. Flood insurance requirements for agricultural buildings

The Agencies are proposing a new section V to address the flood insurance requirements for agricultural buildings that are taken as security for a loan, but that have limited utility to a farming operation. The section would also address loans secured by multiple buildings where some buildings are located in a flood hazard area and some buildings are not.

The proposed answer to new question 21 would explain that all buildings taken as security for a loan and located in an SFHA require flood insurance. Lenders have the option of carving a building from the security for a loan; however, the Agencies believe that it is typically inappropriate for credit risk management reasons to do so.

The guidance in current question 7 under section II would be split between question 11 under proposed section II, as discussed above, and question 22 under proposed section V. The proposed answer to question 22 would explain that a lender is always required to determine whether a building securing a loan is located in an SFHA, but that only those buildings located in an SFHA *and* within a participating community are required to have flood insurance. Flood insurance need not be required on those properties that (1) are not located in a special flood hazard area (whether or not within a participating community) or (2) are located in a special flood hazard area that is not within a participating community.

Section VI. Flood insurance requirements for residential condominiums

For organizational purposes, the Agencies are proposing to consolidate questions and answers relating to the Regulation's flood insurance requirements for residential condominiums into a new section VI. In addition to modifying and expanding the two existing questions in the 1997 Interagency Questions and Answers on residential condominiums, the Agencies are proposing to add five additional

[3] FEMA, *Mandatory Purchase of Flood Insurance Guidelines*, (September 2007) at 30. FEMA has made available a new version of this booklet electronically at *http://www.fema.gov/library/viewRecord.do?id=2954*. Hard copies are available by calling FEMA's Publication Warehouse at (800) 480–2520.

questions and answers to provide better clarity on the requirements.

Proposed question and answer 24 would modify and expand current question 8 under section II to more completely address the Regulation's flood insurance requirements for residential condominium units. The proposed answer would first explain that the amount of flood insurance coverage on the condominium unit required by the Regulation is the lesser of the outstanding principal balance of the loan or the maximum amount of coverage available under the NFIP.

The proposed answer would then explain that *if the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP*, the lender must require a borrower whose loan is secured by a residential condominium unit to either:

- Ensure the condominium owners association has purchased an NFIP Residential Condominium Building Association Policy (RCBAP) covering either 100 percent of the insurable value (replacement cost) of the building, including amounts to repair or replace the foundation and its supporting structures, or an amount equal to the total number of units in the condominium building times $250,000, whichever is less; or
- Obtain an individual unit owner's dwelling policy in an amount sufficient to meet the Regulation's flood insurance requirements, if there is no RCBAP or the RCBAP coverage is less than either 100 percent of the insurable value (replacement cost) of the building or the amount equal to the total number of units in the condominium building times $250,000, whichever is less.

The proposed answer revises and clarifies the current answer to question 8 under section II. The current answer provides that ''to meet federal flood insurance requirements, an RCBAP should be purchased in an amount of at least 80 percent of the replacement value of the building or the maximum amount available under the NFIP (currently $250,000 multiplied by the number of units), whichever is less.''

The proposed question and answer recognizes that neither the Act nor the Regulation addresses explicitly the appropriate level of RCBAP coverage; rather, they address the general purchase requirement applicable to all types of buildings and mobile homes: The lesser of the outstanding principal balance of the loan or the maximum amount of insurance available under the NFIP. The proposed question and answer acknowledges the standard set forth in the Regulation, and clarifies that the maximum amount of insurance available under the NFIP for a residential condominium unit is the lesser of the maximum limit available for a residential condominium unit (currently, $250,000) or the insurable value of the unit (the replacement value of the building divided by the number of units).[4] The proposed question and answer would also reflect that where the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP, an RCBAP written at 80 percent of the replacement cost value of the building *does not* meet the Regulation's flood insurance requirements (unless that amount were equal to the maximum amount of insurance available under the NFIP, which is $250,000 multiplied by the number of units), whereas the current answer suggested that such a coverage level was adequate. While FEMA's recent guidance prescribes 80 percent replacement cost value coverage as the minimum amount necessary to avoid imposition of a co-insurance penalty at the time of loss,[5] proposed answer 24 clarifies that this amount of insurance is insufficient to comply with the Act's and Regulation's minimum requirements. The proposed answer would provide that where the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP and the RCBAP is written at less than 100 percent of the insurable value (replacement cost) of the building or an amount equal to $250,000 multiplied by the number of units, whichever is less, the lender must require the borrower to obtain an individual unit owner's dwelling policy to meet the Regulation's flood insurance requirements.

The Agencies are proposing the modification contained in proposed question 24 and its answer to be in accordance with the general mandatory purchase requirement in the Regulation. As FEMA has noted:

> Although unit owners have a shared interest in the common areas of the condominium building, as well as in their own unit, unit owners are unable to individually protect such common areas. Therefore, the RCBAP, insured to its full replacement cost value (RCV) to the extent possible under the NFIP, is the correct way to insure a residential condominium building against flood loss. A properly placed RCBAP protects the financial interests of the association, unit owners, and lenders and also satisfies the statutory requirements.[6]

The Agencies plan that any guidance adopted as final in question and answer 24 would apply to any loan that is made, increased, extended, or renewed after the effective date of the revised guidance. The Agencies further plan that the revised guidance would apply to any loan made prior to the effective date of the revised guidance, which a lender determines to be covered by flood insurance in an amount less than required by the Regulation, as set forth in proposed question and answer 24, at the first flood insurance policy renewal period following the effective date of the revised guidance.

Proposed question 27 would modify and expand current question 9 under section II to address lenders' options when a loan secured by a residential condominium unit is in a multi-unit complex whose condominium association allows its existing flood insurance policy to lapse. Specifically, if the borrower/unit owner or the condominium association fails to purchase adequate flood insurance within 45 days of the lender's notification of inadequate insurance coverage, the lender must force place flood insurance to cover the unit owner's dwelling in an amount adequate to meet the Regulation's flood insurance requirements.

The Agencies are also proposing five new questions and answers to address additional issues regarding flood insurance requirements for residential condominiums. Proposed new question 23 would be added to specifically affirm that the mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those in multi-story condominium complexes located in an SFHA in which flood insurance is available under the Act.

Proposed new question 25 would address lenders' options when a loan secured by a residential condominium unit is in a multi-unit complex whose condominium association does not obtain or maintain the amount of flood insurance coverage required under the Regulation. Specifically, it would provide that a lender must require the borrower to purchase an individual unit owner's dwelling policy in an amount sufficient to meet the Regulation's flood insurance requirements. The proposed answer would also detail what is considered an adequate amount of flood insurance under the Regulation and provide an example.

[4] In recent guidance, FEMA expressly discusses the statutory standard for determining the required amount of flood insurance for a condominium. FEMA *Mandatory Purchase of Flood Insurance Guidelines*, at 46.

[5] FEMA's recent guidance encourages condominium associations to obtain 100 percent coverage. *Id.* at 47.

[6] *See id.* at 46.

Proposed new question 26 would address the steps a lender must take if the RCBAP coverage is insufficient to meet the Regulation's mandatory purchase requirements for a loan secured by an individual residential condominium unit. The proposed answer would also summarize some of the risks to which the lender and the individual unit owner/borrower may be exposed should a loss occur where the condominium association did not maintain adequate flood insurance coverage under an RCBAP.

Proposed new question 28 would be added to explain how the RCBAP's co-insurance penalty applies when, at the time of loss, the RCBAP's coverage amount is less than 80 percent of either the building's replacement cost or the maximum amount of flood insurance available for that building under the NFIP (whichever is less). Examples of how to calculate the penalty would also be provided. Proposed new question 29 would be added to explain the interplay between the individual unit owner's dwelling policy coverage limitations and the RCBAP.

Section VII. Flood insurance requirements for home equity loans, lines of credit, subordinate liens, and other security interests in collateral located in an SFHA

Proposed new Section VII, which addresses flood insurance requirements for home equity loans, lines of credit, subordinate liens, and other security interests in collateral located in an SFHA, would include seven questions from current section I and parts of two questions from current section V. Specifically, current questions 3, 4, 5, 6, 7, 8, and 10 would be renumbered as questions 30, 31, 34, 35 and 36, 37, 38, and 39 respectively. Current question 5 in section V would be split into proposed questions 32 and 33.

Proposed questions and answers 30, 31, and 39 would include minor wording changes without any intended change in substance or meaning. Proposed question 32 would expand on part of current section V, question 5, but would not change the substance of the answer. New question 34 would be revised to clarify the issue discussed in current question 5 of section I without any change in substance or meaning. New questions 35 and 36 would be added to clarify the issues discussed in current question 6 of section I.

Section VIII. Flood insurance requirements for loan syndications/participations

The Agencies are proposing to include a new section VIII and new question 40 in response to questions from lenders. The proposed question and answer would explain that, with respect to loan syndications and participations, individual participating lenders are responsible for ensuring compliance with flood insurance requirements. The Agencies believe that the risk of flood loss can be a significant threat to the value of improved real property securing loans, especially in light of many recent catastrophic flood-related events such as Hurricane Katrina. Therefore, the Agencies believe that each lender in a loan participation/syndication arrangement that is secured by improved real property located in a special flood hazard area should be responsible for ensuring that the respective interest of the lender in the collateral that secures the lender's portion of the loan is protected against the risk of flood loss, at least to the amount required by the Regulation. This does not mean that each lender in a syndication or participant in a loan must individually undertake such activities as obtaining a flood determination or monitoring whether flood insurance premiums are paid. Rather, it means that the participating lender should perform upfront due diligence to ensure both that the lead lender or agent has undertaken the necessary activities to ensure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an on-going basis for compliance with the flood insurance requirements. The participating lender should require as a condition to the participation, syndication or other credit risk sharing agreement that the lead lender or agent will provide participating lenders with sufficient information on an ongoing basis to monitor compliance with flood insurance requirements.

Section IX. Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights

The heading to proposed section IX has been modified to provide greater clarity with no intended change in substance or meaning. The current questions 1, 2, 3, 4, 5, and 6 under current section IX would be renumbered as proposed questions 42, 43, 44, 45, 46, and 47, respectively, with minor revisions to questions and answers 42 and 46 to provide greater clarity, with no intended change in substance or meaning. Proposed section IX would also incorporate and expand current question 6 under section II as proposed question and answer 41. Proposed question 41 would expound on the two scenarios from current question 6 to provide greater clarity, with no intended change in substance or meaning.

Section X. Escrow requirements

Current section IV on escrow requirements would be moved to proposed section X but would remain largely unchanged. Question 1 under current section IV, relating to the date loan originations were subject to the escrow requirement, would be deleted, as it is now obsolete. Questions 2 through 7 under current section IV would be renumbered as proposed questions 48 through 53, respectively, with minor changes for greater clarity with no intended change in substance or meaning.

Section XI. Forced placement of flood insurance

For organizational purposes, the Agencies are proposing to move existing questions 1, 2, and 3 in Part VI to questions 54, 55, and 56 in section XI of the proposed document, respectively. The Agencies are proposing minor revisions to proposed question and answer 54 to provide greater clarity, with no intended change in substance or meaning.

Section XII. Gap insurance policies

The Agencies are proposing to add a new section and question and answer on the appropriateness of gap or blanket insurance policies, often purchased by lenders to ensure adequate life-of-loan flood insurance coverage for designated loans, as a result of questions received by the Agencies on such policies. Gap or blanket insurance policies are lender-paid private policies that are meant to cover a lender's entire portfolio of loans for insurance shortfalls or expired policies.

The proposed answer to question 57 of section XII would explain that, generally, gap or blanket insurance is not an adequate substitute for NFIP insurance, as a gap or blanket policy typically protects only the lender's, not the borrower's interest, and cannot be transferred when a loan is sold. The question and answer would acknowledge, however, that in limited circumstances, a gap or blanket policy may satisfy flood insurance obligations in instances where NFIP and private insurance for the borrower are otherwise unavailable.

Section XIII: Required use of the Standard Flood Hazard Determination Form (SFHDF)

Current section V would be moved to proposed section XIII, and questions 1,

2, 3, and 4 of current section V would be renumbered as proposed questions 58, 59, 60, and 61, respectively. The Agencies are proposing some minor changes to the answers for these questions to provide additional clarity with no intended change in substance or meaning. For organizational purposes, the guidance found in question 5 of current section V would be moved to proposed questions 32 and 33 under proposed section VII, as discussed above.

Section XIV. Flood determination fees

Current section VII would be moved to proposed section XIV. Questions 1 and 2 in current section VII would be renumbered as questions 62 and 63, respectively, with only minor language modifications, with no intended change in substance or meaning.

Section XV. Flood zone discrepancies

The Agencies are proposing a new section and two new questions concerning issues where there is a discrepancy between the flood hazard zone designation on a flood hazard determination form and the flood hazard zone designation on the flood insurance policy. Proposed new question 64 would address how lenders should respond when confronted with a discrepancy between the flood hazard zone designations on the flood hazard determination form and the flood insurance policy. The question discusses the legitimate reasons why such discrepancies may exist and describes how to resolve differences if there is no legitimate reason for them. Proposed question 65 discusses when such flood zone discrepancies in a loan portfolio will result in a finding that the lender violated federal flood insurance requirements. If there are repeated instances in the lender's loan portfolio of discrepancies between the flood hazard zone listed on a flood hazard determination and the flood hazard zone listed on a flood insurance policy, and the lender has not taken steps to resolve such discrepancies, then an agency may find that the lender has violated the mandatory purchase requirements.

Section XVI. Notice of special flood hazards and availability of Federal disaster relief

The Agencies propose to move current section VIII to proposed section XVI. Therefore, questions 1, 2, 3, 4, 5, and 6 under current section VIII would be renumbered as proposed questions 66, 67, 68, 69, 70, and 71, respectively, with nonsubstantive changes made to provide additional clarity to the answers. For organizational purposes, question 1 under current section X would be consolidated under this new section XVI and renumbered as question 73. Furthermore, a new question 72 is proposed to be added to clarify that the Notice of Special Flood Hazards must be provided to the borrower each time a loan is made, increased, extended, or renewed, even when a new determination is not required.

Section XVII. Mandatory civil money penalties

The Agencies are proposing a new section and two new questions concerning the imposition of mandatory civil money penalties for violations of the flood insurance requirements. Proposed new question 74 would list the sections of the Act that trigger mandatory civil money penalties when examiners find a pattern or practice of violations of those sections. The question would also include information about statutory limits on the amount of such penalties. Proposed new question 75 would discuss the general standards the Agencies consider when determining whether violations constitute a pattern or practice for which civil money penalties are mandatory. These considerations are not dispositive of individual cases, but serve as a reference point for reviewing the particular facts and circumstances.

Redesignation Table

The following redesignation table is provided as an aide to assist the public in reviewing the proposed revisions to the 1997 Interagency Questions and Answers.

Current	Proposed
Section I. Definitions:	
Section I, Question 1	Section IV, Question 17.
Section I, Question 2	Section IV, Question 16.
Section I, Question 3	Section VII, Question 30.
Section I, Question 4	Section VII, Question 31.
Section I, Question 5	Section VII, Question 34.
Section I, Question 6	Section VII, Question 35; and Section VII, Question 36.
Section I, Question 7	Section VII, Question 37.
Section I, Question 8	Section VII, Question 38.
Section I, Question 9	Section I, Question 4.
Section I, Question 10	Section VII, Question 39.
Section II. Requirement to Purchase Flood Insurance Where Available:	
Section II, Question 1	Section I, Question 1.
Section II, Question 2	Section I, Question 3.
Section II, Question 3	Section I, Question 5.
Section II, Question 4	Deleted as obsolete.
Section II, Question 5	Section II, Question 12.
Section II, Question 6	Section IX, Question 41.
Section II, Question 7	Section II, Question 11; and Section V, Question 22.
Section II, Question 8	Section VI, Question 24.
Section II, Question 9	Section VI, Question 27.
Section III. Exemptions	Section III. Exemptions from the mandatory flood insurance requirements.
Section III, Question 1	Section III, Question 15.
Section IV. Escrow Requirements	Section X. Escrow requirements.
Section IV, Question 1	Deleted as obsolete.
Section IV, Question 2	Section X, Question 48.
Section IV, Question 3	Section X, Question 49.

Current	Proposed
Section IV, Question 4	Section X, Question 50.
Section IV, Question 5	Section X, Question 51.
Section IV, Question 6	Section X, Question 52.
Section IV, Question 7	Section X, Question 53.
Section V. Required Use of Standard Flood Hazard Determination Form (SFHDF)	Section XIII. Required use of Standard Flood Hazard Determination Form (SFHDF).
Section V, Question 1	Section XIII, Question 58.
Section V, Question 2	Section XIII, Question 59.
Section V, Question 3	Section XIII, Question 60.
Section V, Question 4	Section XIII, Question 61.
Section V, Question 5	Section VII, Question 32; and Section VII, Question 33.
Section VI. Forced Placement of Flood Insurance	Section XI. Forced placement of flood insurance.
Section VI, Question 1	Section XI, Question 54.
Section VI, Question 2	Section XI, Question 55.
Section VI, Question 3	Section XI, Question 56.
Section VII. Determination Fees	Section XIV. Flood determination fees.
Section VII, Question 1	Section XIV, Question 62.
Section VII, Question 2	Section XIV, Question 63.
Section VIII. Notice of Special Flood Hazards and Availability of Federal Disaster Relief	Section XVI. Notice of special flood hazards and availability of Federal disaster relief.
Section VIII, Question 1	Section XVI, Question 66.
Section VIII, Question 2	Section XVI, Question 67.
Section VIII, Question 3	Section XVI, Question 68.
Section VIII, Question 4	Section XVI, Question 69.
Section VIII, Question 5	Section XVI, Question 70.
Section VIII, Question 6	Section XVI, Question 71.
Section IX. Notice of Servicer's Identity	Section IX. Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights.
Section IX, Question 1	Section IX, Question 42.
Section IX, Question 2	Section IX, Question 43.
Section IX, Question 3	Section IX, Question 44.
Section IX, Question 4	Section IX, Question 45.
Section IX, Question 5	Section IX, Question 46.
Section IX, Question 6	Section IX, Question 47.
Section X Appendix A to the Regulation-Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance.	Section XVI. Notice of special flood hazards and availability of Federal disaster relief.
Section X, Question 1	Section XVI, Question 73.

Public Comments

The Agencies invite public comment on the proposed new and revised Interagency Questions and Answers. If financial institutions, bank examiners, community groups, or other interested parties have unanswered questions or comments about the Agencies' flood insurance regulations, they should submit them to the Agencies. The Agencies will consider including these questions and answers in the final guidance.

Solicitation of Comments Regarding the Use of ''Plain Language''

Section 722 of the Gramm-Leach-Bliley Act of 1999, 12 U.S.C. 4809, requires the federal banking Agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. Although this proposed guidance is not a proposed rule, comments are nevertheless invited on whether the proposed interagency questions and answers are stated clearly and effectively organized, and how the guidance might be revised to make it easier to read.

The text of the proposed Interagency Questions and Answers follows:

Interagency Questions and Answers Regarding Flood Insurance

The Interagency Questions and Answers are organized by topic. Each topic addresses a major area of the revised flood insurance law and regulations. For ease of reference, the following terms are used throughout this document: ''Act'' refers to the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as revised by the National Flood Insurance Reform Act of 1994 (codified at 42 U.S.C. 4001 *et seq.*). ''Regulation'' refers to each agency's current final rule.[7] The OCC, Board, FDIC, OTS, NCUA, and FCA (collectively, ''the Agencies'') are providing answers to questions pertaining to the following topics:

I. Determining when certain loans are designated loans for which flood insurance is required under the Act and Regulation.
II. Determining the appropriate amount of flood insurance required under the Act and Regulation.
III. Exemptions from the mandatory flood insurance requirements.
IV. Flood insurance requirements for construction loans.
V. Flood insurance requirements for agricultural buildings.
VI. Flood insurance requirements for

[7] The Agencies' rules are codified at 12 CFR part 22 (OCC), 12 CFR part 208 (Board), 12 CFR part 339 (FDIC), 12 CFR part 572 (OTS), 12 CFR part 614 (FCA), and 12 CFR part 760 (NCUA).

residential condominiums.
VII. Flood insurance requirements for home equity loans, lines of credit, subordinate liens, and other security interests in collateral located in an SFHA.
VIII. Flood insurance requirements for loan syndications/participations.
IX. Flood insurance requirements in the event of the sale or transfer of a designated loan and/or its servicing rights.
X. Escrow requirements.
XI. Forced placement of flood insurance.
XII. Gap insurance policies.
XIII. Required use of Standard Flood Hazard Determination Form (SFHDF).
XIV. Flood determination fees.
XV. Flood zone discrepancies.
XVI. Notice of special flood hazards and availability of Federal disaster relief.
XVII. Mandatory civil money penalties.

I. Determining When Certain Loans Are Designated Loans for Which Flood Insurance is Required Under the Act and Regulation

1. *Does the Regulation apply to a loan where the building or mobile home securing such loan is located in a community that does not participate in the National Flood Insurance Program (NFIP)?*

Answer: Yes. The Regulation does apply; however, a lender need not require borrowers to obtain flood insurance for a building or mobile home located in a community that does not participate in the NFIP, even if the building or mobile home securing the loan is located in a Special Flood Hazard Area (SFHA). Nonetheless, a lender, using the standard Special Flood Hazard Determination Form (SFHDF), must still determine whether the building or mobile home is located in an SFHA. If the building or mobile home is determined to be located in an SFHA, a lender is required to notify the borrower. In this case, a lender, generally, may make a conventional loan without requiring flood insurance, if it chooses to do so. However, a lender may *not* make a Government-guaranteed or insured loan, such as an SBA, VA, or FHA, loan secured by a building or mobile home located in an SFHA in a community that does not participate in the NFIP. *See* 42 U.S.C. 4106(a). Also, a lender is responsible for exercising sound risk management practices to ensure that it does not make a loan secured by a building or mobile home located in an SFHA where no flood insurance is available, if doing so would be an unacceptable risk.

2. *What is a lender's responsibility if a particular building or mobile home that secures a loan, due to a map change, is no longer located within an SFHA?*

Answer: The lender is no longer obligated to require mandatory flood insurance; however, the borrower can elect to convert the existing NFIP policy to a Preferred Risk Policy. For risk management purposes, the lender may, by contract, continue to require flood insurance coverage.

3. *Does a lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, from another lender trigger any requirements under the Regulation?*

Answer: No. A lender's purchase of a loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, alone, is not an event that triggers the Regulation's requirements, such as making a new flood determination or requiring a borrower to purchase flood insurance. Requirements under the Regulation, generally, are triggered when a lender makes, increases, extends, or renews a designated loan. A lender's purchase of a loan does not fall within any of those categories.

However, if a lender becomes aware at any point during the life of a designated loan that flood insurance is required, the lender must comply with the Regulation, including force placing insurance, if necessary. Depending upon the circumstances, safety and soundness considerations may sometimes necessitate such due diligence upon purchase of a loan as to put the lender on notice of lack of adequate flood insurance. If the purchasing lender subsequently extends, increases, or renews a designated loan, it must also comply with the Regulation.

4. *Does the Regulation apply to loans that are being restructured because of the borrower's default on the original loan?*

Answer: Yes, if the loan otherwise meets the definition of a designated loan and if the lender increases the amount of the loan, or extends or renews the terms of the original loan.

5. *Are table funded loans treated as new loan originations?*

Answer: Yes. Table funding, as defined under HUD's Real Estate Settlement Procedure Act (RESPA) rule, 24 CFR 3500.2, is a settlement at which a loan is funded by a contemporaneous advance of loan funds and the assignment of the loan to the person advancing the funds. A loan made through a table funding process is treated as though the party advancing the funds has originated the loan. The funding party is required to comply with the Regulation. The table funding lender can meet the administrative requirements of the Regulation by requiring the party processing and underwriting the application to perform those functions on its behalf.

6. *Is a lender required to perform a review of its, or its servicer's, existing loan portfolio for compliance with the flood insurance requirements under the Act and Regulation?*

Answer: No. Apart from the requirements mandated when a loan is made, increased, extended, or renewed, a regulated lender need only review and take action on any part of its existing portfolio for safety and soundness purposes, or if it knows or has reason to know of the need for NFIP coverage. Regardless of the lack of such requirement in the Act and Regulation, however, sound risk management practices may lead a lender to conduct scheduled periodic reviews that track the need for flood insurance on a loan portfolio.

II. Determining the Appropriate Amount of Flood Insurance Required Under the Act and Regulation

7. *The Regulation states that the amount of flood insurance required ''must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act.'' What is meant by the ''maximum limit of coverage available for the particular type of property under the Act''?*

Answer: ''The maximum limit of coverage available for the particular type of property under the Act'' depends on the value of the secured collateral. First, under the NFIP, there are maximum caps on the amount of insurance available. For single-family and two-to-four family dwellings and other residential buildings located in a participating community under the regular program, the maximum cap is $250,000. For nonresidential structures located in a participating community under the regular program, the maximum cap is $500,000. (In participating communities that are under the emergency program phase, the caps are $35,000 for single-family and two-to-four family dwellings and other residential structures, and $100,000 for nonresidential structures).

In addition to the maximum caps under the NFIP, the Regulation also provides that ''flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located,'' which is commonly referred to as the ''insurable value'' of a structure. The NFIP does not insure land; therefore, land values should not be included in

the calculation. An NFIP policy will not cover an amount exceeding the ''insurable value'' of the structure. In determining coverage amounts for flood insurance, lenders often follow the same practice used to establish other hazard insurance coverage amounts. However, unlike the insurable valuation used to underwrite most other hazard insurance policies, the insurable value of improved real property for flood insurance purposes also includes the repair or replacement cost of the foundation and supporting structures. It is very important to calculate the correct insurable value of the property; otherwise, the lender might inadvertently require the borrower to purchase too much or too little flood insurance coverage. For example, if the lender fails to exclude the value of the land when determining the insurable value of the improved real property, the borrower will be asked to purchase coverage that exceeds the amount the NFIP will pay in the event of a loss.

(Please note, however, when taking a security interest in improved real property where the value of the land, excluding the value of the improvements, is sufficient collateral for the debt, the lender must nonetheless require flood insurance to cover the value of the structure if it is located in a participating community's SFHA).

8. *What are examples of residential buildings?*

Answer: Residential buildings include one-to-four family dwellings; apartment or other residential buildings containing more than four dwelling units; condominiums and cooperatives in which at least 75 percent of the square footage is residential; hotels or motels where the normal occupancy of a guest is six months or more; and rooming houses that have more than four roomers. A residential building may have incidental non-residential use, such as an office or studio, as long as the total area of such incidental occupancy is limited to less than 25 percent of the square footage of the building.

9. *What are examples of nonresidential buildings?*

Answer: Nonresidential buildings include small business concerns, churches, schools, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, mercantile structures, agricultural and industrial structures, warehouses, hotels and motels with normal room rentals for less than six months' duration, nursing homes, and mixed-use buildings with less than 75 percent residential square footage.

10. *How much insurance is required on a building located in an SFHA in a participating community?*

Answer: The amount of insurance required by the Act and Regulation is the lesser of:

- The outstanding principal balance of the loan(s) or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
  - The maximum limit available for the type of structure or
  - The ''insurable value'' of the structure (*see* Question 7).

Example: (calculating insurance required on a non-residential building): Loan security includes one equipment shed located in an SFHA in a participating community under the regular program.

- Outstanding loan principal is $300,000
- Maximum amount of insurance available under the NFIP:
  - Maximum limit available for type of structure is $500,000 per building (non-residential building)
  - Insurable value of the equipment shed is $30,000

The minimum amount of insurance required by the Regulation for the equipment shed is $30,000.

11. *Is flood insurance required for each building when the real estate secu rity contains more than one building located in an SFHA in a participating community? If so, how much coverage is required?*

Answer: Yes. The lender must determine the amount of insurance required on each building and add these individual amounts together. The total amount of required flood insurance is the lesser of:

- the outstanding principal balance of the loan(s) or
- the maximum amount of insurance available under the NFIP, which is the lesser of:
  - the maximum limit available for the type of structures or
  - the ''insurable value'' of the structures (*see* Question 7).

The amount of total required flood insurance can be allocated among the secured buildings in varying amounts, but all buildings in an SFHA must have some coverage.

Example: Lender makes a loan in the principal amount of $150,000 secured by five nonresidential buildings, only three of which are located in SFHAs within participating communities.

- Outstanding loan principal is $150,000
- Maximum amount of insurance available under the NFIP
  - Maximum limit available for the type of structure is $500,000 per building (non-residential buildings); or
  - Insurable value (for each non-residential building for which insurance is required, which is $100,000, or $300,000 total)

Amount of insurance required for the three buildings is $150,000. This amount of required flood insurance could be allocated among the three buildings in varying amounts, so long as each is covered by flood insurance.

12. *If the insurable value of a building or mobile home, located in an SFHA in which flood insurance is available under the Act, securing a designated loan is less than the outstanding principal balance of the loan, must a lender require the borrower to obtain flood insurance up to the balance of the loan?*

Answer: No. The Regulation provides that the amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for a particular type of property under the Act. The Regulation also provides that flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the building or mobile home is located. Since the NFIP policy does not cover land value, lenders should determine the amount of insurance necessary based on the insurable value of the improvements.

13. *Can a lender require more flood insurance than the minimum required by the Regulation?*

Answer: Yes. Lenders are permitted to require more flood insurance coverage than required by the Regulation. The borrower or lender may have to seek such coverage outside the NFIP. Each lender has the responsibility to tailor its own flood insurance policies and procedures to suit its business needs and protect its ongoing interest in the collateral. Lenders should avoid creating situations where a building is being ''over-insured''.

14. *Can a lender allow the borrower to use the maximum deductible to reduce the cost of flood insurance?*

Answer: Yes. However, it is not a sound business practice for a lender to allow the borrower to use the maximum deductible amount in every situation. A lender should determine the reasonableness of the deductible on a case-by-case basis, taking into account the risk that such a deductible would pose to the borrower and lender. A lender may not allow the borrower to use a deductible amount equal to the

insurable value of the property to avoid the mandatory purchase requirement for flood insurance.

III. Exemptions From the Mandatory Flood Insurance Requirements

15. *What are the exemptions from coverage?*

Answer: There are only two exemptions from the purchase requirements. The first applies to state-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA. The second applies if both the original principal balance of the loan is $5,000 or less, and the original repayment term is one year or less.

IV. Flood Insurance Requirements for Construction Loans

16. *Is a loan secured by raw land that is located in an SFHA in which flood insurance is available under the Act and that will be developed into buildable lot(s) a designated loan that requires flood insurance?*

Answer: No. A designated loan is defined as a loan secured by a building or mobile home that is located or to be located in an SFHA in which flood insurance is available under the Act. Any loan secured by only raw land that is located in an SFHA in which flood insurance is available is not a designated loan since it is not secured by a building or mobile home.

17. *Is a loan secured or to be secured by a building in the course of construction that is located or to be located in an SFHA in which flood insurance is available under the Act a designated loan?*

Answer: Yes. Therefore, a lender must always make a flood determination prior to loan origination to determine whether a building to be constructed that is security for the loan is located or will be located in an SFHA in which flood insurance is available under the Act. If so, then the loan is a designated loan and the lender must provide the requisite notice to the borrower prior to loan origination that mandatory flood insurance is required. The lender must then comply with the mandatory purchase requirement under the Act and Regulation.

18. *Is a building in the course of construction that is located in an SFHA in which flood insurance is available under the Act eligible for coverage under an NFIP policy?*

Answer: Yes. FEMA's *Flood Insurance Manual*, under general rules, states: buildings in the course of construction that have yet to be walled and roofed are eligible for coverage except when construction has been halted for more than 90 days and/or if the lowest floor used for rating purposes is below the Base Flood Elevation (BFE). Materials or supplies intended for use in such construction, alteration, or repair are not insurable unless they are contained within an enclosed building on the premises or adjacent to the premises.

Flood Insurance Manual at p. GR 4 (October 2006). The definition section of the *Flood Insurance Manual* defines ''start of construction'' in the case of new construction as ''either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured (mobile) home on a foundation.'' *Flood Insurance Manual* at p. DEF 9. While an NFIP policy may be purchased prior to the start of construction, as a practical matter, coverage under an NFIP policy is not effective until actual construction commences or when materials or supplies intended for use in such construction, alteration, or repair are contained in an enclosed building on the premises or adjacent to the premises.

19. *When must a lender require the purchase of flood insurance for a loan secured by a building in the course of construction that is located in an SFHA in which flood insurance is available?*

Answer: Under the Act, as implemented by the Regulation, a lender may not make, increase, extend, or renew any loan secured by a building or a mobile home, located or to be located in an SFHA in which flood insurance is available, unless the property is covered by adequate flood insurance for the term of the loan. One way for lenders to comply with the mandatory purchase requirement for a loan secured by a building in the course of construction that is located in an SFHA is to require borrowers to have a flood insurance policy in place at the time of loan origination.

Alternatively, a lender may allow a borrower to defer the purchase of flood insurance until a foundation slab has been poured and/or an elevation certificate has been issued, *provided* that the lender requires the borrower to have flood insurance in place before the lender disburses funds to pay for building construction (except as necessary to pour the slab or perform preliminary site work, such as laying utilities, clearing brush, or the purchase and/or delivery of building materials) on the property securing the loan. If the lender elects this approach and does not require flood insurance to be obtained at loan origination, then it must have adequate internal controls in place at origination to ensure that the borrower obtains flood insurance no later than when the foundation slab has been poured and/or an elevation certificate has been issued.

20. *Does the 30-day waiting period apply when the purchase of the flood insurance policy is deferred in connection with a construction loan?*

Answer: No. The NFIP will rely on an insurance agent's representation on the application for flood insurance that the purchase of insurance has been properly deferred unless there is a loss during the first 30 days of the policy period. In that case, the NFIP will require documentation of the loan transaction, such as settlement papers, before adjusting the loss.

V. Flood Insurance Requirements for Agricultural Buildings

21. *Some agricultural operations have buildings on their farms with limited utility to the farming operation and, in many cases, the farmer would not replace such buildings if lost in a flood. Is a lender required to mandate flood insurance for such buildings?*

Answer: Yes. Under the Regulation, lenders must require flood insurance on real estate improvements when those improvements are part of the property securing the loan and are located in an SFHA in a participating community. The Act does not differentiate agricultural lending from other types of lending.

The lender may consider ''carving out'' buildings from the security it takes on the loan. However, the lender should fully analyze the risks of this option. In particular, a lender should consider whether it would be able to market the property securing its loan in the event of foreclosure. Additionally, the lender should consider any local zoning issues or other issues that would affect its collateral.

22. *What are a lender's requirements under the Regulation for a loan secured by multiple agricultural buildings located throughout a large geographic area where some of the buildings are located in an SFHA in which flood insurance is available and other buildings are not? What if the buildings are located in several jurisdictions or counties where some of the communities participate in the NFIP, and others do not?*

Answer: A lender is required to make a determination as to whether the property securing the loan is in an SFHA. If secured property is located in an SFHA, but not in a participating

community, no flood insurance is required, although a lender can require the purchase of flood insurance (from a private insurer) as a matter of safety and soundness. Conversely, where a secured property is located in a participating community but not in an SFHA, no insurance is required. A lender must provide appropriate notice and require the purchase of flood insurance for designated loans located in an SFHA in a participating community. Agricultural buildings that are part of the loan's security and are located in an SFHA in a participating community are required to have flood insurance.

VI. Flood Insurance Requirements for Residential Condominiums

23. *Are residential condominiums, including multi-story condominium complexes, subject to the statutory and regulatory requirements for flood insurance?*

Answer: Yes. The mandatory flood insurance purchase requirements under the Act and Regulation apply to loans secured by individual residential condominium units, including those located in multi-story condominium complexes, located in an SFHA in which flood insurance is available under the Act. The mandatory purchase requirements also apply to loans secured by other condominium property, such as loans to a developer for construction of the condominium or loans to a condominium association.

24. *What is the amount of flood insurance coverage that a lender must require with respect to residential condominium units, including those located in multi-story condominium complexes, to comply with the mandatory purchase requirements under the Act and the Regulation?*

Answer: To comply with the Regulation, the lender must ensure that the minimum amount of flood insurance covering the condominium unit is the lesser of:

- The outstanding principal balance of the loan(s) or
- The maximum amount of insurance available under the NFIP, which is the lesser of:
  - The maximum limit available for the residential condominium unit or
  - The ''insurable value'' allocated to the residential condominium unit, which is the replacement cost value of the condominium building divided by the number of units.

Assuming that the outstanding principal balance of the loan is greater than the maximum amount of coverage available under the NFIP, the lender must require a borrower whose loan is secured by a residential condominium unit to either:

- Ensure the condominium owners association has purchased an NFIP Residential Condominium Building Association Policy (RCBAP) covering either 100 percent of the insurable value (replacement cost) of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less; or
- Obtain a dwelling policy if there is no RCBAP, as explained in Question 25, or if the RCBAP coverage is less than 100 percent of the replacement cost value of the building or the total number of units in the condominium building times $250,000, whichever is less, as explained in Question 26.

The RCBAP, which is a master policy for condominiums issued by FEMA, may only be purchased by the condominium owners association. The RCBAP covers both the common and individually owned building elements within the units, improvements within the units, and contents owned in common. The maximum amount of building coverage that can be purchased under an RCBAP is either 100 percent of the replacement cost value of the building, including amounts to repair or replace the foundation and its supporting structures, or the total number of units in the condominium building times $250,000, whichever is less.

The dwelling policy provides individual unit owners with supplemental building coverage to the RCBAP. The policies are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverages pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost of $15 million and insured by an RCBAP with $12.5 million of coverage.

- Outstanding principal balance of loan is $300,000;
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement cost value ($15 million ÷ 50 = $300,000).

The lender does not need to require additional flood insurance since the RCBAP's $250,000 per unit coverage ($12.5 million ÷ 50 = $250,000) satisfies the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($300,000).)

The guidance in question and answer 24 will apply to any loan that is made, increased, extended, or renewed after the effective date of the revised guidance. Further, the guidance will apply to any loan made prior to the effective date of the guidance, which a lender determines to be covered by flood insurance in an amount less than required by the Regulation, and as set forth in proposed question and answer 24, at the first flood insurance policy renewal period following the effective date of the revised guidance.

25. *What action must a lender take if there is no RCBAP coverage?*

Answer: If there is no RCBAP, either because the condominium association will not obtain a policy or because individual unit owners are responsible for obtaining their own insurance, then the lender must require the individual unit owner/borrower to obtain a dwelling policy in an amount sufficient to meet the requirements outlined in Question 24.

Example: The lender makes a loan in the principal amount of $175,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, there is no RCBAP.

- Outstanding principal balance of loan is $175,000.
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement cost value ($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of $175,000, since there is no RCBAP, to satisfy the Regulation's mandatory flood insurance requirement. (This is the lesser of the outstanding principal balance

($175,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).)

26. *What action must a lender take if the RCBAP coverage is insufficient to meet the Regulation's mandatory purchase requirements for a loan secured by an individual residential condominium unit?*

Answer: If the lender determines that flood insurance coverage purchased under the RCBAP is insufficient to meet the Regulation's mandatory purchase requirements, then the lender should request the individual unit owner/borrower to ask the condominium association to obtain additional coverage that would be sufficient to meet the Regulation's requirements (*see* Question 24). If the condominium association does not obtain sufficient coverage, then the lender must require the individual unit owner/borrower to purchase a dwelling policy in an amount sufficient to meet the Regulation's flood insurance requirements. The amount of coverage under the dwelling policy required to be purchased by the individual unit owner would be the difference between the RCBAP's coverage allocated to that unit and the Regulation's mandatory flood insurance requirements (*see* Question 24).

Example: Lender makes a loan in the principal amount of $300,000 secured by a condominium unit in a 50-unit condominium building, which is located in an SFHA within a participating community, with a replacement cost value of $10 million; however, the RCBAP is at 80 percent of replacement cost value ($8 million or $160,000 per unit).

- Outstanding principal balance of loan is $300,000
- Maximum amount of coverage available under the NFIP, which is the lesser of:
  - Maximum limit available for the residential condominium unit is $250,000; or
  - Insurable value of the unit based on 100 percent of the building's replacement value ($10 million ÷ 50 = $200,000).

The lender must require the individual unit owner/borrower to purchase a flood insurance dwelling policy in the amount of $40,000 to satisfy the Regulation's mandatory flood insurance requirement of $200,000. (This is the lesser of the outstanding principal balance ($300,000), the maximum coverage available under the NFIP ($250,000), or the insurable value ($200,000).) The RCBAP fulfills only $160,000 of the Regulation's flood insurance requirement.

While the individual unit owner's purchase of a separate dwelling policy that provides for adequate flood insurance coverage under the Regulation will satisfy the Regulation's mandatory flood insurance requirements, the lender and the individual unit owner/borrower may still be exposed to additional risk of loss. Lenders are encouraged to apprise borrowers of this risk. The dwelling policy provides individual unit owners with supplemental building coverage to the RCBAP. The policies are coordinated such that the dwelling policy purchased by the unit owner responds to shortfalls on building coverages pertaining either to improvements owned by the insured unit owner or to assessments. However, the dwelling policy does not extend the RCBAP limits, nor does it enable the condominium association to fill in gaps in coverage.

The risk arises because the individual unit owner's dwelling policy may contain claim limitations that prevent the dwelling policy from covering the individual unit owner's share of the co-insurance penalty, which is triggered when the amount of insurance under the RCBAP is less than 80 percent of the building's replacement cost value at the time of loss. In addition, following a major flood loss, the insured unit owner may have to rely upon the condominium association's and other unit owners' financial ability to make the necessary repairs to common elements in the building, such as electricity, heating, plumbing, elevators, etc. It is incumbent on the lender to understand these limitations.

27. *What must a lender do when a loan secured by a residential condominium unit is in a complex whose condominium association allows its existing RCBAP to lapse?*

Answer: If a lender determines at any time during the term of a designated loan that the loan is not covered by flood insurance or is covered by such insurance in an amount less than that required under the Act and the Regulation, the lender must notify the individual unit owner/borrower of the requirement to maintain flood insurance coverage sufficient to meet the Regulation's mandatory requirements. The lender should encourage the individual unit owner/borrower to work with the condominium association to acquire a new RCBAP in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (*see* Question 24). Failing that, the lender must require the individual unit owner/borrower to obtain a flood insurance dwelling policy in an amount sufficient to meet the Regulation's mandatory flood insurance requirement (*see* Questions 25 and 26). If the borrower/unit owner or the condominium association fails to purchase flood insurance sufficient to meet the Regulation's mandatory requirements within 45 days of the lender's notification to the individual unit owner/borrower of inadequate insurance coverage, the lender must force place the necessary flood insurance.

28. *How does the RCBAP's co-insurance penalty apply in the case of residential condominiums, including those located in multi-story condominium complexes?*

Answer: In the event the RCBAP's coverage on a condominium building at the time of loss is less than 80 percent of either the building's replacement cost or the maximum amount of insurance available for that building under the NFIP (whichever is less), then the loss payment, which is subject to a co-insurance penalty, is determined as follows (subject to all other relevant conditions in this policy, including those pertaining to valuation, adjustment, settlement, and payment of loss):

A. Divide the actual amount of flood insurance carried on the condominium building at the time of loss by 80 percent of either its replacement cost or the maximum amount of insurance available for the building under the NFIP, whichever is less.

B. Multiply the amount of loss, before application of the deductible, by the figure determined in A above.

C. Subtract the deductible from the figure determined in B above.

The policy will pay the amount determined in C above, or the amount of insurance carried, whichever is less.

Example 1: (inadequate insurance amount to avoid penalty)

Replacement value of the building—$250,000
80% of replacement value of the building—$200,000
Actual amount of insurance carried—$180,000
Amount of the loss—$150,000
Deductible—$500
Step A: 180,000 ÷ 200,000 = .90
(90% of what should be carried to avoid co-insurance penalty)
Step B: 150,000 × .90 = 135,000
Step C: 135,000 − 500 = 134,500

The policy will pay no more than $134,500. The remaining $15,500 is not covered due to the co-insurance penalty ($15,000) and application of the deductible ($500). Unit owners' dwelling policies will not cover any

assessment that may be imposed to cover the costs of repair that are not covered by the RCBAP.

Example 2: (adequate insurance amount to avoid penalty)
Replacement value of the building—$250,000
80% of replacement value of the building—$200,000
Actual amount of insurance carried—$200,000
Amount of the loss—$150,000
Deductible—$500
Step A: 200,000 ÷ 200,000 = 1.00
(100% of what should be carried to avoid co-insurance penalty)
Step B: 150,000 × 1.00 = 150,000
Step C: 150,000 − 500 = 149,500

In this example there is no co-insurance penalty, because the actual amount of insurance carried meets the 80 percent requirement to avoid the co-insurance penalty. The policy will pay no more than $149,500 ($150,000 amount of loss minus the $500 deductible). This example also assumes a $150,000 outstanding principal loan balance.

29. *What are the major factors involved with the individual unit owner's dwelling policy's coverage limitations with respect to the condominium association's RCBAP coverage?*

Answer: The following examples demonstrate how the unit owner's dwelling policy may cover in certain loss situations:

Example 1: (RCBAP insured to at least 80 percent of building replacement cost)

- If the unit owner purchases building coverage under the dwelling policy and if there is an RCBAP covering at least 80 percent of the building replacement cost value, the loss assessment coverage under the dwelling policy will pay that part of a loss that exceeds 80 percent of the association's building replacement cost allocated to that unit.
- The loss assessment coverage under the dwelling policy will not cover the association's policy deductible purchased by the condominium association.
- If building elements within units have also been damaged, the dwelling policy pays to repair building elements after the RCBAP limits that apply to the unit have been exhausted. Coverage combinations cannot exceed the total limit of $250,000 per unit.

Example 2: (RCBAP insured to less than 80 percent of building replacement cost)

- If the unit owner purchases building coverage under the dwelling policy and there is an RCBAP that was insured to less than 80 percent of the building replacement cost value at the time of loss, the loss assessment coverage cannot be used to reimburse the association for its co-insurance penalty.
- Loss assessment is available only to cover the building damages in excess of the 80-percent required amount at the time of loss. Thus, the covered damages to the condominium association building must be greater than 80 percent of the building replacement cost value at the time of loss before the loss assessment coverage under the dwelling policy becomes available. Under the dwelling policy, covered repairs to the unit, if applicable, would have priority in payment over loss assessments against the unit owner.

Example 3: (No RCBAP)

- If the unit owner purchases building coverage under the dwelling policy and there is no RCBAP, the dwelling policy covers assessments against unit owners for damages to common areas up to the dwelling policy limit.
- However, if there is damage to the building elements of the unit as well, the combined payment of unit building damages, which would apply first, and the loss assessment may not exceed the building coverage limit under the dwelling policy.

VII. Flood Insurance Requirements for Home Equity Loans, Lines of Credit, Subordinate Liens, and Other Security Interests in Collateral Located in an SFHA

30. *Is a home equity loan considered a designated loan that requires flood insurance?*

Answer: Yes. A home equity loan is a designated loan, regardless of the lien priority, if the loan is secured by a building or a mobile home located in an SFHA in which flood insurance is available under the Act.

31. *Does a draw against an approved line of credit secured by a building or mobile home, which is located in an SFHA in which flood insurance is available under the Act, require a flood determination under the Regulation?*

Answer: No. While a line of credit, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is a designated loan and, therefore, requires a flood determination when application is made for the loan, draws against an approved line do not require further determinations. However, a request made for an *increase* in an approved line of credit may require a new determination, depending upon whether a previous determination was done. (*See* the response to Question 61 in Section XIII. Required use of Standard Flood Hazard Determination Form).

32. *When a lender makes a second mortgage secured by a building or mobile home located in an SFHA, how much flood insurance must the lender require?*

Answer: A lender must ensure that adequate flood insurance is in place or require that additional flood insurance coverage be added to the flood insurance policy in the amount of the lesser of either the combined total outstanding principal balance of the first and second loan, the maximum amount available under the Act (currently $250,000 for a residential building and $500,000 for a nonresidential building), or the insurable value of the building or mobile home. The lender on the second mortgage cannot comply with the Act and Regulation by requiring flood insurance only in the amount of the outstanding principal balance of the second mortgage without regard to the amount of flood insurance coverage on a first mortgage.

Example 1: Lender A makes a first mortgage with a principal balance of $100,000, but improperly requires only $75,000 of flood insurance coverage. Lender B issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second mortgage ($50,000), its interest in the secured property would not be fully protected in the event of a flood loss because Lender A would have prior claim on the entire $100,000 of the loss payment towards its principal balance of $100,000, while Lender B would receive only $25,000 of the loss payment toward its principal balance of $50,000.

Example 2: Lender A, who is not directly covered by the Act or Regulation, makes a first mortgage with a principal balance of $100,000 and does not require flood insurance. Lender B, who is directly covered by the Act and Regulation, issues a second mortgage with a principal balance of $50,000. The insurable value of the residential building securing the loans is $200,000. Lender B must ensure that flood insurance in the amount of $150,000 is purchased and maintained. If Lender B were to require flood insurance only in an amount equal to the principal balance of the second

mortgage ($50,000), its interest in the secured property would not be protected in the event of a flood loss because Lender A would have prior claim on the entire $50,000 loss payment towards its principal balance of $100,000.

Example 3: Lender A made a first mortgage with a principal balance of $100,000 on real property with a fair market value of $150,000. The insurable value of the residential building on the real property is $90,000; however, Lender A improperly required only $70,000 of flood insurance coverage. Lender B later takes a second mortgage on the property with a principal balance of $10,000. Lender B must ensure that flood insurance in the amount of $90,000 is purchased and maintained on the secured property to comply with the Act and Regulation.

33. *If a borrower requesting a home equity loan secured by a junior lien provides evidence that flood insurance coverage is in place, does the lender have to make a new determination? Does the lender have to adjust the insurance coverage?*

Answer: It depends. Assuming the requirements in Section 528 of the Act (42 U.S.C. 4104b) are met and the same lender made the first mortgage, then a new determination may not be necessary, when the existing determination is not more than seven years old, there have been no map changes, and the determination was recorded on an SFHDF. If, however, a lender other than the one that made the first mortgage loan is making the home equity loan, a new determination would be required because this lender would be deemed to be ''making'' a new loan. In either situation, the lender will need to determine whether the amount of insurance in force is sufficient to cover the lesser of the combined outstanding principal balance of all loans (including the home equity loan), the insurable value, or the maximum amount of coverage available on the improved real estate.

34. *If the loan request is to finance inventory stored in a building located within an SFHA, but the building is not security for the loan, is flood insurance required?*

Answer: No. The Act and the Regulation provide that a lender shall not make, increase, extend, or renew a designated loan, that is a loan secured by a building or mobile home located or to be located in an SFHA, ''unless the building or mobile home and any personal property securing such loan'' is covered by flood insurance for the term of the loan. In this example, the collateral is not the type that could secure a designated loan because it does not include a building or mobile home; rather, the collateral is the inventory alone.

35. *Is flood insurance required if a building and its contents both secure a loan, and the building is located in an SFHA in which flood insurance is available?*

Answer: Yes. Flood insurance is required for the building located in the SFHA and any contents stored in that building.

36. *If a loan is secured by Building A, which is located in an SFHA, and contents, which are located in Building B, is flood insurance required on the contents securing a loan?*

Answer: No. If collateral securing the loan is stored in Building B, which does not secure the loan, then flood insurance is not required on those contents whether or not Building B is located in an SFHA.

37. *Does the Regulation apply where the lender takes a security interest in a building or mobile home located in an SFHA only as an ''abundance of caution''?*

Answer: Yes. The Act and Regulation look to the collateral securing the loan. If the lender takes a security interest in improved real estate located in an SFHA, then flood insurance is required.

38. *If a borrower offers a note on a single-family dwelling as collateral for a loan but the lender does not take a security interest in the dwelling itself, is this a designated loan that requires flood insurance?*

Answer: No. A designated loan is a loan secured by a building or mobile home. In this example, the lender did not take a security interest in the building; therefore, the loan is not a designated loan.

39. *If a lender makes a loan that is not secured by real estate, but is made on the condition of a personal guarantee by a third party who gives the lender a security interest in improved real estate owned by the third party that is located in an SFHA in which flood insurance is available, is it a designated loan that requires flood insurance?*

Answer: Yes. The making of a loan on condition of a personal guarantee by a third party and further secured by improved real estate, which is located in an SFHA, owned by that third party is so closely tied to the making of the loan that it is considered a designated loan that requires flood insurance.

VIII. Flood Insurance Requirements for Loan Syndications/Participations

40. *How do the Agencies enforce the mandatory purchase requirements under the Act and Regulation when a lender participates in a loan syndication/participation?*

Answer: Although a syndication/participation agreement may assign compliance duties to the lead lender or agent, and include clauses in which the lead lender or agent indemnifies participating lenders against flood losses, each participating lender remains individually responsible for ensuring compliance with the Act and Regulation.

Therefore, the Agencies will examine whether the regulated institution/participating lender has performed upfront due diligence to ensure both that the lead lender or agent has undertaken the necessary activities to ensure that the borrower obtains appropriate flood insurance and that the lead lender or agent has adequate controls to monitor the loan(s) on an on-going basis for compliance with the flood insurance requirements. Further, the Agencies expect the participating lender to have adequate controls to monitor the activities of the lead lender or agent to ensure compliance with flood insurance requirements over the term of the loan.

IX. Flood Insurance Requirements in the Event of the Sale or Transfer of a Designated Loan and/or its Servicing Rights

41. *How do the flood insurance requirements under the Regulation apply to lenders under the following scenarios involving loan servicing?*

Scenario 1: A regulated lender originates a designated loan secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The lender makes the initial flood determination, provides the borrower with appropriate notice, and flood insurance is obtained. The lender initially services the loan; however, the lender subsequently sells both the loan and the servicing rights to a non-regulated party. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements under the Regulation if it only transfers or sells the servicing rights, but retains ownership of the loan?

Answer: The lender must comply with all requirements of the Regulation, including making the initial flood determination, providing appropriate notice to the borrower, and ensuring that the proper amount of insurance is obtained. In the event the lender sells or transfers the loan and servicing rights, the lender must provide notice of the identity of the new servicer to FEMA or its designee.

If the lender retains ownership of the loan and only transfers or sells the servicing rights to a non-regulated party, the lender must notify FEMA or its designee of the identity of the new servicer. The servicing contract should require the servicer to comply with all the requirements that are imposed on the lender as owner of the loan, including escrow of insurance premiums and forced placement of insurance, if necessary.

Generally, the Regulation does not impose obligations on a loan servicer independent from the obligations it imposes on the owner of a loan. Loan servicers are covered by the escrow, forced placement, and flood hazard determination fee provisions of the Act and Regulation primarily so that they may perform the administrative tasks for the lender, without fear of liability to the borrower for the imposition of unauthorized charges. In addition, the preamble to the Regulation emphasizes that the obligation of a loan servicer to fulfill administrative duties with respect to the flood insurance requirements arises from the contractual relationship between the loan servicer and the lender or from other commonly accepted standards for performance of servicing obligations. The lender remains ultimately liable for fulfillment of those responsibilities, and must take adequate steps to ensure that the loan servicer will maintain compliance with the flood insurance requirements.

Scenario 2: A non-regulated lender originates a designated loan, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act. The non-regulated lender does not make an initial flood determination or notify the borrower of the need to obtain insurance. The non-regulated lender sells the loan and servicing rights to a regulated lender. What are the regulated lender's requirements under the Regulation? What are the regulated lender's requirements if it only purchases the servicing rights?

Answer: A regulated lender's purchase of a loan and servicing rights, secured by a building or mobile home located in an SFHA in which flood insurance is available under the Act, is not an event that triggers any requirements under the Regulation, such as making a new flood determination or requiring a borrower to purchase flood insurance. The Regulation's requirements are triggered when a lender makes, increases, extends, or renews a designated loan. A lender's purchase of a loan does not fall within any of those categories. However, if a regulated lender becomes aware at any point during the life of a designated loan that flood insurance is required, then the lender must comply with the Regulation, including force placing insurance, if necessary. Similarly, if the lender subsequently extends, increases, or renews a designated loan, the lender must also comply with the Regulation.

Where a regulated lender purchases only the servicing rights to a loan originated by a non-regulated lender, the regulated lender is obligated only to follow the terms of its servicing contract with the owner of the loan. In the event the regulated lender subsequently sells or transfers the servicing rights on that loan, the lender must notify FEMA or its designee of the identity of the new servicer, if required to do so by the servicing contract with the owner of the loan.

42. *When a lender makes a designated loan and will be servicing that loan, what are the requirements for notifying the Director of FEMA or the Director's designee*?

Answer: FEMA stated in a June 4, 1996, letter that the Director's designee is the insurance company issuing the flood insurance policy. The borrower's purchase of a policy (or the lender's forced placement of a policy) will constitute notice to FEMA when the lender is servicing that loan.

In the event the servicing is subsequently transferred to a new servicer, the lender must provide notice to the insurance company of the identity of the new servicer no later than 60 days after the effective date of such a change.

43. *Would a RESPA Notice of Transfer sent to the Director of FEMA (or the Director's designee) satisfy the regulatory provisions of the Act?*

Answer: Yes. The delivery of a copy of the Notice of Transfer or any other form of notice is sufficient if the sender includes, on or with the notice, the following information that FEMA has indicated is needed by its designee:

- Borrower's full name;
- Flood insurance policy number;
- Property address (including city and state);
- Name of lender or servicer making notification;
- Name and address of new servicer; and
- Name and telephone number of contact person at new servicer.

44. *Can delivery of the notice be made electronically, including batch transmissions?*

Answer: Yes. The Regulation specifically permits transmission by electronic means. A timely batch transmission of the notice would also be permissible, if it is acceptable to the Director's designee.

45. *If the loan and its servicing rights are sold by the lender, is the lender required to provide notice to the Director or the Director's designee?*

Answer: Yes. Failure to provide such notice would defeat the purpose of the notice requirement because FEMA would have no record of the identity of either the owner or servicer of the loan.

46. *Is a lender required to provide notice when the servicer, not the lender, sells or transfers the servicing rights to another servicer?*

Answer: No. After servicing rights are sold or transferred, subsequent notification obligations are the responsibility of the new servicer. The obligation of the lender to notify the Director or the Director's designee of the identity of the servicer transfers to the new servicer. The duty to notify the Director or the Director's designee of any subsequent sale or transfer of the servicing rights and responsibilities belongs to that servicer. For example, a financial institution makes and services the loan. It then sells the loan in the secondary market and also sells the servicing rights to a mortgage company. The financial institution notifies the Director's designee of the identity of the new servicer and the other information requested by FEMA so that flood insurance transactions can be properly administered by the Director's designee. If the mortgage company later sells the servicing rights to another firm, the mortgage company, not the financial institution, is responsible for notifying the Director's designee of the identity of the new servicer.

47. *In the event of a merger of one lending institution with another, what are the responsibilities of the parties for notifying the Director's designee?*

Answer: If an institution is acquired by or merges with another institution, the duty to provide notice for the loans being serviced by the acquired institution will fall to the successor institution in the event that notification is not provided by the acquired institution prior to the effective date of the acquisition or merger.

X. Escrow Requirements

48. *Are multi-family buildings or mixed-use properties included in the definition of ''residential improved real estate'' under the Regulation for which escrows are required?*

Answer: ''Residential improved real estate'' is defined under the Regulation as ''real estate upon which a home or other residential building is located or to be located.'' A loan secured by residential improved real estate located or to be located in an SFHA in which flood insurance is available is a

designated loan. Lenders are required to escrow flood insurance premiums and fees for any mandatory flood insurance for such loans if the lender requires the escrow of taxes, hazard insurance premiums or other loan charges for loans secured by residential improved real estate.

Multi-family buildings. For the purposes of the Act and the Regulation, the definition of residential improved real estate does not make a distinction between whether a building is single- or multi-family, or whether a building is owner- or renter-occupied. The preamble to the Regulation indicates that single-family dwellings (including mobile homes), two-to-four family dwellings, and multi-family properties containing five or more residential units are covered under the Act's escrow provisions. If the building securing the loan meets the Regulation's definition of residential improved real estate, and the lender requires the escrow of other items, such as taxes or hazard insurance premiums, then the lender is required to also escrow premiums and fees for flood insurance.

Mixed-use properties. The lender should look to the primary use of a building to determine whether it meets the definition of ''residential improved real estate.'' For example, a building having a retail store on the ground level with a small upstairs apartment used by the store's owner generally is considered a commercial enterprise and consequently would not constitute a residential building under the definition. If the primary use of a mixed-use property is for residential purposes, the Regulation's escrow requirements apply. (*See* Questions 8 and 9 for examples of residential and nonresidential buildings.)

49. *When must escrow accounts be established for flood insurance purposes?*

Answer: Lenders should look to the definition of ''federally related mortgage loan'' contained in the Real Estate Settlement Procedures Act (RESPA) to see whether a particular loan is subject to Section 10. Generally, for flood insurance purposes, only loans on one-to-four family dwellings will be subject to the escrow requirements of RESPA. (This includes individual units of condominiums. Individual units of cooperatives, although covered by Section 10 of RESPA, are not insured for flood insurance purposes.)

Loans on multi-family dwellings with five or more units are not covered by RESPA requirements. Pursuant to the Regulation, however, lenders must escrow premiums and fees for any required flood insurance if the lender requires escrows for other purposes, such as hazard insurance or taxes. This requirement pertains to any loan, including those subject to RESPA. The preceding paragraph addresses the requirement for administering loans covered by RESPA. The preamble to the Regulation contains a more detailed discussion of the escrow requirements.

50. *Do voluntary escrow accounts established at the request of the borrower trigger a requirement for the lender to escrow premiums for required flood insurance?*

Answer: No. If escrow accounts for other purposes are established at the voluntary request of the borrower, the lender is not required to establish escrow accounts for flood insurance premiums. Examiners should review the loan policies of the lender and the underlying legal obligation between the parties to the loan to determine whether the accounts are, in fact, voluntary. For example, when a lender's loan policies require borrowers to establish escrow accounts for other purposes and the contractual obligation permits the lender to establish escrow accounts for those other purposes, the lender will have the burden of demonstrating that an existing escrow was made pursuant to a voluntary request by the borrower.

51. *Will premiums paid for credit life insurance, disability insurance, or similar insurance programs be viewed as escrow accounts requiring the escrow of flood insurance premiums?*

Answer: No. Premiums paid for these types of insurance policies will not trigger the escrow requirement for flood insurance premiums.

52. *Will escrow-type accounts for commercial loans, secured by multi-family residential buildings, trigger the escrow requirement for flood insurance premiums?*

Answer: It depends. Escrow-type accounts established in connection with the underlying agreement between the buyer and seller, or that relate to the commercial venture itself, such as ''interest reserve accounts,'' ''compensating balance accounts,'' ''marketing accounts,'' and similar accounts are not the type of accounts that constitute escrow accounts for the purpose of the Regulation. However, escrow accounts established for the protection of the property, such as escrows for hazard insurance premiums or local real estate taxes, are the types of escrow accounts that trigger the requirement to escrow flood insurance premiums.

53. *What requirements for escrow accounts apply to properties covered by RCBAPs?*

Answer: RCBAPs are policies purchased by the condominium association on behalf of itself and the individual unit owners in the condominium. A portion of the periodic dues paid to the association by the condominium owners applies to the premiums on the policy. When a lender makes a loan for the purchase of a condominium unit and when dues to the condominium association apply to the RCBAP premiums, an escrow account is not required. Lenders should exercise due diligence with respect to continuing compliance with the insurance requirements on the part of the condominium association.

XI. Forced Placement of Flood Insurance

54. *What is the requirement for the forced placement of flood insurance under the Act and Regulation?*

Answer: The Act and Regulation require a lender to force place flood insurance, if *all* of the following circumstances occur:

- The lender determines at any time during the life of the loan that the property securing the loan is located in an SFHA;
- The community in which the property is located participates in the NFIP;
- The lender determines that flood insurance coverage is inadequate or does not exist; and
- After required notice, the borrower fails to purchase the appropriate amount of coverage.

A lender must notify the borrower of the required amount of flood insurance that must be obtained within 45 days after notification. The notice to the borrower must also state that if the borrower does not obtain the insurance within the 45-day period, the lender will purchase the insurance on behalf of the borrower and may charge the borrower the cost of premiums and fees to obtain the coverage. If adequate insurance is not obtained within the 45-day period, then the insurance must be force placed. Standard Fannie Mae/Freddie Mac documents permit the servicer or lender to add those charges to the principal amount of the loan.

FEMA developed the Mortgage Portfolio Protection Program (MPPP) to assist lenders in connection with forced placement procedures. FEMA published these procedures in the **Federal Register** on August 29, 1995 (60 FR 44881). Appendix A of the FEMA publication contains examples of notification letters to be used in connection with the MPPP.

55. *Can a servicer force place on behalf of a lender?*

Answer: Yes. Assuming the statutory prerequisites for forced placement are met, and subject to the servicing contract between the lender and the servicer, the Act clearly authorizes servicers to force place flood insurance on behalf of the lender, following the procedures set forth in the Regulation.

56. *When forced placement occurs, what is the amount of insurance required to be placed?*

Answer: The amount of flood insurance coverage required is the same regardless of how the insurance is placed. (*See* Section II. Determining the appropriate amount of flood insurance required under the Act and Regulation.)

XII. Gap Insurance Policies

57. *May a lender rely on a gap or blanket insurance policy to meet its obligation to ensure that its designated loans are covered by an adequate amount of flood insurance over the life of the loans?*

Answer: Generally no. Gap or blanket insurance typically is not an adequate substitute for NFIP insurance. Among other things, a gap or blanket policy typically protects only the lender's, not the borrower's, interest and, therefore, may not be transferred when a loan is sold. The presence of a gap or blanket policy may serve as a disincentive for the lender or its servicer to perform its due diligence and ensure that there is adequate coverage for a designated loan. Finally, a lender that substitutes a gap or blanket policy for an individual flood insurance policy would be unable to sell the loan in the secondary market, since Fannie Mae and Freddie Mac will not accept loans that are covered solely by a gap or blanket policy.

In limited circumstances, a gap or blanket policy may satisfy a lender's flood insurance obligations, when NFIP and private insurance is otherwise unavailable. For example, when a designated loan does not have sufficient coverage, but the borrower refuses to increase coverage under his NFIP insurance, a gap or blanket policy may be appropriate when the lender is unable to force-place private insurance for some reason. Similarly, when a policy has expired, and the borrower has failed to renew coverage, gap or blanket coverage may be adequate protection for the lender for the 15-day gap in coverage between the end of the 30-day ''grace'' period after the NFIP policy expiration and the end of the 45-day force placement notice period. However, the lender must force place adequate coverage in a timely manner, as required, and may not rely on the gap or blanket coverage on an on-going basis.

XIII. Required Use of Standard Flood Hazard Determination Form (SFHDF)

58. *Does the SFHDF replace the borrower notification form?*

Answer: No. The notification form is used to notify the borrower(s) that he or she is purchasing improved property located in an SFHA. The financial regulatory Agencies, in consultation with FEMA, included a revised version of the sample borrower notification form in Appendix A to the Regulation. The SFHDF is used by the lender to determine whether the property securing the loan is located in an SFHA.

59. *Is the lender required to provide the SFHDF to the borrower?*

Answer: No. While it may be a common practice in some areas for lenders to provide a copy of the SFHDF to the borrower to give to the insurance agent, lenders are neither required nor prohibited from providing the borrower with a copy of the form. In the event a lender does provide the SFHDF to the borrower, the signature of the borrower is not required to acknowledge receipt of the form.

60. *May the SFHDF be used in electronic format?*

Answer: Yes. FEMA, in the final rule adopting the SFHDF stated: ''If an electronic format is used, the format and exact layout of the Standard Flood Hazard Determination Form is not required, but the fields and elements listed on the form are required. Any electronic format used by lenders must contain all mandatory fields indicated on the form.'' It should be noted, however, that the lender must be able to reproduce the form upon receiving a document request by its federal supervisory agency.

61. *Section 528 of the Act, 42 U.S.C. 4104b(e), permits a lender to rely on a previous flood determination using the SFHDF when it is increasing, extending, renewing or purchasing a loan secured by a building or a mobile home. Under the Act, the ''making'' of a loan is not listed as a permissible event that permits a lender to rely on a previous determination. May a lender rely on a previous determination for a refinancing or assumption of a loan?*

Answer: It depends. When the loan involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the lender may rely on the previous determination only if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, *and* there were no map revisions or updates affecting the security property since the original determination was made. A loan refinancing or assumption made by a lender different from the one who obtained the original determination constitutes a new loan, thereby requiring a new determination.

XIV. Flood Determination Fees

62. *When can lenders or servicers charge the borrower a fee for making a determination?*

Answer: There are four instances under the Act and Regulation when the borrower can be charged a specific fee for a flood determination:

- When the determination is made in connection with the making, increasing, extending, or renewing of a loan that is initiated by the borrower;
- When the determination is prompted by a revision or updating by FEMA of floodplain areas or flood-risk zones;
- When the determination is prompted by FEMA's publication of notices or compendia that affect the area in which the security property is located; or
- When the determination results in forced placement of insurance.

Loan or other contractual documents between the parties may also permit the imposition of fees.

63. *May charges made for life of loan reviews by flood determination firms be passed along to the borrower?*

Answer: Yes. In addition to the initial determination at the time a loan is made, increased, renewed, or extended, many flood determination firms provide a service to the lender to review and report changes in the flood status of a dwelling for the entire term of the loan. The fee charged for the service at loan closing is a composite one for conducting both the original and subsequent reviews. Charging a fee for the original determination is clearly within the permissible purpose envisioned by the Act. The Agencies agree that a determination fee may include, among other things, reasonable fees for a lender, servicer, or third party to monitor the flood hazard status of property securing a loan in order to make determinations on an ongoing basis.

However, the life-of-loan fee is based on the authority to charge a determination fee and, therefore, the monitoring fee may be charged only if the events specified in the answer to Question 62 occur.

XV. Flood Zone Discrepancies

64. *What should a lender do when there is a discrepancy between the flood hazard zone designation on the flood*

determination form and the flood insurance policy?

Answer: Lenders should have a process in place to identify and resolve such discrepancies. In attempting to resolve a particular discrepancy, a lender should determine whether there may be a legitimate reason for a discrepancy.

The flood determination form designates a flood hazard zone where the building or mobile home is actually located based on the latest FEMA information; the flood insurance policy designates the flood hazard zone for purposes of rating the degree of flood hazard risk. The two respective flood hazard zone designations may legitimately differ by virtue of the NFIP's ''Grandfather Rule,'' which provides for the continued use of a rating on an insured property when the initial flood insurance policy was issued prior to changes in the hazard rating for the particular flood zone where the property is located. The Grandfather Rule allows policyholders who have maintained continuous coverage and/or who have built in compliance with the Flood Insurance Rate Map to continue to benefit from the prior, more favorable rating for particular pieces of improved property. A discrepancy caused as a result of the application of the NFIP's Grandfather Rule is reasonable and acceptable. In such an event where the lender determines that there is a legitimate reason for the discrepancy, it should document its findings.

If the lender is unable to reconcile a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy and there is no legitimate reason for the discrepancy, the lender and borrower may jointly request that FEMA review the determination. This procedure is intended to confirm or disprove the accuracy of the original determination. The procedures for initiating a FEMA review are found at 44 CFR 65.17. This request must be submitted within 45 days of the lender's notification to the borrower of the requirement to obtain flood insurance.

65. *Can a lender be found in violation of the requirements of federal flood insurance regulations if, despite the lender's diligence in making the flood hazard determination, notifying the borrower of the risk of flood and the need to obtain flood insurance, and requiring mandatory flood insurance, there is a discrepancy between the flood hazard zone designation on the flood determination form and the flood insurance policy?*

Answer: Yes. As noted in Question 64 above, lenders should have a process in place to identify and resolve such discrepancies. If a lender is able to resolve a discrepancy—either by finding a legitimate reason for such discrepancy or by attempting to resolve the discrepancy by contacting FEMA to review the determination, then no violation will be cited. However, if more than occasional, isolated instances of unresolved discrepancies are found in a lender's loan portfolio, the Agencies may cite the lender for a violation of the mandatory purchase requirements. Failure to resolve such discrepancies could result in the lender's collateral not being covered by the amount of legally required flood insurance.

XVI. Notice of Special Flood Hazards and Availability of Federal Disaster Relief

66. *Does the notice have to be provided to each borrower for a real estate related loan?*

Answer: No. In a transaction involving multiple borrowers, the lender need only provide the notice to any one of the borrowers in the transaction. Lenders may provide multiple notices if they choose. The lender and borrower(s) typically designate the borrower to whom the notice will be provided. The notice must be provided to a borrower when the lender determines that the property securing the loan is or will be located in an SFHA.

67. *Lenders making loans on mobile homes may not always know where the home is to be located until just prior to, or sometimes after, the time of loan closing. How is the notice requirement applied in these situations?*

Answer: When it is not reasonably feasible to give notice before the completion of the transaction, the notice requirement can be met by lenders in mobile home loan transactions if notice is provided to the borrower as soon as practicable after determination that the mobile home will be located in an SFHA. Whenever time constraints can be anticipated, regulated lenders should use their best efforts to provide adequate notice of flood hazards to borrowers at the earliest possible time. In the case of loan transactions secured by mobile homes not located on a permanent foundation, the Agencies note that such ''home only'' transactions are excluded from the definition of mobile home and the notice requirements would not apply to these transactions.

However, as indicated in the preamble to the Regulation, the Agencies encourage a lender to advise the borrower that if the mobile home is later located on a permanent foundation in an SFHA, flood insurance will be required. If the lender, when notified of the location of the mobile home subsequent to the loan closing, determines that it has been placed on a permanent foundation and is located in an SFHA in which flood insurance is available under the Act, flood insurance coverage becomes mandatory and appropriate notice must be given to the borrower under those provisions. If the borrower fails to purchase flood insurance coverage within 45 days after notification, the lender must force place the insurance.

68. *When is the lender required to provide notice to the servicer of a loan that flood insurance is required?*

Answer: Because the servicer of a loan is often not identified prior to the closing of a loan, the Regulation requires that notice be provided no later than the time the lender transmits other loan data, such as information concerning hazard insurance and taxes, to the servicer.

69. *What will constitute appropriate form of notice to the servicer?*

Answer: Delivery to the servicer of a copy of the notice given to the borrower is appropriate notice. The Regulation also provides that the notice can be made either electronically or by a written copy.

70. *In the case of a servicer affiliated with the lender, is it necessary to provide the notice?*

Answer: Yes. The Act requires the lender to notify the servicer of special flood hazards and the Regulation reflects this requirement. Neither contains an exception for affiliates.

71. *How long does the lender have to maintain the record of receipt by the borrower of the notice?*

Answer: The record of receipt provided by the borrower must be maintained for the time that the lender owns the loan. Lenders may keep the record in the form that best suits the lender's business practices. Lenders may retain the record electronically, but they must be able to retrieve the record within a reasonable time pursuant to a document request from their federal supervisory agency.

72. *Can a lender rely on a previous notice if it is less than seven years old and it is the same property, same borrower, and same lender?*

Answer: No. The preamble to the Regulation states that subsequent transactions by the same lender with respect to the same property will be treated as a renewal and will require no new determination. However, neither the Regulation nor the preamble addresses waiving the requirement to

provide the notice to the borrower. Therefore, the lender must provide a new notice to the borrower, even if a new determination is not required.

73. *Is use of the sample form of notice mandatory?*

Answer: No. Although lenders are required to provide a notice to a borrower when it makes, increases, extends, or renews a loan secured by an improved structure located in an SFHA, use of the sample form of notice provided in Appendix A is not mandatory. It should be noted that the sample form includes other information in addition to what is required by the Act and the Regulation. Lenders may personalize, change the format of, and add information to the sample form of notice, if they choose. However, a lender-revised notice must provide the borrower with at least the minimum information required by the Act and Regulation. Therefore, lenders should consult the Act and Regulation to determine the information needed.

XVII. Mandatory Civil Money Penalties

74. *What violations of the Act can result in a mandatory civil money penalty?*

Answer: A pattern or practice of violations of any of the following requirements of the Act and their implementing Regulations triggers a mandatory civil money penalty:

(i) Purchase of flood insurance where available (42 U.S.C. 4012a(b));

(ii) Escrow of flood insurance premiums (42 U.S.C. 4012a(d));

(iii) Forced placement of flood insurance (42 U.S.C. 4012a(e));

(iv) Notice of special flood hazards and the availability of Federal disaster relief assistance (42 U.S.C. 4104a(a)); and

(v) Notice of servicer and any change of servicer (42 U.S.C. 4101a(b)).

The Act states that any regulated lending institution found to have a pattern or practice of certain violations ''shall be assessed a civil penalty'' by its Federal supervisor in an amount not to exceed $350 per violation, with a ceiling per institution of $100,000 during any calendar year (42 U.S.C. 4012a(f)(5)). This limit has since been raised to $385 per violation, and the annual ceiling to $125,000 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. 2461 note. Lenders pay the penalties into the National Flood Mitigation Fund held by the Department of the Treasury for the benefit of FEMA.

75. *What constitutes a ''pattern or practice'' of violations for which civil money penalties must be imposed under the Act?*

Answer: The Act does not define ''pattern or practice.'' The Agencies make a determination of whether one exists by weighing the individual facts and circumstances of each case. In making the determination, the Agencies look both to guidance and experience with determinations of pattern or practice under other regulations (such as Regulation B (Equal Credit Opportunity) and Regulation Z (Truth in Lending)), as well as Agencies' precedents in assessing civil money penalties for flood insurance violations.

The *Policy Statement on Discrimination in Lending* (Policy Statement) provided the following guidance on what constitutes a pattern or practice:

> Isolated, unrelated, or accidental occurrences will not constitute a pattern or practice. However, repeated, intentional, regular, usual, deliberate, or institutionalized practices will almost always constitute a pattern or practice. The totality of the circumstances must be considered when assessing whether a pattern or practice is present.

In determining whether a financial institution has engaged in a pattern or practice of flood insurance violations, the Agencies' considerations may include, but are not limited to, the presence of one or more of the following factors:

- Whether the conduct resulted from a common cause or source within the financial institution's control;
- Whether the conduct appears to be grounded in a written or unwritten policy or established practice;
- Whether the noncompliance occurred over an extended period of time;
- The relationship of the instances of noncompliance to one another (for example, whether the instances of noncompliance occurred in the same area of a financial institution's operations);
- Whether the number of instances of noncompliance is significant relative to the total number of applicable transactions. (Depending on the circumstances, however, violations that involve only a small percentage of an institution's total activity could constitute a pattern or practice);
- Whether a financial institution was cited for violations of the Act and Regulation at prior examinations and the steps taken by the financial institution to correct the identified deficiencies;
- Whether a financial institution's internal and/or external audit process had not identified and addressed deficiencies in its flood insurance compliance; and
- Whether the financial institution lacks generally effective flood insurance compliance policies and procedures and/or a training program for its employees.

Although these guidelines and considerations are not dispositive of a final resolution, they do serve as a reference point in assessing whether there may be a pattern or practice of violations of the Act and Regulation in a particular case. As previously stated, the presence or absence of one or more of these considerations may not eliminate a finding that a pattern or practice exists.

End of text of the Interagency Questions and Answers Regarding Flood Insurance.

Dated: March 5, 2008.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 12, 2008.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 14th day of March, 2008. Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: February 5, 2008.

By the Office of Thrift Supervision.

John M. Reich,

Director.

Dated: March 13, 2008.

Roland E Smith,

Secretary, Farm Credit Administration Board.

By the National Credit Union Administration Board, on March 13, 2008.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E8–5787 Filed 3–20–08; 8:45 am]

BILLING CODES 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P; 6705–01–P; 7535–01–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Availability of the Final Environmental Assessment and Finding of No Significant Impact for Fort Field Diversion Dam Reconstruction, Utah County, UT

AGENCY: Utah Reclamation Mitigation and Conservation Commission.

ACTION: Notice of availability.

SUMMARY: The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission),

Central Utah Water Conservancy District (District) and U.S. Department of the Interior (Department), jointly prepared an Environmental Assessment (EA) to determine the effects of reconstructing the Fort Field Diversion on the Provo River in Utah County, to provide unimpaired fish passage during low flow conditions and to meet diversion requirements for canal companies and legal water users.

The Proposed Action selected from the EA for implementation entails the Mitigation Commission, District and Department cooperating to reconstruct the Fort Field Diversion structure, consisting of a cobble bar, a concrete sluiceway, with gates, tree removal and replacement or lining of a section of pipeline.

The Fort Field Diversion often functions as a dry dam: it diverts the entire stream flow of Provo River, with the exception of small quantities of water that leak through the diversion structure. It is also the lowest diversion on the Provo River and the first diversion encountered by June sucker as they ascend the Provo River to spawn. The June sucker is an endangered fish species found only in Utah Lake, which swims from Utah Lake up into the Provo River to spawn.

The Fort Field Diversion restricts June sucker spawning to only the lowest 3.8 miles of Provo River, and compromises the quality of spawning habitat in that lower reach; the upper 1.1 miles of the 4.9 mile reach designated as critical habitat for June sucker, is often inaccessible during May and June, when June sucker spawn.

The decision to select the Proposed Action from the EA will allow reconstruction of the Fort Field diversion structure resulting in fish passage and access to the additional 1.1 miles of June sucker's critical habitat. It will also allow accurate and real-time bypass and measurement of instream flows, maintaining the ability to meet diversion requirements for canal companies and legal water users who divert water at the Fort Field Diversion structure.

Based on information contained in the EA, a Finding of No Significant Impact (FONSI) was made, thus the Proposed Action does not require preparation of an Environmental Impact Statement (EIS) (it will not have a significant effect on the human environment; negative environmental impacts that could occur are negligible and can be generally eliminated with mitigation; there are no unmitigated adverse impacts on public health or safety, threatened or endangered species, sites or districts listed in or eligible for listing in the National Register of Historic Places, or other unique characteristics of the region; no highly uncertain or controversial impacts, unique or unknown risks, cumulative effects, or elements of precedence were identified that have not been mitigated; and, implementation of the action will not violate any federal, state, or local environmental protection law.)

ADDRESSES: Copies of the Final Environmental Assessment and Finding of No Significant Impact can be obtained at the Utah Reclamation Mitigation and Conservation Commission, 230 South 500 East, Suite 230, Salt Lake City, Utah, 84102. They may also be viewed on the internet at: *http://www.mitigationcommission.gov/news.html*.

FOR FURTHER INFORMATION CONTACT: Maureen Wilson, Project Coordinator, (801) 524–3166.

Dated: March 13, 2008.

Michael C. Weland,

Executive Director.

[FR Doc. E8–5743 Filed 3–20–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of VA Property for the Development and Operation of a Senior Housing Facility for Low Income Veterans at the Department of Veterans Affairs Medical Center, Dayton, OH

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of intent to enter into an enhanced-use lease.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to enter into an enhanced-use lease of approximately 6 acres of underutilized land at the VA Medical Center in Dayton, Ohio. The selected lessee will finance, design, develop, construct, operate, maintain and manage a facility to provide senior housing for low income veterans. The facility will include a single 3-story, newly constructed masonry building, with not less than 61 one-bedroom and 6 two-bedroom units and associated vehicular parking spaces. The lessee also will be required to provide VA with agreed-upon ground rent payments and in-kind consideration consisting of priority placement and a discount rental rate that eligible veterans will pay to reside in the facility.

FOR FURTHER INFORMATION CONTACT: Edward Bradley, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7778 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: March 17, 2008.

James B. Peak,

Secretary of Veterans Affairs.

[FR Doc. E8–5723 Filed 3–20–08; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 73, No. 56
Friday, March 21, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

14 CFR Parts 91 and 135

[Docket No. FAA–2005–20245; Amendment No. 23–58, 25–124, 27–43, 29–50, 91–300, 121–338, 125–54, 129–45, and 135–113]

RIN 2120–AH88

Revisions to Cockpit Voice Recorder and Digital Flight Data Recorder Regulations

Correction

In rule document E8–3949 beginning on page 12542 in the issue of Friday, March 7, 2008, make the following corrections:

Appendix E to Part 91 [Corrected]

1. On page 12565, Appendix E to Part 91 is corrected as follows:

APPENDIX E TO PART 91.—AIRPLANE FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [4] read out
* * *	*	* *	*	*
Stabilizer Trim Position or Pitch Control Position [5].	Full Range	±3% unless higher uniquely required	1	[3] 1%
* * *	*	* *	*	*

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft, the recording system, excluding these sensors (but including all other characteristics of the recording system), shall contribute no more than half of the values in this column.
* * * * *
[3] Percent of full range.
[4] This column applies to aircraft manufactured after October 11, 1991.
[5] For Pitch Control Position only, for all aircraft manufactured on or after April 7, 2010, the sampling interval (per second) is 8. Each input must be recorded at this rate. Alternately sampling inputs (interleaving) to meet this sampling interval is prohibited.

Appendix F to Part 91 [Corrected]

2. On the same page, Appendix F to Part 91 is corrected as follows:

APPENDIX F TO PART 91.—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
* * *	*	* *	*	*
Collective [4]	Full Range	±3%	2	[2] 1%

APPENDIX F TO PART 91.—HELICOPTER FLIGHT RECORDER SPECIFICATIONS—Continued

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
Pedal Position [4]	Full Range	±3%	2	[2] 1%
Lat. Cyclic [4]	Full Range	±3%	2	[2] 1%
Long. Cyclic [4]	Full Range	±3%	2	[2] 1%
Controllable Stabilator Position [4]	Full Range	±3%	2	[2] 1%

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft, the recording system, excluding these sensors (but including all other characteristics of the recording system), shall contribute no more than half of the values in this column.
[2] Percent of full range.
[3] This column applies to aircraft manufactured after October 11, 1991.
[4] For all aircraft manufactured on or after April 7, 2010, the sampling interval per second is 4.

Appendix C to Part 135 [Corrected]

3. On page 12571, Appendix C to Part 135 is corrected as follows:

APPENDIX C TO PART 135.—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Installed system [1] minimum accuracy (to recovered data)	Sampling interval (per second)	Resolution [3] read out
*	*	*	*	*
Collective [4]	Full Range	±3%	2	[2] 1%
Pedal Position [4]	Full Range	±3%	2	[2] 1%
Lat. Cyclic [4]	Full Range	±3%	2	[2] 1%
Long. Cyclic [4]	Full Range	±3%	2	[2] 1%
Controllable Stabilator Position [4]	Full Range	±3%	2	[2] 1%

[1] When data sources are aircraft instruments (except altimeters) of acceptable quality to fly the aircraft, the recording system, excluding these sensors (but including all other characteristics of the recording system), shall contribute no more than half of the values in this column.
[2] Percent of full range.
[3] This column applies to aircraft manufactured after October 11, 1991.
[4] For all aircraft manufactured on or after April 7, 2010, the sampling interval per second is 4.

Appendix E to Part 135 [Corrected]

4. On the same page, Appendix E to Part 135 is corrected as follows:

APPENDIX E TO PART 135.—HELICOPTER FLIGHT RECORDER SPECIFICATIONS

Parameters	Range	Accuracy sensor input to DFDR readout	Sampling interval (per second)	Resolution [2] read out
*	*	*	*	*
Pilot Input—Primary Controls (Collective, Longitudinal Cyclic, Lateral Cyclic, Pedal) [3].	Full Range	±3%	2	[1] 0.5%
*	*	*	*	*

[1] Percent of full range.
[2] This column applies to aircraft manufactured after October 11, 1991.
[3] For all aircraft manufactured on or after April 7, 2010, the sampling interval per second is 4.

[FR Doc. Z8–3949 Filed 3–20–08; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
March 21, 2008

Part II

Federal Communications Commission

47 CFR Part 73

Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 87–268; FCC 08–72]

Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document disposes of the petitions for reconsideration filed in response to the *Seventh Report and Order* in this digital television (''DTV'') Table of Allotments proceeding and also addresses the comments filed in response to the *Eighth Further Notice of Proposed Rule Making* in this proceeding. This document finalizes the post-transition DTV table and provides all eligible stations with a channel for digital operation after the transition from analog to digital television in February 2009. This document makes several changes to the DTV Table in response to petitions for reconsideration and comments and establishes in Appendix B the parameters for post-transition operation by television broadcasters.

DATES: Effective March 21, 2008.

ADDRESSES: You may submit comments, identified by MB Docket No. 87–268, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
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- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Kim Matthews of the Media Bureau, Policy Division, (202) 418–2154.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order* (''*MO&OR*'') in MB Docket No. 87–268, FCC 08–72, adopted March 3, 2008, and released March 6, 2008. 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).

I. Introduction

1. On August 6, 2007, we adopted a new, and final, Table of Allotments for digital television (''DTV'') providing all eligible stations with channels for DTV operations after the DTV transition on February 17, 2009. *Seventh Report and Order and Eighth Further Notice of Proposed Rule Making (Seventh R&O and Eighth FNPRM), Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, 22 FCC Rcd 15581 (2007) (*Seventh R&O* and *Eighth FNPRM*). The final DTV Table accommodates all eligible broadcasters, reflects to the extent possible the channel elections made by broadcasters, and is consistent with efficient spectrum use. The final DTV Table also establishes the channels and facilities necessary to complete the digital transition and ultimately will replace the existing DTV Table at the end of the DTV transition. The post-transition DTV Table will be codified at 47 CFR 73.622(i). The revisions to the post-transition table made herein are attached hereto in Appendix A. The current DTV Table, which is contained in 47 CFR 73.622(b), will become obsolete at the end of all authorized pre-transition DTV operations. The current NTSC Table, which is contained in 47 CFR 73.606(b), will become obsolete at the end of the transition, when all full-power analog operations must cease. The existing DTV Table continues to govern stations' DTV operations until the end of the DTV transition. This *MO&OR* resolves all petitions for reconsideration and related issues in connection with the final DTV Table of Allotments.

2. We received 124 timely filed petitions for reconsideration of the *Seventh R&O* reflecting 221 requests for action on individual stations. The vast majority of the petitions request specific changes to the DTV Table and/or Appendix B facilities. The DTV Table specifies a channel for each eligible full power broadcast television station. Appendix B sets forth specific technical facilities—ERP, antenna HAAT, antenna radiation pattern, and geographic coordinates—at which stations will be allowed to operate. Appendix B also includes information on service area and population coverage. In the *MO&OR*, we address these specific requests as well as several more general issues raised by some petitioners. In general, we have accommodated the requests made by petitioners for changes to the DTV Table and/or Appendix B to the extent possible consistent with the interference and other standards outlined in the *Seventh Further Notice of Proposed Rule Making* (*Seventh FNPRM*), 71 FR 66592, November 15, 2006 and the *Seventh R&O* in this proceeding. A large number of the petitions requested changes to Appendix B facilities to permit the station to use an existing analog antenna when the station returns to its analog channel for post-transition digital operations. We addressed and resolved 30 such requests that were raised during the comment period for the *Seventh R&O*. Where possible, we have made the revisions requested by these petitioners. We note, too, that the flexibility we recently adopted in the *Third DTV Periodic Review Report and Order* will provide many of the petitioners with the opportunity to request and receive the facilities they sought in this docket when the station files its application for authorization on its final, post-transition channel. Reliance on the application process for modifying facilities is consistent with the requests and preferences of several petitioners, as described, *infra*. We also note that when stations filed their petitions for reconsideration, they were unaware of the flexibility we would provide in the application process, and many filed to preserve their rights, while advocating for revision through the application process rather than by reconsideration. We also reiterate that requests for revisions to Appendix B in this docket, or for modifications in the application process, that are attempts to maximize beyond authorized post-transition facilities will not be granted at this time. However, as provided in the *Third DTV Periodic Report and Order*, stations will have the opportunity to request

expanded facilities later this year. *See Third DTV Periodic Report and Order*, Section V.E., para. 148.

3. In addition, we are adopting an *Eighth Report and Order* (*Eighth R&O*) herein addressing a number of revisions to the DTV Table and/or Appendix B proposed in the *Eighth Further Notice of Proposed Rule Making* (*Eighth FNPRM*). In the *Eighth FNPRM*, we sought comment on tentative channel designations (''TCDs'') for three new permittees and identified a number of other proposed revisions to the DTV Table and/or Appendix B advanced by commenters in either reply comments or late-filed comments to the *Seventh FNPRM*. In the *Eighth R&O*, we address comments received in response to the *Eighth FNPRM*.

Third DTV Periodic Review

4. On December 22, 2007, the Commission adopted a *Report and Order* in the Third DTV Periodic Review proceeding. *See Report and Order*, *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07–91, FCC 07–228 (rel. Dec. 31, 2007) (''*Third DTV Periodic Report and Order*'') (73 FR 5634, Jan. 30, 2008). In the *Third DTV Periodic Report and Order*, we adopted a number of procedures and rules changes designed to provide flexibility to broadcasters to ensure that they meet the statutory transition deadline and complete construction of their final, post-transition facilities. Among other things, we established construction deadlines for full-power television stations to construct their full, authorized post-transition (DTV Table Appendix B) facilities and decided that stations moving to a different channel for post-transition operation would not be required to construct or complete a digital facility on their pre-transition DTV channel. Specifically, the Commission established the following construction deadlines: (1) May 18, 2008 for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities; (2) August 18, 2008 for stations that will use their pre-transition DTV channel for post-transition operations, but which do not have a construction permit that matches their post-transition (DTV Table Appendix B) facilities; and (3) February 17, 2009 for stations building digital facilities based on a new channel allotment in the post-transition DTV Table and for stations facing a unique technical challenge, such as the need to reposition a side-mounted antenna, that prevents them from completing construction of their final DTV facilities before turning off their analog transmission. In addition, we announced our intent to lift the freeze on the filing of maximization applications on August 17, 2008, the date by which we expect to have completed processing stations' applications to build their post-transition facilities. Until this date, we will maintain our freeze and, except as discussed below, will not accept maximization applications to expand facilities.

5. We also adopted several policies in the *Third DTV Periodic Report and Order* designed to accommodate stations that apply for facilities that deviate to some extent from the facilities set forth in the Appendix B adopted herein. For example, we adopted a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that are moving to a different channel (*e.g.*, their analog channel) for post-transition operation. *Id.* Specifically, we will permit stations to expand beyond their authorized service area where the station demonstrates that such expansion: (1) Would allow the station to use its analog antenna or a new antenna to avoid a significant reduction in post-transition service from its analog service area; (2) would be no more than five miles larger in any direction than their authorized service area, as defined by the post-transition DTV Table Appendix B; and (3) would not cause impermissible interference, *i.e.*, more than 0.5 percent new interference, to other stations. We also stated that, while we generally will not permit more than 0.5 percent new interference, we will consider on a case-by-case basis allowing stations to cause additional new interference if stations can demonstrate that they need this additional flexibility to serve their analog viewers. Consistent with our existing rules, we will also consider on a case-by-case basis stations' negotiated interference agreements provided these agreements are consistent with the public interest. *Id.* This policy will allow added flexibility for stations that wish to use their existing analog channel antenna, and will help the transition process by reducing the demands on equipment suppliers and installation crews during a critical time as the transition deadline nears. As noted above, we received a number of petitions for reconsideration from stations seeking changes to the DTV Table and Appendix B to permit them to use their analog antenna when they return to their analog channel. The 5-mile waiver policy we adopted in the *Third DTV Periodic Report and Order*, in addition to the relief we grant herein, should provide significant relief to stations in this situation. In addition, with respect to evaluating interference in applications to construct post-transition facilities, we permitted stations a limit of 0.5 percent new interference in addition to that in the DTV Table Appendix B. This approach provides more flexibility than the interference standard proposed in the *Third DTV Periodic Review NPRM*, which would have permitted a total of 0.5 percent interference post-transition, rather than 0.5 percent interference in addition to existing interference reflected in DTV Table Appendix B. This added flexibility in the interference standard, together with the 5-mile waiver policy, should permit quick action on and approval of the vast majority of applications for the final DTV facilities adopted in the DTV Table and Appendix B herein. In the *Third DTV Periodic Report and Order*, we stated that stations should file their applications for post-transition facilities as soon as possible in order to have the maximum time to order equipment and build their facilities. We provided expedited processing (generally within 10 days) to stations whose applications demonstrate the following requirements: (1) The application does not seek to expand the station's facilities beyond its final post-transition DTV Table Appendix B facilities; (2) the application specifies facilities that match or closely approximate the DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in DTV Table Appendix B, then it must apply for facilities that are no more than five percent smaller than its facilities specified in Appendix B with respect to predicted population); and (3) the application is filed within 45 days of the effective date of the *Third DTV Periodic Report and Order*, which became effective January 30, 2008. Stations that filed a petition for reconsideration of the *Seventh R&O* may receive expedited processing provided they file their applications within 45 days of the Commission's release of this *Memorandum Opinion and Order on Reconsideration* and otherwise qualify for expedited processing.

II. Discussion

A. General Issues

6. Most of the petitions for reconsideration filed in response to the *Seventh R&O* pertain to individual

station situations. We will discuss these petitions in detail below, grouped according to the nature of the request. However, a number of petitioners raised general issues, and we begin by discussing these petitions.

1. MSTV Petition for Reconsideration and Clarification

7. We grant in part and deny in part the Association for Maximum Service Television, Inc. (''MSTV'') Petition for Reconsideration and Clarification, which, along with several *ex parte* letters, urges the Commission to afford regulatory flexibility to stations to permit them to build post-transition facilities that will serve current viewers. We agree with many of the points raised by MSTV and have taken a number of steps in this proceeding and in the Third DTV Periodic Review proceeding to address their concerns.

8. MSTV argued in both this docket and the Third DTV Periodic Review that the Commission should entertain and grant stations' requests as part of the applications process rather than through the allotment process based on petitions for reconsideration of the *Seventh R&O*. We agree and grant their petition to the extent that many of the requests made by specific broadcasters can be addressed at the application stage and do not require adjustments to Appendix B. However, we are taking a two-pronged approach by both revising Appendix B in response to petitions for reconsideration, where appropriate, and providing significant flexibility in the Third DTV Periodic Review proceeding for applications for post-transition facilities. These two approaches together will permit stations to apply for post-transition facilities that match as closely as possible the facilities that the station has requested, is authorized to serve, and that reach current analog viewers without causing interference to other stations or violating the freeze.

9. MSTV is particularly concerned that the Commission provide flexibility to stations that are not currently on their final, post-transition channels with respect to antenna patterns, particularly those stations that want to use their current analog antennas for post-transition operation. MSTV argues that, as a technical matter, it can be difficult and in some cases impossible to build DTV facilities to operate on a new channel that will replicate the interim DTV antenna pattern, which is the pattern the Commission tried to replicate in the DTV Table Appendix B. In addition, MSTV states that many stations would like to use their analog antenna for their post-transition operations and this antenna may not be capable of replicating precisely the antenna pattern reflected in DTV Table Appendix B. MSTV also notes that, in light of these difficulties, many stations may have to reduce power significantly on the post-transition channel to shrink the station's service area in order to keep the service contour within the contour allotted on Appendix B. This could result in a loss of service post-transition to many current viewers. We shared MSTV's concern in this regard and therefore urged stations to file petitions for reconsideration, including stations that had not filed during the comment cycle following the *Seventh FNPRM*. These general concerns, as well as the specific circumstances portrayed in the individual petitions and comments, contributed to the Commission's decisions in the *Third DTV Periodic Review Report and Order* to provide procedures and policies affording greater flexibility in the application process.

10. MSTV notes that, in the Third DTV Periodic Review proceeding, broadcasters proposed a number of solutions to address these antenna pattern issues. Specifically, MSTV and the National Association of Broadcasters (''NAB'') proposed that the Commission permit stations returning to their analog channel for post-transition operations and planning to use their existing analog antenna to exceed the Appendix B service contour by no more than five miles. In addition, in its Petition for Reconsideration and Clarification in this proceeding, MSTV also proposed, as an alternative measure to address antenna pattern concerns, that the Commission apply a more relaxed interference standard to stations returning to their NTSC channel (*i.e.*, permit such stations to cause a maximum of 2 percent interference for 12 months after February 2009) to afford these stations the ability to replicate their NTSC coverage. MSTV asserted that the Commission could resolve the antenna pattern issue by adopting these proposals in the Third DTV Periodic Review proceeding. However, MSTV also urges the Commission to grant individual stations' requests for relief if they have filed petitions for reconsideration of the *Seventh R&O* in this proceeding.

11. As noted above, in the *Third DTV Periodic Report and Order* we adopted a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that are moving to a different channel (*e.g.*, their analog channel) for post-transition operation. This 5-mile waiver policy will allow added flexibility for stations that wish to use their existing analog antenna and, by permitting more such stations to use existing antennas, should reduce the demand for new equipment and installers for the remainder of the transition period. While we declined in the *Third DTV Periodic Report and Order* to permit more than 0.5 percent new interference generally, we stated that we would consider on a case-by-case basis allowing stations to cause additional new interference if stations can demonstrate that they need this additional flexibility to serve their analog viewers. We also stated that, consistent with our existing rules, we would consider on a case-by-case basis stations' negotiated interference agreements provided these agreements are consistent with the public interest. We decline to adopt any further relief proposed by MSTV in this proceeding. As we stated in the *Third DTV Periodic Report and Order*, we believe that the 5-mile waiver policy, together with other policies adopted in that Order, provide sufficient flexibility to stations, especially when combined with the changes to the DTV Table Appendix B we adopt herein for stations that filed petitions for reconsideration.

12. We received a total of 124 timely filed petitions reflecting 221 requests for changes to the DTV Table and/or Appendix B for individual stations. We grant, in whole or in part, 112 of these requests. For these stations, as discussed further below, we are changing Appendix B to either reflect the specific parameters requested by the station for post-transition operation or to otherwise provide the station with substantial relief. For stations for whom the revised Appendix B adopted herein has been changed to reflect the exact parameters sought by the station, these parameters either match a current authorization for the station or the station will presumably file an application for post-transition operation requesting these parameters that will be eligible for expedited processing pursuant to the procedures adopted in the *Third DTV Periodic Report and Order*. Thus, for these stations there should be no antenna pattern issue left to resolve. With respect to stations for whom the revised Appendix B herein provides some but not all of the relief sought by the station, the flexibility adopted in the *Third DTV Periodic Report and Order* will permit these stations to file an application for post-transition operation that deviates to some extent from these Appendix B parameters. The combination of the relief provided herein and the flexibility adopted in the *Third DTV Periodic Report and Order*

should be sufficient to address antenna pattern concerns for the vast majority of stations moving to a new channel post transition.

13. We grant MSTV's request that, where stations did not seek reconsideration of discrepancies between Appendix B and the facilities that DTV stations are using or intend to use post-transition, (*See* Petition for Reconsideration and Clarification of MSTV at 8–9.), they will not be deemed to have given up any rights to fix these discrepancies at the application or licensing stage.

14. It is worthwhile to clarify that the specific parameters listed on DTV Table Appendix B describe each station's service area based on its certification during the channel election process. In many cases this is a hypothetical facility. *See Seventh R&O,* 22 FCC Rcd at 15588–89, paras. 17–18. When a station applies for the construction permit to build its facility, it may need to depart to some extent from the parameters listed on Appendix B to construct the actual facility, for example, to reflect an achievable directional antenna pattern or to locate the antenna at a height on the tower where mounting is possible. Station applications that cover the same area (or not more than five percent smaller) will be processed quickly. For such stations, no change to Appendix B will be necessary. For stations that wish to make a more significant adjustment, for example, to use their existing analog antenna, we will consider their petition for reconsideration, as described herein, as well as their forthcoming application for construction permit (''CP''). Stations that did not file a petition for reconsideration, or filed too late to be considered, may nevertheless apply for the facilities they want and we will consider their application consistent with the procedures and policies adopted in the *Third DTV Periodic Review Report and Order.*

2. Protection of DTV Allotments

15. We deny the request of several petitioners to abandon Appendix B and rely exclusively on the DTV Table of Allotments, specifying only communities and channel numbers and not the specific parameters for digital facilities. Contrary to these petitioners' arguments, use of Appendix B is consistent with the Commission's longstanding practice for analog and digital channel allotments.

3. TV Channels 5 and 6

16. Mullaney Engineering, Inc. (''MEI'') and EME Communications (''EME'') have filed petitions requesting that the Commission eliminate the requirement in section 73.525 of the Commission's rules that new FM stations protect channel 6 DTV allotments or, alternatively, that it altogether eliminate channel 6, and possibly channel 5, from the digital TV allotment process and allocate that corresponding spectrum to the FM service. Section 73.525 requires that applications for construction permits for new or modified facilities for a non-commercial educational (''NCE'') FM station on Channels 200–220 (88.1–91.9 MHz) protect affected TV stations operating on channel 6 unless the application is accompanied by a written agreement between the NCE–FM applicant and each affected TV Channel 6 broadcast station concurring with the proposed NCE–FM facilities. *See* 47 CFR 73.525. Affected stations are defined as TV Channel 6 stations located within specified distances of an NCE–FM station on FM channels 200–220. We deny these requests.

B. Requests for Minor Adjustments

17. In this *Memorandum Opinion and Order on Reconsideration,* we grant five requests for minor adjustments to station coordinates for stations that are remaining on their pre-transition digital channel. At this stage in the allotment process, we need make such changes only for stations whose pre- and post-transition DTV channels are the same and that, therefore, generally need not file an application for construction or modification. Where the station's pre- and post-transition DTV channels are the same, the corrected coordinates are specified on a station license or construction permit, and the requested change did not result in a change of more than three seconds latitude or longitude for the station, we are making the requested correction. The stations for which we make such a correction are listed in Appendix D1 hereto and the changes requested by those stations are reflected in DTV Table Appendix B adopted herein. We deny the requests for similar changes from nine stations that are moving to a different channel for post-transition operations and that may request such minor coordinate changes as part of the station's application for post-transition facilities. The stations for which we decline to make minor adjustments herein but which may request these adjustments in an application are: KDSE, Dickinson, ND; KFME, Fargo, ND; KUPK, Garden City, KS; WBKO, Bowling Green, KY; WEAU, Eau Claire, WI; WIBW, Topeka, KS; WJHG, Panama City, FL; WSAW, Wausau, WI; and KBSH, Hays, KS. Such minor changes will not prevent applications that otherwise qualify from receiving expedited processing.

18. Some of the stations listed on Appendix D1 requested modification of Appendix B to round a station's geographic coordinates to the nearest whole second rather than merely truncate the data. For such petitioners whose pre- and post-transition channels are the same, and that provided us with station coordinates expressed to the tenth of a second, we have revised DTV Table Appendix B herein to round the coordinates to the nearest whole second.

19. In addition, for five stations we deny the request to change station coordinates because the geographic coordinates as listed in Appendix B match the coordinates listed on the station's license or construction permit. The five stations are KSEE, Fresno, CA; WTAP, Parkersburg, WV; WTVY, Dothan, AL; KKTV, Colorado Springs, CO; WOWT, Omaha, NE. We are revising parameters in Appendix B to match a current license or CP, but any desired adjustment to a license or CP itself must be requested by application. For each of these five stations, the pre- and post-transition DTV channels are the same. Thus, these stations already have an authorization on their post-transition channel and should revise the coordinates on their license or CP by requesting such revisions on FCC Form 302.

C. Requests To Make Changes to Certification

20. We grant 55 petitions consistent with our treatment in the *Seventh R&O* to permit changes to stations' facility certifications (FCC Form 381) based on appropriate demonstrations from these stations where such changes are consistent with the circumstances contemplated in the *Seventh Further Notice.* In paragraph 28 of the *Seventh Further Notice,* the Commission recognized that some stations have already constructed or received authorization to construct facilities on the station's TCD that provide service to areas that extend beyond that to which the station certified on FCC Form 381. Because the interference protection provided during the channel election process was limited to the facilities to which the station certified in FCC Form 381, the Commission noted that stations serving or authorized to serve areas beyond their certified area could become subject to interference in those areas. The Commission stated that it would permit stations in this situation to propose to modify their certified facilities to match their authorized or constructed facilities. Stations requesting such a change were required

either to (1) submit an engineering analysis demonstrating that the proposed change to their certified facilities would not result in interference in excess of 0.1 percent to any licensee's existing TCD or (2) submit the signed, written consent of every affected licensee. The Commission also stated in the *Seventh Further Notice* that stations in these circumstances seeking a change in their certification would be required to accept interference from any channel election already approved.

1. Requests That Meet the Interference Criteria

21. We grant 53 petitions, as we did in the *Seventh R&O,* to permit stations to change their facility certifications (FCC Form 381), and thus our post-transition DTV Table Appendix B, where such stations have demonstrated in a petition for reconsideration that such modification of their facilities will conform to licensed or authorized facilities and where the proposed change to the Appendix B facilities either meets the interference criterion discussed above (*i.e.*, the proposed change would not result in interference in excess of 0.1 percent to any licensee's existing TCD) or, as discussed further below, the station affected agreed to accept the interference. We have made the changes requested by these petitioners and the changes are reflected in the revised DTV Table Appendix B adopted herein. A list of the stations for which we made these changes is attached hereto in Appendix D2. To address the requests of those commenters in this group whose stations are moving to a different channel for post-transition service, we recalculated their post-transition DTV coverage area based on their authorized or licensed DTV facility, as indicated by the file number shown in Appendix D2. Only one of these stations requires special explanation, KPXC, due to its atypical circumstances.

22. *KPXC, Denver, CO.* As noted on Appendix D2, we grant the request from Paxson Denver License, Inc. (''Paxson''), licensee of station KPXC–TV, channel 59, and permittee of KPXC–DT, channel 43, Denver, CO, which was allotted channel 43 in the DTV Table in the *Seventh R&O.* Paxson requests that the KPXC certification and Appendix B allotment be made consistent with its DTV construction permit originally granted on November 29, 2005. While our interference analysis shows that the change requested by KPXC would cause 2.2 percent interference to KOAA, Pueblo, CO (analog channel 5, digital channel 42 for both pre- and post-transition), KOAA has submitted a letter stating that it consents to the allotment change requested by KPXC.

23. As we noted in the *Seventh R&O,* KPXC has encountered zoning issues that have been the subject of litigation. As Paxson is still lacking zoning approval for its preferred site for KPXC, it has informed the Commission that it will be filing an application to move to a new site. According to Paxson, the combination of the changes to Appendix B for KPXC granted herein and the flexibility adopted in the *Third DTV Periodic Report and Order* will permit it to file an application to specify a new tower site for KPXC. We continue to request that Paxson keep us informed concerning any relevant progress and events in its zoning case.

2. Requests by Operating Stations That Do Not Meet Interference Criteria

24. We grant requests from two stations, consistent with our treatment in the *Seventh R&O,* to permit stations that are already operating their final, post-transition DTV facilities to change their facility certifications (FCC Form 381), and thus our post-transition DTV Table Appendix B, to reflect those facilities, even though such operations will exceed the 0.1 percent interference standard. As described below, these stations requested changes to the proposed DTV Table Appendix B to reflect operating facilities where we have determined that the interference caused to the TCD of another licensee exceeds the 0.1 percent interference standard and there is no interference agreement with the affected station. While these stations are requesting changes to the parameters adopted in the *Seventh R&O* in situations where the level of interference exceeds the relevant standard, we find that they have met their burden of demonstrating that special circumstances justify a waiver because they are already operating their final, post-transition DTV facilities. We believe it is unnecessary and unfair to require these already-operational facilities to reduce service. In addition, the stations receiving the interference have not filed an opposition to the stations requesting the change.

25. *WBNX, Akron, OH.* We grant the request of Winston Broadcasting Network, Inc. (''Winston''), licensee of station WBNX–TV, channel 55, and WBNX–DT, channel 30, Akron, OH, which was allotted channel 30 in the DTV Table in the *Seventh R&O.* Winston requests that the parameters for WBNX in Appendix B be changed to conform the antenna ID number to the information reflected in the WBNX–DT license. The Commission's interference analysis shows that WBNX–DT's licensed facility causes 0.16 percent interference to WEYI, Saginaw, MI (analog channel 25, digital channel 30 for both pre- and post-transition).

26. *KALB, Alexandria, LA.* We grant the request of Media General Communications Holdings, LLC (''Media General''), licensee of station KALB, channel 5, and KALB–DT, channel 35, Alexandria, LA, which was allotted channel 35 in the DTV Table in the *Seventh R&O.* Media General requests that the certification and Appendix B parameters for KALB be changed. The changes requested would make those parameters consistent with the KALB–DT license. The Commission's interference analysis shows that KALB–DT's licensed facility causes 0.59 percent interference to KARD, West Monroe, LA (analog channel 14, digital channel 36 for both pre- and post-transition).

D. Requests for Modified Coverage Area

27. We grant the requests filed on behalf of 40 stations whose post-transition DTV channel is different from their pre-transition DTV channel to change the coverage area in the *Seventh R&O* DTV Table Appendix B. The stations for which we are modifying the coverage area herein are listed in Appendix D3 and the modified parameters for those stations are reflected in Appendix B as modified herein. In general, these petitioners argue that the facilities specified in the DTV Table Appendix B adopted in the *Seventh R&O* do not permit the station to provide service to the area served by the station's analog facility. We deny the requests filed on behalf of 24 stations for which our adjustment would result in a smaller facility than that described by the parameters on Appendix B as adopted in the *Seventh R&O* or that would shift the station's service area in such a way that existing viewers would lose service post-transition. In addition, we deny the requests filed by 13 stations for which our adjustment to Appendix B would result in impermissible interference. Both groups of petitioners—those granted or denied—can apply for desired facilities in the application process.

28. Many of these petitioners plan to return to their station's analog channel post-transition and request changes to the parameters specified on Appendix B to permit the station to use its existing analog antenna. In general, these petitioners argue that it is difficult or impossible for the station to use their preferred antenna to serve the allotment specified on Appendix B. In many

cases, in order to stay within this allotment, as required by the existing freeze on expansion of a station's contour, the station would be required to significantly reduce power, thereby potentially resulting in a loss of service post-transition to existing viewers. Other petitioners request changes to the power level or antenna specified in Appendix B in order to allow the station to continue to serve its analog viewers post-transition.

29. In response to the petitions filed on behalf of these stations, we have provided the same relief herein that we provided to similarly situated stations in the *Seventh R&O.* Specifically, we have recalculated Appendix B facilities based on replicating the analog coverage that was used to determine the station's initial DTV table facilities. If the recalculation would result in a reduction in the Appendix B facilities or would result in an undesirable shift in the station's service area, we are retaining the Appendix B facilities that we adopted in the *Seventh R&O* without change. The stations whose Appendix B facilities are not being changed for this reason are: KABY, Aberdeen, SD; KAII, Wailuku, HI; KARE, Minneapolis, MN; KAZT, Prescott, AZ; KETA, Oklahoma City, OK; KFPH, Flagstaff, AZ; KHAW, Hilo, HI; KHET, Honolulu, HI; KMEB, Wailuku, HI; KPNX, Mesa, AZ; KSFY, Sioux Falls, SD; KUSA, Denver, CO; KUVI, Bakersfield, CA; KWEX, San Antonio, TX; WBIR, Knoxville, TN; WEEK, Peoria, IL; WIRT, Hibbing, MN; WMAE, Booneville, MS; WMAZ, Macon, GA; WMMP, Charleston, SC; WNAC, Providence, RI; WOTF, Melbourne, FL; WTVX, Fort Pierce, FL; and WZZM, Grand Rapids, MI. Although we are not revising Appendix B in these latter cases, we note that these stations may be able to obtain much, if not all, of the relief they seek when they file an application for their final post-transition DTV channel pursuant to the rules and procedures adopted in the *Third DTV Periodic Report and Order.* As discussed above, we adopted a number of policies in that Order designed to give substantial flexibility to stations moving to a different channel for post-transition digital service, including stations that are returning to their analog channel and that plan to use their analog antenna.

30. If our recalculation of Appendix B based on replication of the station's initial DTV table facilities would result in a larger coverage area or a desirable coverage area shift, and our analysis indicates that the recalculated facilities (1) meet the 0.1 percent interference standard specified in the *Second DTV Periodic Report and Order* or (2) would cause more than 0.1 percent new interference but the affected station(s) agree to accept the interference, we are granting the request to change DTV Appendix B to reflect the larger or shifted coverage area. These stations are listed in Appendix D3, and the revised parameters for these stations are reflected in the revised DTV Table Appendix B, *infra.* We believe that permitting these changes to Appendix B is consistent with our overall goal in the DTV transition of encouraging replication of analog service. One of the Commission's objectives throughout the transition has been to permit broadcasters to reach with digital service the audiences they have been serving with analog service so that viewers will continue to have access to the stations that they are accustomed to receiving over the air. We remain committed to ensuring that viewers maintain the best possible television service after the transition date. The revisions granted to the stations listed in Appendix D3 are consistent with this goal as they will permit these stations to provide digital service to more of their established analog viewers.

1. Granted Requests for Which an Opposition Was Filed

31. For three stations listed on Appendix D3, WUSA, Washington, DC, WHAS, Louisville, KY, and WPBN, Traverse City, MI, there was an opposition filed to the station's petition for reconsideration. We briefly discuss these oppositions and related pleadings below. As described above, for all stations listed on Appendix D3, including WUSA, WHAS, and WPBN, our recalculation of Appendix B herein resulted in a larger coverage area consistent with our interference standards. Accordingly, we revised Appendix B for these stations to provide them with this larger coverage area. While these revisions to Appendix B may not include the specific parameters requested by WUSA, WHAS, and WPBN in their petitions, the revised Appendix B parameters together with the flexibility adopted in the *Third DTV Periodic Report and Order* should provide to these stations some, if not all, the relief they seek when they file applications for post-transition facilities.

32. *WUSA, Washington, DC.* We grant, in part, the request of Gannett Co. Inc. (''Gannett''), indirect owner of WUSA, channel 9, and WUSA–DT, channel 34, Washington, DC, allotted channel 9 in the DTV Table in the *Seventh R&O.* Gannett submitted a petition for reconsideration requesting to amend the Form 381 certification of WUSA–DT to specify the station's replicated service area rather than the maximized service area in order to permit the station to use an existing combined analog antenna for its post-transition DTV operations. Sonshine Family Television, Inc. (''Sonshine'') filed an opposition to the petition claiming that the proposed revised allotment for WUSA would cause interference to WBPH–DT, Bethlehem, PA (analog channel 60, post-transition digital channel 9) in excess of the applicable interference standard. Sonshine argued initially that the proposed revised WUSA allotment would cause new interference to WBPH of 3.744 percent. In response to a later pleading filed by Gannett, Sonshine revised its position to support the WUSA proposal if certain power limitations were met by the post-transition WUSA facilities. The Commission recalculated Appendix B facilities for WUSA pursuant to the process described above and performed an interference analysis based on these recalculated Appendix B facilities. The Commission's interference analysis shows no new interference from the revised Appendix B facilities for WUSA to WBPH or any other station and the revised WUSA parameters are reflected in the Appendix B adopted herein. While these revised parameters may not reflect all of the changes requested by Gannett, the changes to Appendix B when combined with the flexibility provided in the *Third DTV Periodic Report and Order* for the application process should provide all or much of the relief sought for WUSA.

33. *WHAS, Louisville, KY.* We grant, in part, the request of Belo Corp. (''Belo''), licensee of WHAS, channel 11, and WHAS–DT, channel 55, Louisville, KY, allotted channel 11 in the DTV Table in the *Seventh R&O.* Belo submitted a petition for reconsideration requesting that its Form 381 certification be amended to specify the WHAS replicated analog service area rather than its maximized service area and that Appendix B be modified to reflect an omni-directional antenna pattern that would permit WHAS to use its existing analog omni-directional antenna for post-transition operations. Primeland Television, Inc. filed an opposition arguing that the proposed changes to WHAS are premature and will cause substantial interference to the post-transition operations of WLFI, Lafayette, LA (analog channel 18, post-transition digital channel 11). Primeland also states that WLFI has declined to enter into an interference agreement with WHAS. Belo acknowledges in its

petition that its proposed changes to WHAS would cause interference to WLFI–DT, but argues that its proposal actually represents a reduction from the level of interference currently caused to WLFI–TV by WHAS–TV's analog facility. In its opposition, Primeland argues that the facilities specified in the DTV Table concern post-transition operations and that any masking interference caused by WHAS's analog facilities should be disregarded. In reply Belo argues that grant of its petition would best serve the public interest as the changes it requests for WHAS will permit existing analog viewers of that station to receive WHAS digital service, while those changes will not deprive any current analog viewers of WLFI of that station's digital service. The Commission recalculated Appendix B facilities for WHAS pursuant to the process described above and performed an interference analysis based on these recalculated Appendix B facilities. The Commission's interference analysis shows no new interference from the revised Appendix B facilities for WHAS to WLFI or any other station and those revised WHAS parameters are reflected in the Appendix B adopted herein. While these revised parameters may not reflect all of the changes requested by Belo, the changes to Appendix B when combined with the flexibility provided in the *Third DTV Periodic Report and Order* should provide all or most of the relief sought for WHAS.

34. *WPBN, Traverse City, MI.* We grant, in part, the petition for reconsideration filed on behalf of WPBN. Barrington Traverse City License LLC, licensee of television station WPBN, channel 7, and WPBN–DT, channel 50, Traverse City, MI, was allotted channel 7 for post-transition operations in the *Seventh R&O.* In its petition for reconsideration, Barrington seeks revised technical parameters for WPBN's post-transition operations in order to operate at the coordinates and height of its channel 7 analog operation, using its analog antenna.

35. WOOD License Company, LLC, licensee of WOOD–TV/DT in Grand Rapids, Michigan, opposes Barrington's petition on the grounds that granting the requested change for WPBN would cause interference to WOOD's post-transition operations on DTV channel 7, resulting in loss of service to 11,868 persons or 0.52 percent of WOOD's service population. In its reply, Barrington argues that WOOD is incorrect and that the requested allotment for WPBN would actually cause substantially less interference to WOOD–DT post-transition than is caused currently by the WPBN analog facility.

36. The Commission recalculated Appendix B facilities for WPBN pursuant to the process described above and performed an interference analysis based on these recalculated Appendix B facilities. The Commission's interference analysis shows no new interference from the revised Appendix B facilities for WPBN to WOOD or any other station and those revised WPBN parameters are reflected in the Appendix B adopted herein. While these revised parameters may not reflect all of the changes requested by Barrington, the changes to Appendix B when combined with the flexibility provided in the *Third DTV Periodic Report and Order* should permit Barrington to obtain at least some of the relief it seeks for WPBN.

2. Granted Requests Filed by Stations That Were Previously Addressed in the *Seventh Report and Order*

37. Petitions for reconsideration were filed on behalf of the following stations requesting reconsideration of the Commission's decisions in the *Seventh R&O* regarding the stations. The Commission has modified Appendix B herein for these stations and the stations appear on Appendix D3 herein. As these petitions relate to particular decisions made in the *Seventh R&O,* they are discussed individually below.

38. *KCET, Los Angeles, CA.* We grant, in part, the petition for reconsideration of Community Television of Southern California (''CTSC''), licensee of NCE station KCET, channel 28, and KCET–DT, channel 59, Los Angeles, CA, which received channel 28 for its TCD in the proposed DTV Table. In its comments filed in response to the *Seventh Further Notice,* CTSC requested that the Commission change DTV Table Appendix B to specify maximized parameters for KCET–DT. The Commission denied the CTSC request because the KCET maximized facilities would cause interference to the certified facilities of KEYT, Santa Barbara, CA (analog channel 3, post-transition digital channel 27) on its TCD in excess of the permissible 0.1 percent limit. In its petition for reconsideration, CTSC states that it has determined that Appendix B specifies a different antenna than the current KCET analog antenna, which CTSC states is the antenna it has always intended to use for its post-transition facility. CTSC requests that the Commission modify Appendix B to specify its current antenna, which will permit replication of KCET's current NTSC and DTV service areas.

39. The Commission has recalculated the Appendix B facilities for KCET pursuant to the process described above and performed an interference analysis based on these recalculated Appendix B facilities. The Commission's interference analysis shows no new interference to other stations from the revised Appendix B facilities for KCET and, accordingly, we have revised Appendix B herein to reflect these revised KCET parameters. While these revised parameters may not reflect all of the changes requested by CTSC, the changes we make herein to Appendix B when combined with the flexibility provided in the *Third DTV Periodic Report and Order* should provide all or most of the relief sought for KCET.

40. *WGAL, Lancaster, PA.* We grant, in part, the petition for reconsideration of Hearst-Argyle Television, Inc. (''Hearst''), parent company of the licensees of WGAL channel 8 and WGAL–DT channel 58, which was allotted channel 8 for post-transition operations in the *Seventh R&O.* Hearst seeks reconsideration of the Commission's denial of its request to change the certified technical parameters for its post-transition facilities to replicate analog service. Specifically, it reiterates its comments filed in response to the *Seventh Further Notice* where it requested an increase in HAAT to 415 meters and a decrease in ERP to 5.36kW. In response to these comments, the Commission recalculated WGAL's Appendix B facilities based on replicating its analog coverage area and determined that the recalculation resulted in a reduction in the Appendix B facilities for WGAL. Accordingly, in the *Seventh R&O*, we retained the larger Appendix B facilities that we had initially proposed for WGAL. Hearst argues in its petition that the Commission erred in its treatment of WGAL in the *Seventh R&O* because, in fact, the recalculated Appendix B facilities based on replication would result in a larger coverage area for WGAL.

41. As Hearst indicates in its petition that it would prefer a modified coverage area for WGAL even if that coverage area is smaller or shifted from the area on Appendix B, the Commission has recalculated the Appendix B facilities for WGAL pursuant to the process described above and performed an interference analysis based on these recalculated Appendix B facilities. The Commission's interference analysis shows no new interference to other stations from the revised Appendix B facilities for WGAL and, accordingly, we have revised Appendix B herein to reflect these revised parameters.

3. Requests That Do Not Meet the Interference Standard

42. As described in greater detail below, we deny the requests from 13 stations that filed petitions requesting changes to the DTV Table Appendix B adopted in the *Seventh R&O* to increase the station's coverage area, because our recalculations of the Appendix B facilities and interference analysis show that the requested change would result in interference that would exceed the 0.1 percent interference standard and the affected station has not agreed to accept this interference. None of these petitions request changes to reflect DTV facilities they are operating or are authorized to operate. We note, however, that many of these stations must file an application for authority to construct the station's post-transition facility. As a result of the flexibility adopted in the *Third DTV Periodic Report and Order,* stations whose requests for modified coverage area are denied may be able to specify facilities in that application that more closely approach the parameters requested in the station's petition for reconsideration. The following is a list of these stations and a description of their individual circumstances.

43. *KEMV, Mountain View, AR.* We deny the petition for reconsideration filed by Arkansas Educational Television Commission (''AETC''), licensee of noncommercial educational station KEMV, channel 6, and KEMV–DT, channel 13, Mountain View, AR, which was allotted channel 13 for post-transition operations in the DTV Table in the *Seventh R&O.* AETC requests that the parameters for KEMV–DT in Appendix B be adjusted to include an omnidirectional antenna with an ERP of 6.9 kW. The Commission's interference analysis based on recalculated Appendix B facilities shows that KEMV would cause 0.6 percent interference to KTHV, Little Rock, AR (analog channel 11, digital channel 12 for both pre- and post-transition), 2.1 percent interference KETG, Arkadelphia, AR (analog channel 9, digital channel 13 for both pre- and post-transition), and 0.6 percent interference to WHBQ, Memphis, TN (analog channel 13, pre-transition digital channel 53, post-transition digital channel 13).

44. *WBBM, Chicago, IL.* We deny the petition for reconsideration filed by CBS Corporation (''CBS''), the ultimate owner of station WBBM, channel 2, and WBBM–DT, channel 3, Chicago, IL. CBS filed a petition for reconsideration of the *Seventh R&O* requesting that the parameters for WBBM–DT in Appendix B be adjusted to reflect operation with a directional antenna and an increase in ERP to 13.6 kW to nearly match the carried-over, maximized service contour of WBBM's channel 3 authorized operations. The Commission's interference analysis based on recalculated Appendix B facilities shows that WBBM would cause 0.4 percent interference to WINM, Angola, IN (analog channel 63, digital channel 12 for both pre- and post-transition).

45. *KTVU, Oakland, CA.* We deny the petition for reconsideration filed by KTVU Partnership (''Cox''), licensee of KTVU, channel 2, and KTVU–DT, channel 56, Oakland, CA. KTVU was allotted channel 44 for post-transition operations in the DTV Table in the *Seventh R&O.* Cox requests a change in certified facilities and a revision of KTVU–DT's allotment in Appendix B to reflect operation with a directional antenna, a decrease in ERP to 500 kW, and an increase in HAAT to 513 meters. The Commission's interference analysis based on recalculated Appendix B facilities shows that KTVU would cause 0.6 percent interference to KCSM, San Mateo, CA (analog channel 60, digital channel 43 for both pre- and post-transition) and 0.4 percent interference to KBCW, San Francisco, CA (analog channel 44, digital channel 45 for both pre- and post-transition).

46. *WTOV, Steubenville, OH.* We deny the petition for reconsideration of WTOV, Inc. (''Cox''), licensee of WTOV, channel 9, and WTOV–DT, channel 57, Steubenville, Ohio. WTOV was allotted channel 9 for post-transition operations in the DTV Table in the *Seventh R&O.* Cox requests a change in certified facilities and a revision of WTOV–DT's allotment in Appendix B to reflect operation with a nondirectional antenna, an increase in ERP to 12 kW, and an increase in HAAT to 282 meters. The Commission's interference analysis based on recalculated Appendix B facilities shows that WTOV would cause 2.9 percent interference to WWCP, Johnstown, PA (analog channel 8, pre-transition digital channel 29, and post-transition digital channel 8) and 0.6 percent interference to WVFX, Clarksburg, West Virginia (analog channel 46, digital channel 10 for both pre- and post-transition).

47. *WKRG, Mobile, AL.* We deny the petition for reconsideration of Media General Communications Holdings, LLC (''Media General''), licensee of WKRG, channel 5, and WKRG–DT, channel 27, Mobile, AL. WKRG was allotted channel 27 for post-transition operations in the DTV Table in the *Seventh R&O.* Media General requests a change in the certification for WKRG and a revision of the station's allotment in Appendix B to reflect operation with a new antenna ID. The Commission's interference analysis based on recalculated Appendix B facilities shows that WKRG would cause 1.0 percent interference to WAIQ, Montgomery, AL (analog channel 26, digital channel 27 for both pre- and post-transition).

48. *WRBL, Columbus, GA.* We deny the petition for reconsideration Media General Communications Holdings, LLC (''Media General''), licensee of WRBL, channel 3, and WRBL–DT, channel 15, Columbus, GA. WRBL was allotted channel 15 for post-transition operations in the DTV Table in the *Seventh R&O.* Media General requests a change in the certification for WRBL and a revision of the station's allotment in Appendix B to reflect operation with an increased HAAT of 543 meters. The Commission's interference analysis based upon the recalculated Appendix B facilities for WRBL shows that WRBL would cause 0.2 percent interference to WGXA, Macon, GA (analog channel 24, digital channel 16 for both pre- and post-transition).

49. *WKMG, Orlando, FL.* We deny the petition for reconsideration of Post-Newsweek Stations, Orlando, Inc. (''Post-Newsweek''), licensee of WKMG, channel 6, and WKMG–DT, channel 58, Orlando, FL. WKMG was allotted channel 26 for post-transition operations in the DTV Table in the *Seventh R&O.* Post-Newsweek requests that its post transition DTV allotment parameters be modified to reflect use of a polarized dielectric antenna with an ERP of 866 kW. The Commission's interference analysis based on recalculated Appendix B facilities shows that WKMG would cause 0.9 percent interference to WVEA, Venice, FL (analog channel 62, digital channel 25 for both pre- and post-transition) and 0.2 percent interference to WRDQ, Orlando, FL (analog channel 27, pre-transition digital channel 14, post-transition digital channel 27).

50. *WAFB, Baton Rouge, LA.* We deny the petition for reconsideration of Raycom Media, Inc. (''Raycom''), licensee of WAFB, channel 9, and WAFB–DT, channel 46, Baton Rouge, LA. WAFB was allotted channel 9 for post-transition operations in the DTV Table in the *Seventh R&O.* Raycom requests that Appendix B be revised to reflect use of WAFB's existing analog omnidirectional antenna. The Commission's interference analysis based on recalculated Appendix B facilities shows that WAFB would cause 1.0 percent interference to WVUE, New Orleans, LA (analog channel 8, pre-transition digital channel 29, post-transition digital channel 8) and 12.9

percent interference to KLFY, Lafayette, LA (analog channel 10, pre-transition digital channel 56, post-transition digital channel 10).

51. *WITV, Charleston, SC.* We deny the petition for reconsideration filed by South Carolina Educational Television Commission (''SCETV''), licensee of WITV, channel 7, and WITV–DT, channel 49, Charleston, SC. WITV was allotted channel 7 for post-transition operations in the DTV Table in the *Seventh R&O.* SCETV requests an increase in ERP to 20 kW to aid the station in replicating its analog coverage. The Commission's interference analysis based on recalculated Appendix B facilities shows that WITV would cause 0.2 percent interference to WOLO, Columbia, SC (analog channel 25, digital channel 8 for both pre- and post-transition).

52. *WFUT, Newark, NJ.* We deny the petition for reconsideration of Univision New York LLC (''Univision''), licensee of WFUT, channel 68, and WFUT–DT, channel 53, Newark, NJ, which was allotted channel 30 for post-transition operations in the DTV Table in the *Seventh R&O.* Univision requests an increase in ERP and a change to the WFUT antenna radiation pattern to aid the station in replicating the WFUT–DT coverage area. The Commission's interference analysis based on recalculated Appendix B facilities shows that WFUT would cause 0.2 percent interference to WFME, West Milford, NJ (analog channel 66, digital channel 29 for both pre- and post-transition).

53. *WDEF, Chattanooga, TN.* We deny the petition for reconsideration filed by WDEF–TV, Inc. (''WDEF''), licensee of WDEF, channel 12, and WDEF–DT, channel 47, Chattanooga, TN. WDEF was allotted channel 12 for post-transition operations in the DTV Table in the *Seventh R&O.* WDEF requests use of its existing nondirectional antenna with a decrease in ERP to 13 kW. The Commission's interference analysis based on recalculated Appendix B facilities shows that WDEF would cause 0.5 percent interference to WRCB, Chattanooga, TN (analog channel 3, digital channel 13 for both pre- and post-transition).

54. *WWBT, Richmond, VA.* We deny the petition for reconsideration filed by WWBT, Inc. (''WWBT''), licensee of WWBT, channel 12, and WWBT–DT, channel 54, Richmond, VA. WWBT was allotted channel 12 for post-transition operations in the DTV Table in the *Seventh R&O.* WWBT requests an increase in ERP to 12.1 kW. Although WWBT could cause up to 2 percent interference because it is a station with a pre-transition digital allotment out of core that is moving to its analog channel, the Commission's interference analysis based on recalculated Appendix B facilities shows that WWBT would cause 3.0 percent interference to WVEC, Chattanooga, TN (analog channel 13, pre-transition digital channel 41, post-transition digital channel 13).

55. *KAAL, Austin, MN.* We deny the petition for reconsideration of Hubbard Broadcasting Inc. (''Hubbard''), licensee of station KAAL–TV, channel 6, and KAAL–DT, channel 33, Austin, MN. KAAL was allotted channel 36 for post-transition operations in the *Seventh R&O.* In its petition for reconsideration, Hubbard requests that it be permitted to operate post-transition using the existing channel 36 facilities of station KTTC–DT, Rochester, MN (analog channel 10, pre-transition digital channel 36, post-transition digital channel 10). We find that KTTC's facilities are roughly 30 miles from KAAL's current tower and that KTTC is licensed to a different community (Rochester, MN instead of Austin, MN). Both findings indicate that it would be difficult for KAAL to properly serve Austin. In addition, the Commission's interference analysis based on recalculated Appendix B facilities that KAAL would cause 0.40 percent interference to KWSD, Sioux Falls, SD (analog channel 36, pre-transition digital channel 51, and post-transition digital channel 36).

E. Requests for Alternative Channel Assignments

56. We received 13 requests for an alternative channel assignment. We grant herein eight of these requests and deny five requests, consistent with our treatment of such channel change requests in the *Seventh R&O.* A list of the stations for which we are granting a change appears in Appendix D4, *infra,* and we have revised the DTV Table for these stations accordingly. For each of these stations, we believe that the circumstances described by the station are consistent with one or more of the criteria for consideration of alternative channel assignments outlined in the *Seventh Further Notice.* Each of these requested channel changes granted herein and listed on Appendix D4 meets the 0.1 percent interference standard.

57. The Commission stated that any request for an alternative channel assignment must either meet the 0.1 percent additional interference standard or be accompanied by a request for a waiver of the 0.1 percent limit or the signed written consent of the affected licensee. The Commission stated that it would grant waivers of the 0.1 percent limit where doing so would promote overall spectrum efficiency and ensure the best possible service to the public, including service to local communities.

58. We deny the channel change requests of five stations. As discussed further below, for three of these stations the Commission's interference analysis shows that the new channel requested by the station would cause interference to one or more other stations in excess of the 0.1 percent standard, and there is no agreement with the affected station(s) accepting this interference. In one case where the interference standard is exceeded, that of KCWX, Fredericksburg, TX, the petition for reconsideration was opposed. As discussed below, we decline to waive our interference limit for these stations. In addition, we decline to grant the channel change request of two stations that filed their requests too late for consideration in this *Memorandum Opinion and Order on Reconsideration.* Following is a brief discussion of these stations and the relevant circumstances.

59. *WCOV, Montgomery, AL.* We deny the petition for reconsideration filed on behalf of WCOV. Woods Communications Corporation (''Woods''), licensee of station WCOV, channel 20, and WCOV–DT, channel 16, Montgomery, AL, elected and was allotted channel 16 for post-transition operations in the *Seventh R&O.* In its petition for reconsideration, Woods requests the substitution of channel 20 for its final, post-transition digital channel in the Table of Allotments. The Commission's interference analysis shows that the proposed operation of WCOV on channel 20 would cause 0.40 percent interference to WIIQ, Demopolis, AL (analog channel 41, digital channel 19 for both pre- and post-transition), 0.17 percent interference to WTBS, Atlanta, GA (analog channel 17, digital channel 20 for both pre- and post-transition), 0.45 percent interference to WMPV, Mobile, AL (analog channel 21, digital channel 20 for both pre- and post-transition), 0.31 percent interference to WYLE, Florence, AL (analog channel 26, digital channel 20 for both pre- and post-transition), and 0.23 percent interference to WDHN, Dothan, AL (analog channel 18, digital channel 21 for both pre- and post-transition). Because the proposed channel substitution causes impermissible interference to five other stations, we deny Woods' request for channel change for WCOV. Woods has submitted neither evidence of agreement from the stations receiving the interference nor a

request for waiver. WCOV may file a request for a channel substitution when the Commission lifts the filing freeze. The 0.5 percent interference standard adopted in the *Third DTV Periodic Report and Order* will apply to such requests for channel substitution.

60. *WWAZ, Fond du Lac, WI.* We deny the channel change request of WWAZ because the basis it offers for the request, financial need, is not a basis for a channel change. WWAZ License, LLC (''WWAZ''), licensee of station WWAZ, channel 68, and WWAZ–DT, channel 44, Fond du Lac, WI, was allotted channel 44 for post-transition operations in the *Seventh R&O*. WWAZ requests the substitution of channel 9 for its final, post-transition digital channel in the Table of Allotments. The Commission's interference analysis shows that the requested channel change would cause 1.45 percent interference to WMVS, Milwaukee, WI (analog channel 10, digital channel 8 for both pre- and post-transition), and 2.19 percent interference to WAOW, Wausau, WI (analog channel 9, pre-transition digital channel 29, and post-transition digital channel 9). In view of the impermissible interference caused by the proposed WWAZ channel substitution to two other stations, we deny its channel substitution request and decline to waive our interference standard. WWAZ may request a channel substitution after the freeze is lifted.

61. *KCWX, Fredericksburg, TX.* We deny the petition for reconsideration filed on behalf of KCWX. Corridor Television, LLP is the licensee of KCWX–DT, Fredericksburg, Texas, a single channel analog station on Channel 2. In the *Seventh Report and Order,* the Commission denied Corridor's request to change its DTV channel from 5 to channel 8. finding that the change would cause 0.79 percent interference to KTBC, Austin, Texas (analog channel 7, post-transition digital channel 7) and 0.47 percent interference to NCE station KLRN, San Antonio, Texas (analog channel 9, post-transition digital channel 9). In its petition for reconsideration, Corridor amends its request for channel change specifying a proposal with 15 kW non-directional ERP at 413 meters HAAT. Although Corridor acknowledges that its channel change would still result in greater than 0.1 percent interference, Corridor again requests a waiver pending adoption of the Commission's proposed 0.5 percent DTV interference standard in the Third DTV Periodic Review proceeding. Alamo and KTBC both oppose Corridor's revised request for channel change. Both argue that the issue of a channel change was already considered in the *Seventh R&O* and was properly denied because the Commission found that it would cause impermissible interference to KLRN and KTBC. They point out that Corridor's new proposal also would cause impermissible interference to their stations.

62. We note that Corridor does not challenge the denial of its original channel change proposal but rather it introduces a new proposal with revised technical parameters. The parameters requested by Corridor in its petition are not consistent with replication of its analog coverage contour, which is the coverage to which it certified on FCC Form 381. Accordingly, the revised channel change proposal cannot be considered in this proceeding. Once the freeze is lifted with respect to channel substitutions, Corridor may submit a petition for rulemaking and request that channel 8 be substituted for channel 5 for KCWX–DT. Corridor may request specific parameters for its proposed channel 8 operations at that time, and the channel substitution will be examined under the 0.5 percent interference standard. Corridor acknowledges that its revised channel change proposal does not comply with our 0.1 percent interference limit with respect to KTBC and KLRN. Corridor claims that its revised channel change proposal complies with the new 0.5 percent DTV interference standard recently adopted in the *Third DTV Periodic Review Report and Order.* However, the 0.5 percent interference proposal is not the standard for revisions to Appendix B. Rather, the 0.5 percent standard was adopted in the *Third DTV Periodic Review Report and Order* to apply to post-transition modifications.

63. *KMBC, Kansas City, MO.* We deny the petition for reconsideration filed on behalf of KMBC. KMBC Hearst-Argyle Television, Inc. (''Hearst''), licensee of station KMBC, channel 9, and KMBC–DT, channel 7, Kansas City, MO, was allotted channel 9 for post-transition operations in the *Seventh R&O*. Hearst requests the substitution of channel 29 for its assigned channel 9 in the DTV Table of Allotments. Because Hearst's petition was filed after the statutory deadline, it cannot be considered in this *Memorandum Opinion and Order on Reconsideration.*

64. *WFXS, Wittenberg, WI.* We deny the petition for reconsideration filed on behalf of WFXS. Davis Television Wausau, LLC (''Davis''), licensee of WFXS, channel 55, and WFXS–DT, post-transition channel 50, Wittenberg, WI, requested leave to file a late petition for reconsideration requesting the substitution of DTV channel 31 for DTV channel 50. Davis' Petition was filed too late to be considered in this proceeding but the petitioner may file a request for channel substitution after the freeze is lifted.

F. Changes That Should Be Requested During the Application Process

65. We deny the petitions for reconsideration filed on behalf of 53 stations whose requests are not consistent with the types of allotment changes covered in the *Seventh Further Notice* for this DTV Table proceeding. These stations are listed on Appendix D5 herein. The changes requested for these stations can be requested in an application filed pursuant to the policies and procedures adopted in the *Third DTV Periodic Report and Order.* These requests are not for modification of the coverage area defined by the DTV Table Appendix B to match authorized or licensed coverage. Instead, these stations generally state in their petitions that they do not want or may not be able to construct the precise facilities specified in the proposed DTV Table Appendix B. We conclude that the stations identified in Appendix D5 can use the application process to request the facility they seek to build. In addition, those seeking to expand their facilities beyond the service area described by the Appendix B parameters can file requests to maximize their facilities when the freeze on such filings is lifted later this year.

66. Stations listed in Appendix D5 should use Form 301 or 340 to apply to construct or modify their post-transition facilities, consistent with the procedures and standards for such applications adopted in the *Third DTV Periodic Report and Order,* including compliance with the interference standard and filing freeze. As discussed above, the rules and procedures adopted in that Order provide significant regulatory flexibility to many stations, particularly stations moving to a different channel for post-transition operations, and permit all stations to file applications for facilities that differ to some extent from the parameters specified in DTV Table Appendix B.

67. Stations have begun filing their applications for a CP on their final DTV channel now, and we encourage all stations to file their applications as soon as possible. Although stations that filed petitions for reconsideration are permitted to file their applications before their petitions are resolved, we recognize that many of these stations may have waited to see how the Commission would address their

request. Therefore, stations that filed petitions for reconsideration may receive expedited processing provided they file no later than April 21, 2008, which is 45 days from the release of this *Memorandum Opinion and Order.* Stations that do not seek expedited processing or whose applications do not meet the criteria for expedited processing still must file their applications soon. As specified in the Public Notice issued on January 30, 2008, most stations filing an application for a construction permit must file the application by June 19, 2008 at the latest. However, stations with a construction deadline of August 18, 2008 must file by March 17, 2008 at the latest.

68. Stations listed on Appendix D5 fall into three categories. First, some stations that are moving to a different channel post-transition filed petitions requesting relatively minor adjustments to the station's parameters identified in Appendix B. For some stations, the requested change represents a change to the station's coordinates of three seconds or less latitude or longitude. These kinds of requests for facilities that deviate only slightly the parameters reflected on Appendix B can be easily accommodated during the application process. As discussed in Section III.B. above, while we made these kinds of minor adjustments on Appendix D1 herein for stations whose pre- and post-transition DTV channels are the same, we are requiring that stations moving to a different channel for post-transition operation make these requests for minor adjustments as part of their application for their post-transition channel. Other stations in this category request changes to the station's coordinates of slightly more than three seconds latitude or longitude or request relatively minor changes to other station parameters. These relatively minor deviations from Appendix B can also be accommodated as part of the license application process for these stations.

69. Second, many of the stations denied revisions to Appendix B requested changes that would violate the freeze on maximizations. Some of these stations, particularly those that are seeking to serve their current analog viewers, may be able to increase their coverage area during the application process. Others will be able to apply for a larger coverage area when the Commission lifts its filing freeze later this year. In the *Third DTV Periodic Report and Order*, the Commission announced its intent to lift the freeze on the filing of maximization applications on August 17, 2008, the date by which we expect to have completed processing stations' applications to build their post-transition facilities. Until that date, we will maintain the freeze and will not accept maximization applications to expand facilities, except pursuant to the 5-mile waiver policy for stations that are moving to a different channel for post-transition operations.

70. Third, the petitions for reconsideration filed on behalf of KFNR, Rawlins, WY; KGWL, Lander, WY; and KTWO, Casper, WY request that the facilities described on Appendix B for these stations be revised to reduce the stations' coverage area. These stations must file an application requesting a modification of their CP. In the *Third DTV Periodic Report and Order*, the Commission stated that it would provide expedited processing to applications for facilities that are no more than five percent smaller than the facility specified in Appendix B with respect to predicted population, and that meet the other criteria for expedited processing.

71. In addition to the stations listed on Appendix D5, we note that in Section III.D., *supra*, we declined to modify the coverage area for a number of stations that filed petitions requesting changes to the station's coverage area as defined in Appendix B. Stations for which we did not make changes to Appendix B in Section III.D. herein and that are moving to a different channel for post-transition operations must file an application for post-transition facilities. As a result of the flexibility adopted in the *Third DTV Periodic Report and Order*, these stations may be able to obtain some or all of the relief they seek through the application process.

72. The petitions for reconsideration filed on behalf of the following stations require individual discussion. In some cases, the petition was opposed. In other cases, the petition requests reconsideration of a Commission decision in the *Seventh R&O* regarding the station, or requests changes to Appendix B in addition to those granted in the *Seventh R&O*.

73. *WPVI, Philadelphia, PA*. We deny the petition for reconsideration filed on behalf of WPVI. WPVI, which is licensed on analog channel 6 and pre-transition DTV channel 64, was allotted channel 6 for post-transition operations. In the *Seventh R&O*, the Commission modified WPVI's Appendix B facilities to help WPVI replicate its analog Grade B coverage area. The Walt Disney Company (''Disney'') filed a petition for reconsideration requesting that the FCC permit WPVI to use its present analog antenna with parameters that meet the 0.1 percent interference standard applicable to Appendix B.

74. The parameters specified on Appendix B for WPVI (ERP of 6.22 kW and HAAT of 332 meters) were revised in the *Seventh R&O* to the maximum amount consistent with replication of the station's analog contour and the 0.1 percent interference standard. Disney is requesting further changes for WPVI that should be requested in that station's application for post-transition facilities. It appears that the requested changes can be accommodated at the application stage.

75. *KHAS, Hastings, NE and KNOP, North Platte, NE*. We deny the petition for reconsideration filed on behalf of KHAS and KNOP. KHAS, which is licensed on analog channel 5 and pre-transition DTV channel 21, was allotted channel 5 for post-transition operations. KNOP, which is licensed on analog channel 2 and pre-transition DTV channel 22, was allotted channel 2 for post-transition operations. Hoak Media, LLC filed a petition for reconsideration of the *Seventh R&O* for these stations stating that, while the Appendix B facilities adopted in the Order may permit KHAS and KNOP to replicate, reconsideration is necessary because the Commission did not address Hoak's request for additional power for these stations.

76. The parameters specified on Appendix B for KHAS (ERP of 6.78 kW and HAAT of 223 meters) and KNOP (ERP of 6.75 kW and HAAT of 192 meters) were revised in the *Seventh R&O* to the maximum amount consistent with replication of the station's analog contour and the 0.1 percent interference standard. As a result of the flexibility adopted in the *Third DTV Periodic Report and Order*, Hoak will be able to apply for at least some of the changes it seeks when it files its application for post-transition facilities for these stations. To the extent that Hoak seeks additional relief for KHAS and KNOP that cannot be accommodated during the application process, Hoak may file an application for increased facilities once the Commission lifts its filing freeze.

77. *WDSE, Duluth, MN*. We deny the petition for reconsideration filed on behalf of WDSE. WDSE, which is licensed on analog channel 8 and pre-transition DTV channel 38, was allotted channel 8 for post-transition operations. In the *Seventh R&O*, the Commission modified the WDSE Appendix B facilities to help this station replicate its analog Grade B coverage area. Duluth-Superior Area Educational Television Corporation (''Duluth-Superior'') filed a petition for reconsideration of the

Seventh R&O stating that while the Commission purported to grant its request to change the coverage area of WDSE in that Order, the revised Appendix B does not reflect the requested operating parameters.

78. The parameters specified on Appendix B for WDSE (ERP of 17.4 kW and HAAT of 290 meters) were revised in the *Seventh R&O* to the maximum amount consistent with replication of the station's analog contour and the 0.1 percent interference standard. The further changes requested by WDSE should be requested in the station's application for post-transition facilities. It appears that the requested changes can be accommodated at the application stage, especially in view of the flexibility adopted in the *Third DTV Periodic Report and Order*.

79. *KUAC, Fairbanks, AK*. We deny the petition for reconsideration filed on behalf of KUAC. KUAC, which is licensed on analog channel 9 and pre-transition DTV channel 24, was allotted channel 9 for post-transition operations. In the *Seventh R&O*, the Commission modified the KUAC Appendix B facilities in order to help this station replicate its analog Grade B coverage area. The University of Alaska (''University'') filed a petition for reconsideration of the *Seventh R&O* requesting that the Commission revise Appendix B to increase HAAT and ERP for KUAC and to change the antenna ID to permit use of the station's existing non-directional antenna.

80. The parameters specified on Appendix B for KUAC (ERP of 3.2 kW and HAAT of 152 meters) were revised in the *Seventh R&O* to the maximum amount consistent with replication of the station's analog contour and the 0.1 percent interference standard. As a result of the flexibility adopted in the *Third DTV Periodic Report and Order*, the University will be able to apply for at least some of the changes it seeks when it files its application for post-transition facilities for this station. To the extent that the University seeks additional relief for KUAC that cannot be accommodated during the application process, the University may file an application for increased facilities once the Commission lifts its filing freeze.

81. *KUHT, Houston, TX*. We deny the petition for reconsideration filed on behalf of KUHT. KUHT, which is licensed on analog channel 8 and pre-transition DTV channel 9, was allotted channel 8 for post-transition operations. In the *Seventh R&O*, the Commission modified the KUHT Appendix B facilities by increasing ERP to help this station replicate its analog Grade B coverage area. The University of Houston System (''UHS'') filed a petition for reconsideration of the *Seventh R&O* requesting that the Commission revise Appendix B to change the antenna ID for KUHT to permit use of the station's existing directional analog antenna.

82. The parameters specified on Appendix B for KUHT (ERP of 21.9 kW and HAAT of 564 meters) were revised in the *Seventh R&O* to the maximum amount consistent with replication of the station's analog contour and the 0.1 percent interference standard. As a result of the flexibility adopted in the *Third DTV Periodic Report and Order*, UHS will be able to apply for at least some of the changes it seeks when it files its application for post-transition facilities for KUHT. To the extent that UHS seeks additional relief that cannot be accommodated during the application process, it may file an application for increased facilities once the Commission lifts its filing freeze.

83. *KNRR, Pembina, ND*. We deny the petition for reconsideration filed on behalf of KNRR. KNRR, which is licensed on analog channel 12 and pre-transition DTV channel 15, was allotted channel 12 for post-transition operations. In the *Seventh R&O*, the Commission declined to modify the coverage area for KNRR on Appendix B because it determined that, if it recalculated Appendix B facilities for the station based on replicating the station's analog coverage that was used to determine their initial DTV facilities, the recalculated service area would be smaller than the Appendix B service area. Red River Broadcast Co., LLC (''Red River'') filed a petition for reconsideration of the *Seventh R&O* requesting that the Commission revise Appendix B to reduce the facilities for KNRR by changing the ERP and HAAT.

84. We decline to make the changes to Appendix B requested by KNRR because it can accomplish what it seeks when it files its application for post-transition facilities for KNRR. In addition, by retaining the larger Appendix B facilities for the station, KNRR will ultimately have more flexibility to make changes for KNRR in the future. When it files its application for post-transition facilities on channel 12, KNRR should make its request for new parameters at that time.

85. *KBRR, Thief River Falls, MN*. We deny the petition for reconsideration filed on behalf of KBRR. KBRR, a full-power satellite station, is licensed on analog channel 10 and has been issued a CP for channel 32 for pre-transition DTV facilities. KBRR was allotted channel 10 for post-transition operations. In the *Seventh R&O*, the Commission declined to modify the coverage area for KBRR on Appendix B because it determined that, if it recalculated Appendix B facilities for the station based on replicating the station's analog coverage that was used to determine their initial DTV facilities, the recalculated service area would be smaller than the Appendix B service area. Red River Broadcast Co., LLC (''Red River'') filed a petition for reconsideration of the *Seventh R&O* requesting that the Commission revise Appendix B to change the ERP, HAAT, and antenna information for KBRR.

86. Red River is requesting changes for KBRR that should be requested in that station's application for post-transition facilities. The requested changes can be accommodated at the application stage to the extent they are consistent with the coverage expansion and interference criteria adopted in the *Third DTV Periodic Report and Order*.

87. *WEDU, Tampa, FL*. We deny the petition for reconsideration filed on behalf of noncommercial educational station WEDU. WEDU, which is licensed on analog channel 3 and pre-transition DTV channel 54, was allotted channel 13 for post-transition operations. In the *Seventh R&O*, the Commission declined to modify the coverage area for WEDU on Appendix B because our recalculation of the Appendix B facilities and subsequent interference analysis showed that the requested change would result in interference in excess of the 0.1 percent interference standard. Florida West Coast Public Broadcasting, Inc. (''FWCPB'') filed a petition for reconsideration of the *Seventh R&O* requesting that the Commission change the antenna ID in Appendix B to specify an omnidirectional antenna.

88. FWCPB is requesting changes for WEDU that should be requested in that station's application for post-transition facilities. The requested changes can be accommodated at the application stage to the extent they are consistent with the coverage expansion and interference criteria adopted in the *Third DTV Periodic Report and Order*.

89. *KETZ, El Dorado, AR*. We deny the petition for reconsideration filed on behalf of DTV singleton station KETZ. KETZ is licensed on pre-transition DTV channel 12 and was allotted channel 10 for post-transition operations. In the *Seventh R&O*, the Commission granted KETZ's request to change its TCD from 12 to 10. The Arkansas Educational Television Commission (''AETC'') filed a petition for reconsideration requesting that Appendix B be revised to specify an omnidirectional antenna for KETZ.

90. The parameters specified on Appendix B for KETZ were revised in the *Seventh R&O* to permit KETZ to change its TCD to 10 consistent with replication of the station's certified coverage area and the 0.1 percent interference standard. As a result of the flexibility adopted in the *Third DTV Periodic Report and Order*, AETC will be able to apply for at least some of the additional coverage area it seeks when it files its application for post-transition facilities for KETZ. To the extent that AETC seeks additional relief that cannot be accommodated during the application process, it may file an application for increased facilities once the Commission lifts its filing freeze.

91. *KCBS, Los Angeles, CA*. We deny the petition for reconsideration filed by KCBS. KCBS, which is licensed on analog channel 2 and pre-transition DTV channel 60, was allotted channel 43 for post-transition operations. CBS Corporation filed a petition for reconsideration of our decision in the *Seventh R&O* directing that the station should request the changes it seeks in an application to construct or modify post-transition facilities. CBS requests that the parameters in the DTV Table Appendix B for KCBS be changed to correspond to those specified in the co-owned KCAL construction permit.

92. The parameters sought by CBS for KCBS are those authorized for another station, KCAL. While the two stations are co-owned, that relationship does not confer on KCBS the right to expand its coverage area beyond the area to which it certified in FCC Form 381. We reaffirm our decision in the *Seventh R&O* that KCBS should use the application process to request the facility it wishes to operate post-transition. As indicated above, as a result of the regulatory flexibility adopted in the *Third DTV Periodic Report and Order*, KCBS may be able to obtain part, if not all, of the relief it seeks through the application process. KCBS may request additional expansion when we lift the freeze on maximization requests later this year. Our decision does not prevent KCBS from using the KCAL site and equipment; rather, we are ensuring that KCBS does not use these facilities to expand beyond its authorization and thus step ahead of other stations that are waiting for the proper time to request to maximize.

93. *KTCI, St. Paul, MN*. We deny the petition for reconsideration filed by Twin Cities Public Television (''Twin Cities''), licensee of KTCI, channel 17, and KTCI–DT, channel 16, St. Paul, MN, which was allotted channel 26 in the DTV Table in the *Seventh R&O*. Although we deny the request to revise Appendix B, we generally agree with Twin Cities that KTCI–DT should be able to operate using the KMSP–DT tower and antenna. Rather, we deny the petition because we continue to believe that Twin Cities will be able to achieve its goal of serving its current service area with the KMSP–DT antenna, albeit at a much lower power through the CP application process. We do not find it necessary to revise Appendix B to reach this result.

94. In its petition for reconsideration, Twin Cities argues that the Commission should have permitted its proposed changes to the Appendix B facility of KTCI–DT. Twin Cities argues that requiring it to await Commission action on its application for a construction permit to modify Station KTCI–DT's facilities ''will create unnecessary uncertainty in the transition process, contrary to the Commission's stated goals throughout the transition.'' The State of Wisconsin Educational Communications Board (State of Wisconsin), licensee of WHWC–DT, Menomonie, Wisconsin, opposes Twin Cities' petition for reconsideration. State of Wisconsin maintains that Twin Cities' proposed changes to the Appendix B facilities of KTCI–DT would result in prohibited 14.9 percent interference to WHWC–DT. Twin Cities responds that its requested changes to the Appendix B facilities of KTCI–DT do not create new post-transition interference to WHWC–DT. Rather, Twin Cities maintains that WHWC–DT currently receives 22.5 percent interference from KMSP–DT, channel 26. Twin Cities argues that its proposal, which seeks to use the same antenna and antenna pattern as KMSP–DT, will use less than 10 percent of the power and would decrease from 22.5 percent to 14.9 percent the amount of interference that WHWC–DT, channel 27 receives from ''existing analog and DTV operations.''

95. While we do not disagree with Twin Cities' arguments with respect to interference to WHWC–DT, we are not persuaded that we should reverse our decision in the *Seventh R&O*. We reaffirm that the appropriate next step would be for Twin Cities to submit an application for its post-transition channel 26 based upon the facility described in Appendix B. In that application, Twin Cities may specify the pre-transition channel 26 technical facilities of KMSP–DT and that proposal will be examined. Pursuant to the procedures recently adopted in the *Third DTV Periodic Review Report and Order*, Twin Cities, as a station whose post-transition channel is different from its pre-transition DTV channel, may avail itself of the ''five mile'' waiver policy and the 0.5 percent interference standard.

96. *WCAX, Burlington, VT*. We deny the petition for reconsideration filed on behalf of WCAX. WCAX, which is licensed on analog channel 3 and pre-transition DTV channel 53, was allotted channel 22 for post-transition operations. In the *Seventh R&O*, the Commission modified the WCAX Appendix B facilities to help this station replicate its analog Grade B coverage area. Mt. Mansfield Television, Inc. (''Mt. Mansfield'') filed a petition for reconsideration stating that its election of channel 22 required extensive coordination with Canada which led to a solution in 2005 specifying certain parameters for WCAX. Mt. Mansfield requests that Appendix B be revised to reflect the parameters approved by Canada.

97. We modified Appendix B in the *Seventh R&O* to provide WCAX with the largest coverage area consistent with replication of its analog service area. We recognize that Canada has agreed to permit WCAX to serve a slightly different coverage area than that described on Appendix B, and when WCAX files its application for post-transition operations on channel 22, it may apply to match that different coverage area, including an increase in its coverage area to the extent it is consistent with the flexibility provided to all stations moving to a new channel in the *Third DTV Periodic Report and Order*.

98. *KVEA, Corona, CA*. We deny the petition for reconsideration filed by KVEA. KVEA, which is licensed on analog channel 52 and pre-transition DTV channel 39, was allotted channel 39 for post-transition operations. In the *Seventh R&O*, the Commission granted KVEA's request for minor adjustment to the station's coordinates as listed on Appendix B. NBC Telemundo License Co. (''NBC Telemundo'') filed a petition for reconsideration proposing that the Commission waive the current freeze and approve an increase in KVEA's ERP at any time after February 17, 2008.

99. NBC Telemundo acknowledges that its requested change for KVEA would violate the freeze on maximizations. It is possible that KVEA could increase its coverage area during the application process. Otherwise, KVEA must wait to request additional expansion until the Commission lifts its filing freeze later this year.

G. Stations Not Eligible to Participate in the Channel Election Process

100. *Pappas Telecasting of America and South Central Communications*

Corporation. We deny the petition for reconsideration filed by Pappas Telecasting of America (''Pappas'') and South Central Communications Corporation (''SCCC''). Pappas and SCCC are pending applicants for a new single-channel television station on Channel 48 at Owensboro, Kentucky. Pappas and SCCC filed joint comments in response to the *Seventh NPRM* requesting that the Commission substitute DTV Channel 35 for Channel 48. Pappas and SCCC recognized that it was not possible to seek an alternate channel but argued that the Commission should act on its own motion to modify the Owensboro allotment ''in the same way it has awarded Tentative Channel Designations (TCD's) to new permittees.'' In the *Seventh R&O,* the Commission denied their request to change the allotment for Owensboro along with several other proposals submitted by pending applicants to add new allotments to the post-transition DTV Table. The Commission explained that, in the *Second DTV Periodic Report and Order,* it clearly stated that only Commission licensees and permittees would be eligible to participate in the channel election process. Applicants for new stations and petitioners for new allotments were expressly excluded from making elections.

101. With respect to applicants that receive a construction permit after the close of the comment period in this proceeding, the Commission stated that those parties may either construct their analog facilities or apply to the Commission for permission to construct a digital facility on their analog channel. If any other pending applications were granted before the end of the transition, the Commission stated that it would attempt to accommodate these stations with a DTV channel for post transition operation. But in all situations, the Commission would only act to make allotment decisions once an application was granted and there was a new permittee. Since the Pappas and SCCC applications were still pending, it was to correct to deny consideration of their channel change proposal. Therefore, the Pappas and SCCC petition for reconsideration is denied.

102. Pappas and SCCC also have pending a petition for rulemaking filed on March 8, 2002, requesting DTV Channel 54 be substituted for Channel 48 at Owensboro, Kentucky (''DTV Channel 54 substitution petition. The DTV Channel 54 substitution petition is hereby dismissed. Pappas and SCCC applications for Channel 48 at Owensboro, Kentucky continue to cause impermissible interference to Channel 48 at Bowling Green, Kentucky and are therefore dismissed. *See* File Nos. BPCT–19960722KL and 19960920IV.

103. *Montana University System Board of Regents.* We deny the petitions for reconsideration filed by the Board of Regents of the Montana University System (''MSU''). MSU is the permittee of new single-channel television stations on Channel 21 at Great Falls, Montana (Facility ID No. 169030) and Channel 16 at Billings, Montana (Facility ID No. 169028). MSU filed petitions for rulemaking that resulted in these channels being added to the pre-transition DTV Table. Subsequently, MSU was the only applicant for these new NCE stations and received grants of its construction permits to build these pre-transition channels after the *Seventh R&O* and *Eighth Further Notice* was adopted. Thus MSU was not a permittee in time to be included in this rulemaking.

104. Although, as MSU acknowledges, we cannot allot these new post-transition channels for MSU's NCE stations at Great Falls and Billings, Montana, at this time, we will initiate an NPRM to add these allotments or to propose replacement channels. In the interim, MSU may file modification applications for post-transition operation for these two stations on their pre-transition channels. As long as these post-transition facilities will not cause more than 0.5 percent interference to other post-transition stations and otherwise comply with our rules, they will be granted. If either of the post-transition facilities for these stations would cause more than 0.5 percent interference to other post-transition DTV facilities, then MSU may file a petition for rulemaking and seek a channel substitution.

H. Analog Singleton Stations

105. We decline to grant the petitions for reconsideration filed by analog singleton stations WCAV, Charlottesville, VA, KUTH, Provo, UT, and KRBK, Osage Beach, MO. These stations were given, in Appendix B, a coverage area to replicate their analog service area. Each station presents arguments supporting their request to make a change to their digital allotment as described by these Appendix B parameters. However, these changes would result in expanded coverage areas in violation of the freeze. These stations should be able to achieve their goal of serving current analog viewers with digital service using their existing equipment by requesting modifications through the application process, which is currently underway, and, where necessary, filing for maximization later this year. As described above, these stations must file an application to operate digitally on their post-transition channel and can file those applications at any time. At the application stage, these stations may take advantage of the 5-mile waiver policy and the 0.5 percent new interference policy adopted in the *Third DTV Periodic Report and Order.*

I. Modifications to Appendix B To Address International Coordination Issues

106. *WKYC, Cleveland, OH.* We grant the request of WKYC and change Appendix B herein for that station to reflect a directional antenna pattern to reduce interference to a Canadian station. WKYC, which is licensed on analog channel 3 and pre-transition DTV channel 2, was allotted channel 17 for post-transition operations. WKYC–TV, Inc. (''WKYC'') filed a comment in this proceeding stating that the request for channel 17 was referred to Canada for coordination and that Canada has responded by specifying a revision to the parameters that it requests for WKYC. WKYC advises the Commission that the parameters specified by Canada are acceptable to WKYC. We have revised Appendix B herein for WKYC to conform to the parameters negotiated with Canada.

J. Antenna Information

107. We deny the petitions for reconsideration filed on behalf of the following stations seeking to add antenna identification numbers to Appendix B: KPLC, Lake Charles, LA; WFIE, Evansville, IN. These stations request that we change Appendix B to include antenna identification numbers for these stations and state that the stations will be operating with omnidirectional antennas. In developing Appendix B, we did not include antenna identification numbers for stations operating with an omnidirectional antenna. Accordingly, we decline to add an antenna identification number to Appendix B where the petition indicates the station will be operating omnidirectionally and our database indicates that the station is authorized for an omnidirectional antenna.

K. Other Requests

108. *WBOY, Clarksburg, WV.* We deny the request of West Virginia Media Holdings, LLC (''WVMH''), licensee of WBOY, channel 12 and the permittee of WBOY–DT, channel 52, Clarksburg, WV. WBOY–DT was allotted channel 12 in the DTV Table in the *Seventh R&O.* WVMH notes that in the *Seventh R&O* the Commission allotted technical facilities for WMFD–DT, Channel 12,

Mansfield, Ohio, that WVMH claims will cause interference to WBOY–DT at ''levels many times in excess of the applicable 0.1 percent limit on new interference.'' In the *Seventh R&O,* Mid-State Television, Inc. (Mid State) had requested that its allotment for WMFD–DT be modified to specify facilities it had included in an April 2005 amendment to its maximization application. The Commission approved this change, allotted Channel 12 for WMFD–DT, and acknowledged that this modification would result in 0.44 percent interference to WBOY–DT. The Commission explained that this allotment was ''the result of a negotiated solution with Canada to resolve international coordination issues.'' The Commission also found that WVMH had not filed comments opposing WMFD's proposed change to Appendix B.''

109. In its Petition for Reconsideration, WVMH argues that it had no notice that WBOY–DT might be adversely affected by this change. WVMH argues that the increase in ERP from 13 kW to 14 kW is not essential to the Canadian concurrence with the WMFD–DT allotment facilities. WVMH maintains it was Mid State's amendment to include a directional antenna that resolved the Canadian concerns. WVMH submits an engineering statement and claims that the excessive interference caused to WBOY–DT can be reduced.

110. In its opposition, Mid State states that WVMH's petition for reconsideration ''raises no issues not previously considered fully by the Commission, nor does it provide any support for reversal of the Commission's considered decision in this matter.'' Mid State argues that the public interest and equities support maintaining the WMFD–DT allotment due to Canadian concurrence and ''the limited impact of the projected interference alleged.''

111. We agree that WVMH's petition fails to demonstrate error in our previous decision. Nor does WVMH's petition raise any new issues or evidence not previously considered. In the *Seventh R&O,* we found that the public interest would be served by allotting the changed facilities for WMFD–DT. We continue to believe that this was the correct allotment for this station. Stations like WMFD–DT face international coordination issues that provide unique challenges in completing the digital transition. Resolving border area conflicts often involves compromises and multiple adjustments. WVMH's petition for reconsideration is denied.

112. *KPRY, Pierre, SD.* We grant the request of Hoak Media, LLC (''Hoak''), licensee of KPRY, channel 4, and KPRY–DT, channel 19, Pierre, SD, which was allotted channel 19 for post-transition operations in the DTV Table in the *Seventh R&O.* In that Order, the Commission grouped station requests into several categories before acting upon them. The Commission placed KPRY–DT in Category 1 along with other stations proposing to modify their certified facilities to match their authorized or constructed facilities. Hoak claims that KPRY–DT should have been grouped in Category 2 along with stations that anticipate filing a request for change to their station's parameters in the future, but that did not yet have all of the information necessary to request such a change. On reconsideration, we grant KPRY–DT's request for Appendix B facilities of 1000 kW and 378 m HAAT. Hoak may submit an application to specify a lower power and antenna height as noted in its comments.

113. *KFJX, Pittsburg, KS.* We grant the petition for partial reconsideration filed by KFJX. Surtsey Media, LLC (''Surtsey''), licensee of analog singleton station KFJX, channel 14, Pittsburg, KS, was allotted channel 13 for post-transition operations in the DTV Table in the *Seventh R&O.* In that Order, the Commission granted KFJX's request to change its TCD from 14 to 13. Surtsey filed a petition for reconsideration requesting that Appendix B be revised to match the facilities of KOAM, a related station in the Pittsburg, KS market with which KFJX currently shares facilities.

114. According to Surtsey, it requested the change in TCD in part because of interference issues on channel 14 and in part because it has the opportunity to acquire the channel 13 facilities of KOAM–DT in Pittsburg, which is moving off of channel 13 to another channel post-transition. Surtsey argues that permitting KFJX to take over the facilities of an existing, operating DTV station is consistent with the Commission's goal of facilitating a smooth, efficient transition as otherwise Surtsey would have to acquire new equipment to install at its currently specified site while KOAM would have to discard its equipment once the transition occurs. Instead, Surtsey requests that its digital allotment be modified to reflect the existing KOAM–DT facilities. Surtsey acknowledges, however, that the non-directional KOAM antenna at the requested power would extend the KFJX–DT signal beyond the KFJX analog footprint, thereby violating the filing freeze. Surtsey's petition states that it would accept modifications to Appendix B for KFJX to specify the KOAM antenna site, antenna type and antenna height but at a reduced power in order to shrink the resulting service area into the KFJX analog footprint. Surtsey states that it would accept this restriction on its initial digital allotment as long as it was permitted to increase its power prior to February 17, 2009 (the final digital transition date) to the level currently utilized by KOAM.

115. We agree that public interest considerations warrant granting Surtsey's request to change Appendix B for KFJX to specify the KOAM antenna site, antenna height, and antenna type. Specification of these parameters will permit Surtsey to utilize the KOAM equipment, thereby facilitating the transition for KFJX. We will therefore grant Surtsey's request for the exact coordinates, antenna type, and height, which are currently used by KOAM for its antenna. We agree with Surtsey that these parameters will allow KFJX to operate using KOAM's facility, thus speeding the transition process, reducing costs, and eliminating the need for new equipment or coordination with tower crews. Surtsey's petition reflects the licensee's appreciation that, at this time, Appendix B will specify an ERP that will maintain the station's coverage area within its analog coverage area. Moreover, as the Commission concluded in the *Third DTV Periodic Review Report and Order,* and as noted in Surtsey's petition, the Commission is not lifting the filing freeze at this stage in the transition for any stations. We are, however, expecting that the freeze will be lifted later this year to enable Surtsey to apply to increase the ERP for KFJX. As Surtsey's Petition recognizes, to waive the freeze now to permit KFJX to increase power before the filing freeze is lifted for all stations, would permit Surtsey to step ahead of other stations that are waiting for the proper time to request to maximize. Indeed, there are other stations that are moving to a channel vacated by another station that would like to immediately operate the facilities of the existing station. (discussion of KCBS, Los Angeles, CA). As discussed above, to permit such a step would expand these stations' coverage, unfairly disadvantaging other stations in these markets that would like to expand on their existing stations.

116. Surtsey need not wait until the freeze is lifted to request expanded coverage. Stations that are moving to a different channel, as KFJX is doing, may file now to request a waiver of the freeze for up to five miles, where, as here, the increase is necessary to better serve current analog viewers, and where the modification would not cause more than

0.5 percent new interference to any other station. Thus, KFJX, and other similarly situated stations may build upon the changes we have made to the Appendix B facilities to apply for larger area.

117. *WSJV, Elkhart, IN.* We grant the petition for reconsideration filed on behalf of WSJV. WSJV Television, Inc. (''WSJV''), licensee of WSJV, channel 28, and WSJV–TV, channel 58, was allotted channel 28 for post-transition operations in the DTV Table in the *Seventh R&O.* In that Order, the Commission revised Appendix B for WSJV to conform to that stations' DTV authorization on channel 58. WSJV filed a petition for reconsideration requesting that the Commission instead revise Appendix B to permit the station to use the existing directional antenna system of its analog facility. WSJV explains that, when the original DTV Table was created, an inaccuracy in the orientation of the directional antenna system that existed on WSJV's analog license prior to December 1999 was carried over to the station's associated digital channel 58 allotment. The station subsequently resolved the inaccuracy in the station's analog antenna orientation on the analog license, but could not eliminate the discrepancy that was built into the original DTV Table. WSJV elected to return to its in-core analog channel for post-transition use and, based on its certification of replication, the Commission relied on the initial channel 58 allotment parameters to compute the WSJV facilities on channel 28 on Appendix B. These facilities were therefore based on the incorrect antenna pattern rotation.

118. We will change Appendix B for WSJV to reflect the correct antenna pattern rotation. Those changes are reflected on Appendix B, herein.

III. Eighth Report and Order

119. In the *8th FNPRM* we sought comment on tentative channel designations (''TCDs'') and technical facilities for three new permittees that had recently attained permittee status. We also identified a number of other revisions to the DTV Table and Appendix B advanced by commenters in either reply comments or late-filed comments to the *Seventh Further Notice,* and we analyzed these revisions and submitted proposals upon which we invited public comment.

120. As we stated in the *Third DTV Periodic Report and Order,* stations that need to request authority to construct or modify their post-transition facilities must file construction permit (CP) or modification applications. In that Order and in a recently adopted Public Notice, the Commission established the deadlines and procedures for filing such applications. These deadlines and procedures apply to the stations discussed below that have been granted a post-transition allotment herein.

A. New Permittees

121. The Commission established a separate pleading cycle in the *Eighth Further Notice* to give interested parties an opportunity for comment on three new permittees that had recently attained permittee status. We now adopt our proposals to the extent they are unopposed.

122. *Entravision Holdings, LLC, Pueblo, CO.* We found that post-transition operations for Entravision on channel 48 in Pueblo would create no additional interference, and we proposed channel 48 as this station's TCD. We received no comments in response to this proposal and accordingly will now grant the modification to the post-transition DTV Table and Appendix B to reflect this new allotment.

123. *Northwest Television, Inc., Galesburg, IL.* With respect to new permittee Northwest Television in Galesburg, IL, our engineering analysis determined that channel 8 was the best available post-transition channel because this channel created no new interference to the TCD of any other full-power station, and the only interference was received by Class A Station WQFL–CA, Rockford, IL. However, WQFL had an application for a minor modification to its license pending, the grant of which eliminated the interference from channel 8 but necessitated a waiver of the filing freeze. In order to locate an interference-free post-transition channel for Galesburg, we proposed to grant WQFL–CA a waiver of the filing freeze and to grant the WQFL–CA modification application, thereby resolving any potential interference. We received no comments with respect to either of these proposals, and accordingly we will make the necessary adjustments to the DTV Table and Appendix B.

124. *Richland Reserve, Greeley, CO.* Although Richland Reserve was allotted channel 45 for pre-transition digital operation our analysis indicated that, post-transition, channel 45 for Richland in Greeley would have caused 0.3 percent new interference. Therefore, we proposed channel 49 as the TCD of Richland. Richland contests our proposal, and in its comment it requests that the DTV Table be amended to specify DTV channel 38 as its post-transition TCD instead of channel 49. Richland asserts that, because the *Eighth Further Notice* proposed channel 48 as the TCD for Entravision Holdings, LLC, in Pueblo, Colorado (analog channel 48), the channel 48 TCD for Entravision will receive 0.8 percent interference from the Commission's currently proposed 49 TCD for Richland. Richland points out that using its substitute proposal of channel 38 as its TCD will eliminate all interference concerns, and that it would file a construction permit to reflect this change. The Commission has determined that Richland's proposed use of channel 38 is acceptable, and we will make the necessary adjustments to the DTV Table and Appendix B.

B. Late Filed Requests for Changes to the Table of Allotments and Appendix B

125. Several stations filed late requests after the close of the reply comment period of the *Seventh FNPRM,* seeking revisions to the proposed DTV Table and Appendix B. Where the proposed changes to the DTV Table and/or Appendix B could affect other stations, we determined that it was appropriate to seek public comment on these late requests.

1. Requests To Make Changes That Meet the Interference Criteria

126. We stated in the *Seventh R&O* that we would permit stations to change their facility certifications (FCC Form 381), and thus our post-transition DTV Table Appendix B, where such stations have demonstrated that such modification of their facilities would conform to licensed or authorized facilities and where the proposed change to the Appendix B facilities either met the 0.1 percent interference criterion or the station affected agreed to accept the interference. We proposed two such changes in the *Eighth Further Notice.* The request of Fox Television Stations of Philadelphia, Inc. has been withdrawn, and we grant the other request.

127. *WDCA, Washington, DC.* Fox Television Stations, Inc., (''Fox''), licensee of station WDCA–TV, channel 20, and WDCA–DT, channel 35, Washington, DC, received channel 35 for its TCD in the proposed DTV Table. Fox filed late comments requesting that the Commission modify Appendix B to reflect WDCA's actual, authorized facilities. WDCA–DT has a CP that specifies facilities at its main studio where WDCA–DT is currently ''located, authorized and operating,'' and WDCA–DT has applied for a license to cover that CP. As noted by Fox, previous engineering analysis had indicated that this location and these parameters caused no impermissible interference,

and the Commission proposed granting this request. As no comments were received in response, the Commission will adjust Appendix B accordingly to reflect WDCA's authorized facilities.

2. Requests for Modified Coverage Area

128. As we explained in the *Seventh R&O,* we have granted requests of stations whose post-transition DTV channel is different from their pre-transition DTV channel, who are returning to their analog channel for post-transition operations, and whose proposed Appendix B facilities would not permit them to replicate their station's analog grade B contour, or who are seeking changes to specific parameters to permit these stations to serve more of the area served by the station's analog facilities. In response to such comments, we recalculated Appendix B facilities for stations based on replicating their analog coverage which was used to determine their initial DTV facilities, and typically granted the benefit of the larger coverage area resulting from our calculations, whether that turned out to be the station's initially proposed Appendix B facility, or the larger coverage area resulting from our calculations provided our interference standards were met. This process was designed to meet our goal for ensuring that audiences previously served by stations continued to receive those stations. We applied this methodology below and grant the request with respect to KOAM.

129. *KOAM, Pittsburg, KS.* Saga Quad States Communications (''Saga''), licensee of station KOAM–TV, channel 7, and KOAM–DT, channel 13, Pittsburg, KS, received channel 7 for its TCD in the proposed DTV Table. In a comment to the *Seventh FNPRM,* Saga proposed parameter changes in order to more closely replicate its analog Grade B contour than it was capable of doing with its current Appendix B parameters. Having analyzed Saga's request and recalculated its Appendix B facilities based upon replicating the analog coverage that was used to determine KOAM–DT's initial DTV facilities, we solicited comments on our proposal to grant Saga's request and to adjust KOAM's facilities in Appendix B. In comments filed in response to the *Eighth FNPRM,* Saga supports the Commission's proposal, and no reply comment has been filed. Accordingly, we will make the proposed change to Appendix B.

3. Requests for Alternative Channel Assignments

130. We grant the requests of four stations for alternative channel assignments in conformance with the standards set out in the *Seventh FNPRM.* The Commission in that *Notice* stated that licensees that want to change their DTV allotment, but which are not in any of the specified acceptable categories (i.e., are technically able to construct their full, authorized DTV facilities on their existing TCD) may request a change in allotment only after the DTV Table is finalized and must do so through the existing allotment procedures. Those requests for an alternative channel assignment that we can consider must either meet the 0.1 percent additional interference standard or be accompanied by a request for a waiver of the 0.1 percent limit or the signed written consent of the affected licensee. The Commission stated that it would grant waivers of the 0.1 percent limit where doing so would promote overall spectrum efficiency and ensure the best possible service to the public, including service to local communities.

131. Adoption of stations' channel change requests may not mean that we are adopting every parameter requested by the station. Stations should file the necessary applications for a construction permit in light of the procedures adopted in the *Third DTV Periodic Report and Order* to finalize parameters with respect to their build-out on their new channel.

132. *KOLO, Reno, NV.* Gray Television Licensee, Inc. (''Gray''), licensee of station KOLO–TV, channel 8, and KOLO–DT, channel 9, Reno, NV, received channel 9 for its TCD in the proposed DTV table. Gray filed a late request that KOLO's TCD be changed to permit it to operate post-transition on its NTSC channel 8 due to concerns that its antenna was optimized for channel 8. We proposed granting this request upon finding no additional interference from the proposed change. In a comment filed in response to our *Eighth FNPRM,* KOLO supports the Commission's proposal and, as no other comments were filed, we will make the approved change to Appendix B and the DTV Table to reflect KOLO's facilities on channel 8.

133. *WEHT, Evansville, IN.* Gilmore Broadcasting Corp. (''Gilmore''), licensee of station WEHT, channel 25, and WEHT–DT, channel 59, Evansville, IN, received channel 25 for its TCD. Gilmore filed reply comments to the *Seventh FNPRM* requesting a change in its TCD to channel 7 and adjustment to its parameters on Appendix B, and we proposed granting this request upon finding no additional interference from the proposed change. Gilmore filed comments supporting the proposed change and no other comments were filed. Accordingly we will make the necessary change to the DTV Table and Appendix B to reflect the change in WEHT's use of channel 7 facilities.

134. *KTRV, Nampa, ID.* Idaho Independent Television, Inc. (''IIT''), licensee of KTRV–TV, and KTRV–DT, Nampa, ID, received channel 12 for its TCD in the proposed DTV Table. IIT filed comments seeking to retain its existing DTV facilities and requesting revision to Appendix B to reflect that retention, but also seeking a channel change to 13 as its new TCD as well as an antenna ID change. We proposed to grant IIT's request after studying KTRV's post-transition operation on channel 13. IIT filed comments and reply comments, both supporting the Commission's proposal and yet asking for a change in antenna ID number and no reply or opposition was filed. We shall therefore substitute channel 13 for channel 12 as the TCD for post-transition use by KTRV–DT in both the DTV Table and Appendix B. We note that the lack of an antenna ID in Appendix B for KTRV indicates that KTRV is not using a directional antenna, which is consistent with our records for this station. Therefore, we are continuing not to specify an antenna ID for this station.

135. *WUOA, Tuscaloosa, AL.* The Board of Trustees of The University of Alabama (''the University''), singleton licensee of analog station WUOA, channel 23, Tuscaloosa, AL, received 23 as its TCD in the proposed DTV Table. The University filed a Supplement to its Comments in June 2007, seeking a change to a low VHF channel 4 or channel 6 post-transition allotment with new coordinates and parameters due to limited resources of the University. In the alternative, the University had sought replication facilities on channel 4 or 6. We proposed replication facilities for WUOA on channel 6 as this showed no additional interference. The University filed comments supporting the proposed replication facility on channel 6, but seeking a correction to its azimuthal pattern through utilization of a non-directional antenna. No other comments were filed and we grant the University's request and make the necessary changes to the DTV Table and Appendix B to reflect the facilities on channel 6. We have corrected the tabulation of antenna ID 80096 to eliminate the incorrect null at N 100.0° E and have substituted the correct relative field value of 0.717. However, we deny the University's request for a change in its technical parameters to reflect use of a non-directional antenna. The University can request use of a non-directional antenna when it files its

application in accordance with the *Third DTV Periodic Report and Order.*

4. Other Requests

136. *WPCW, Jeannette, PA.* We adopt the proposed channel change for WPCW. CBS Corporation (''CBS''), parent company of the licensee of WPCW, channel 19, and applicant for construction permit for a DTV station on channel 49, Jeannette, PA, received channel 49 for its TCD in the proposed DTV Table. The licensee of WPCW is Pittsburgh Television Station WPCW, Inc., a wholly owned subsidiary of CBS. In comments filed in response to the Seventh Further Notice, CBS requested an adjustment in Appendix B to reflect a change in parameters approved by the Commission in its 2006 decision substituting channel 49 for 30 as WPCW's digital frequency and reallocating channel 49 from Johnstown, PA to Jeannette, PA. Larry L. Schrecongost (''Schrecongost''), licensee of Class A television Station WLLS–CA, channel 49, Indiana, PA, had opposed the CBS request and argued that the proposed DTV Table should have specified channel 30 rather than channel 49 for WPCW because operation on channel 49 would have caused interference to WLLS–CA in violation of the Community Broadcasters Protection Act of 1999. The Commission found that WPCW's operations on channel 49 would have caused impermissible interference to two stations and, to resolve the dispute, we proposed to allot channel 11 to WPCW with the site location specified in the 2006 Report and Order. In a comment filed in response to the Eighth Further Notice, CBS supports the proposal to allot it channel 11, and accordingly, we will make the requisite changes to the DTV Table and Appendix B to reflect CBS's facilities on this new channel and site.

137. *WGNO & WNOL, New Orleans, LA.* We grant the request of Tribune and adopt the proposed changes for WGNO and WNOL. Tribune Broadcasting Co. (''Tribune'') is licensee of station WGNO, channel 26, and permittee of WGNO–DT, channel 15, New Orleans, LA, which received channel 26 for its TCD in the proposed DTV Table, and licensee of station WNOL, channel 38, and permittee of WNOL–DT, channel 40, New Orleans, LA, which received channel 15 for its TCD in the proposed DTV Table. Tribune filed reply comments to the Seventh Further Notice stating that the analog and digital transmission facilities of both of these stations had been destroyed by Hurricane Katrina. After seeking alternative locations for its DTV operations, Tribune subsequently filed late comments requesting that the DTV allotments and technical parameters for the channels be changed to reflect new operations from the transmitter site of station WDSU, with which it proposed to share an antenna. We considered Tribune's request and found that the proposed parameters, while not causing impermissible interference, would have exceeded WGNO and WNOL's respective authorized contours, in violation of the filing freeze. Nevertheless, in light of the circumstances resulting from Hurricane Katrina, we proposed to waive the freeze and substitute the technical parameters requested by Tribune for these stations. Tribune filed comments supporting our proposal, and as no replies or objections were filed, we therefore will modify Appendix B accordingly.

IV. Procedural Matters

A. Memorandum Opinion and Order on Reconsideration

1. Regulatory Flexibility Act

138. Appendix E sets forth the Supplemental Final Regulatory Flexibility Analysis for the *MO&OR on Reconsideration*, as required by the Regulatory Flexibility Act of 1980, as amended.

2. Paperwork Reduction Act

139. The *MO&OR* was analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA'') and does not contain any information collection requirements.

3. Congressional Review Act

140. The Commission will include a copy of the *MO&OR* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act.

4. Accessible Formats

141. 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*.

B. Eighth Report and Order

1. Regulatory Flexibility Act

142. Appendix G sets forth the Supplemental Final Regulatory Flexibility Analysis for the *Eighth R&O*, as required by the Regulatory Flexibility Act of 1980, as amended.

2. Paperwork Reduction Act

143. The *Eighth R&O* was analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA'') and does not contain any information collection requirements.

3. Congressional Review Act

144. The Commission will include a copy of this *Eighth R&O* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act.

V. Ordering Clauses

145. *It is ordered* that, pursuant to the authority contained in sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 316, 319, 324, 336, and 337 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 157, 301, 302, 303, 307, 308, 309, 316, 319, 324, 336, and 337, the *MO&OR of the Seventh R&O and Eighth R&O* IS ADOPTED.

146. *It is further ordered* that pursuant to the authority contained in Sections 1, 2, 4(i), 303, 303a, 303b, and 307 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 303a, 303b, and 307, the Commission's rules *are hereby amended* as set forth in Appendix A.

147. *It is further ordered* that the rules as revised in Appendix A *shall be effective* upon publication of this *MO&OR of the Seventh R&O and Eighth R&O* in the **Federal Register**. We find good cause for the rules adopted herein to be effective March 21, 2008 to ensure that full power television stations can meet the statutory deadline for transitioning to all-digital service.

148. *It is further ordered* that the petitions for reconsideration or clarification listed in Appendix C *are granted* to the extent provided herein and otherwise *are denied.*

149. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *O&OR and Eighth R&O*, including the Supplemental Final Regulatory Flexibility Analysis and Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

150. *It is further ordered* that the Commission *shall send* a copy of this *MO&OR and Eighth R&O* 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).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Section 73.622(i) is amended by revising the entries for ''Tuscaloosa, AL,'' ''Fairbanks, AK,'' ''Pueblo, CO,'' ''Nampa, ID,'' ''Sun Valley, ID,'' ''Evansville, IN,'' ''Wichita, KS,'' ''Vicksburg, MS,'' ''Reno, NV,'' ''Lima, OH,'' ''Jeannette, PA,'' ''Lead, SD,'' ''Kingsport, TN,'' and ''Eagle Pass, TX'' and by adding entries for ''Greeley, CO'' and ''Galesburg, IL,'' in the DTV Table to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(i) * * *

Community	Channel No.
ALABAMA	
* * * * *	
Tuscaloosa	6, 33
* * * * *	
ALASKA	
* * * * *	
Fairbanks	7, *9, 18, 26
* * * * *	
COLORADO	
* * * * *	
Greeley	38
* * * * *	
Pueblo	*8, 42, 48
* * * * *	
IDAHO	
* * * * *	
Nampa	13, 24
* * * * *	
Sun Valley	5
* * * * *	
ILLINOIS	
* * * * *	
Galesburg	8
* * * * *	
INDIANA	
* * * * *	
Evansville	7, *9, 28, 45, 46
* * * * *	
KANSAS	
* * * * *	
Wichita	10, 19, 26, 45
* * * * *	
MISSISSIPPI	
* * * * *	
Vicksburg	41
* * * * *	
NEVADA	
* * * * *	
Reno	7, 8, 13, *15, 20, 26, 44
* * * * *	
OHIO	
* * * * *	
Lima	8, 44
* * * * *	
PENNSYLVANIA	
* * * * *	
Jeannette	11
* * * * *	
SOUTH DAKOTA	
* * * * *	
Lead	5, 10
* * * * *	
TENNESSEE	
* * * * *	
Kingsport	27
* * * * *	
TEXAS	
* * * * *	
Eagle Pass	24
* * * * *	

Note: The following Appendices will not appear in the Code of Federal Regulations:

Appendix B—DTV Table of Allotments Information

Appendix C—List of Petitions for Reconsideration, Oppositions, and Replies

Appendix D1—Granted Requests for Minor Adjustments

Appendix D2—Granted Requests for Changes to Certification That Meet the Interference Criteria

Appendix D3—Granted Requests for Modified Coverage Area

Appendix D4—Granted Requests for Alternative Channel Assignments

Appendix D5—Stations Requesting Changes That Should Be Requested In An Application

Appendix E—Supplemental Final Regulatory Flexibility Analysis

Appendix F—Eighth Report and Order List of Comments and Replies

Appendix G—Final Regulatory Flexibility Analysis

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
21488	AK	ANCHORAGE	5	5	45	277		612010	1493046	45353	348	0
804	AK	ANCHORAGE	7	8	50	240	77186	612522	1495220	26532	317	0
10173	AK	ANCHORAGE	2	10	21	240	67943	612522	1495220	22841	317	0
13815	AK	ANCHORAGE	13	12	41	240	65931	612522	1495220	25379	317	0
35655	AK	ANCHORAGE	4	20	234	55	74791	611311	1495324	10885	302	0
83503	AK	ANCHORAGE	9	26	1000	212	74792	610402	1494436	23703	323	0

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
49632	AK	ANCHORAGE	11	28	28.9	61	73156	611133	1495401	7254	292	0
25221	AK	ANCHORAGE	33	32	50	33	74793	610957	1494102	8943	287	0
4983	AK	BETHEL	4	3	1	61		604733	1614622	10324	9	0
64597	AK	FAIRBANKS	7	7	3.2	214	74449	645520	1474255	11355	82	0
69315	AK	FAIRBANKS	9	9	3.2	152	80229	645442	1474638	6873	82	0
13813	AK	FAIRBANKS	2	18	16	230		645520	1474249	10344	82	0
49621	AK	FAIRBANKS	11	26	52	1	84814	645036	1474248	5216	81	0
8651	AK	JUNEAU	3	10	1	1		581756	1342407	4249	30	0
13814	AK	JUNEAU	8	11	0.14	1		581805	1342626	2239	30	1.1
60520	AK	KETCHIKAN	4	13	3.2	1	29997	552059	1314012	4355	15	0
20015	AK	NORTH POLE	4	20	50	5		644532	1471926	6209	82	0
60519	AK	SITKA	13	7	3.2	1	80181	570301	1352004	6048	8	0
56642	AL	ANNISTON	40	9	15.6	359	39744	333624	862503	24554	1437	6.6
71325	AL	BESSEMER	17	18	350	675	44013	332851	872403	37533	1549	1.4
717	AL	BIRMINGHAM	10	10	3	426		332904	864825	22733	1363	5
74173	AL	BIRMINGHAM	13	13	17.7	408	84859	332926	864748	31722	1652	2
5360	AL	BIRMINGHAM	42	30	1000	426	43265	332904	864825	31006	1687	0.4
16820	AL	BIRMINGHAM	68	36	885	406	68103	332904	864825	28264	1553	1.1
71221	AL	BIRMINGHAM	6	50	1000	420	74797	332919	864758	33118	1692	0.9
720	AL	DEMOPOLIS	41	19	1000	324	60739	322145	875204	26322	330	6.5
43846	AL	DOTHAN	18	21	1000	205		311425	851843	23559	436	0
4152	AL	DOTHAN	4	36	995	573		305510	854428	43948	886	0.4
714	AL	DOZIER	2	10	3.2	393		313316	862332	23623	353	8.7
65128	AL	FLORENCE	15	14	1000	431	66619	350009	870809	30337	1112	0
6816	AL	FLORENCE	26	20	50	230	74798	343438	874657	15572	355	1.7
715	AL	FLORENCE	36	22	419	208		343441	874702	20118	526	0.1
1002	AL	GADSDEN	60	26	150	315	29932	334853	862655	17744	1379	0.2
73312	AL	GADSDEN	44	45	225	309	43164	335327	862813	17536	1350	0.6
83943	AL	GULF SHORES	55	25	64.5	308	74787	303640	873626	15544	932	0
74138	AL	HOMEWOOD	21	28	765	427	68108	332904	864825	30801	1663	0.9
48693	AL	HUNTSVILLE	19	19	40.7	514		344419	863156	23609	992	2.2
713	AL	HUNTSVILLE	25	24	396	338		344413	863145	26992	1091	0.3
57292	AL	HUNTSVILLE	31	32	468	538	67239	344412	863159	32626	1301	0.9
28119	AL	HUNTSVILLE	54	41	400	518	43864	344412	863159	29827	1213	1
591	AL	HUNTSVILLE	48	49	41	552		344239	863207	22282	936	0.8
710	AL	LOUISVILLE	43	44	925	262	59887	314304	852603	18777	337	0.1
4143	AL	MOBILE	10	9	29	381		304117	874754	34970	1203	0
11906	AL	MOBILE	15	15	510	558	74580	303640	873627	35589	1283	0.5
60827	AL	MOBILE	21	20	105	529	70813	303640	873627	23682	1116	0
83740	AL	MOBILE		23	337	574	75124	303645	873843	38025	1283	0
73187	AL	MOBILE	5	27	1000	581	74800	304120	874949	45375	1406	0.3
721	AL	MOBILE	42	41	199	185		303933	875333	16357	912	0.1
13993	AL	MONTGOMERY	12	12	24.9	507	74369	315828	860944	31615	788	0.5
73642	AL	MONTGOMERY	20	16	1000	518	29552	315828	860944	37703	829	1.3
706	AL	MONTGOMERY	26	27	600	179		322255	861733	18271	555	3.7
72307	AL	MONTGOMERY	32	32	199	545	75049	320830	864443	28378	579	0.7
60829	AL	MONTGOMERY	45	46	500	308	28430	322413	861147	21909	641	0.3
711	AL	MOUNT CHEAHA	7	7	24.1	610	80203	332907	854833	42613	2362	3.8
11113	AL	OPELIKA	66	47	136	539	74487	321916	844728	24321	662	1.3
32851	AL	OZARK	34	33	15	151	68078	311228	853649	8868	244	0
84802	AL	SELMA	29	29	1000	408	32810	323227	865033	26741	621	5.9
701	AL	SELMA	8	42	787	507		320858	864651	38739	722	0.1
62207	AL	TROY	67	48	50	345	30182	320336	855701	14891	479	2
77496	AL	TUSCALOOSA	23	6	1	266	80096	330315	873257	18093	595	0
21258	AL	TUSCALOOSA	33	33	160	625	70330	332848	872550	30987	1357	0.5
68427	AL	TUSKEGEE	22	22	100	325	74464	320336	855702	17798	532	0.3
2768	AR	ARKADELPHIA	9	13	7.3	320		335426	930646	22157	299	16.9
86534	AR	CAMDEN	49	49	1000	183		331615	924214	20174	212	0.5
92872	AR	EL DORADO		10	6	541	80186	330441	921341	26324	442	1.6
35692	AR	EL DORADO	10	27	823	582		330441	921341	43407	631	5.4
84164	AR	EL DORADO	43	43	206	530	74776	330441	921341	26259	446	0.1
81593	AR	EUREKA SPRINGS	34	34	87.1	213	75069	362630	935825	12963	442	0.1
2767	AR	FAYETTEVILLE	13	9	19	501		354853	940141	35150	889	1.5
60354	AR	FAYETTEVILLE	29	15	180	266		360057	940459	19569	560	3.5
66469	AR	FORT SMITH	5	18	550	286		354949	940924	25959	736	0.2
60353	AR	FORT SMITH	40	21	325	602		350415	944043	33811	525	7.4
29560	AR	FORT SMITH	24	27	200	305	41354	354236	940815	19234	627	0.8
78314	AR	HARRISON	31	31	191	339	75064	364218	930345	18376	533	2.8
608	AR	HOT SPRINGS	26	26	66.4	258	74370	342221	930247	13726	250	0.1
13988	AR	JONESBORO	8	8	18	531		355322	905608	39532	689	0.2
2769	AR	JONESBORO	19	20	50	310		355414	904614	18806	312	0
2784	AR	JONESBORO	48	48	982	295	75036	353616	903118	24784	1386	0
2770	AR	LITTLE ROCK	2	7	49.8	543	84843	342823	921211	45815	1110	0
2787	AR	LITTLE ROCK	11	12	55	519		344757	922959	43098	1128	0.8
33543	AR	LITTLE ROCK	7	22	750	574		342824	921210	43307	1087	0.3
11951	AR	LITTLE ROCK	16	30	1000	449	40344	344757	922929	32289	1043	0
33440	AR	LITTLE ROCK	4	32	989	474	29656	344757	922959	37939	1084	0.2
58267	AR	LITTLE ROCK	36	36	50	394	74768	344756	922945	16626	809	0.2
37005	AR	LITTLE ROCK	42	44	1000	485	59098	344745	922944	31880	1038	0.4
2777	AR	MOUNTAIN VIEW	6	13	4.05	407	66439	354847	921724	20288	260	14.5

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
607	AR	PINE BLUFF	25	24	725	356	40413	343155	920241	24562	845	0
41212	AR	PINE BLUFF	38	39	1000	590	40345	342631	921303	34162	1006	0
29557	AR	ROGERS	51	50	1000	267	.....	362447	935716	23556	643	0
67347	AR	SPRINGDALE	57	39	316	114	40726	361107	941749	12789	422	0.1
81441	AZ	DOUGLAS	3	36	1000	9	74708	312208	1093145	10673	34	0
24749	AZ	FLAGSTAFF	2	2	11.2	488	84844	345806	1113028	41766	281	0.2
41517	AZ	FLAGSTAFF	13	13	19.6	474	74998	345805	1113029	29913	203	0
74149	AZ	FLAGSTAFF	4	18	726	487	74804	345804	1113030	34193	227	0
35104	AZ	FLAGSTAFF	9	32	1000	343	72238	345806	1113029	26812	213	1
63927	AZ	GREEN VALLEY	46	46	70.8	1095	74581	322454	1104256	26056	802	0
83491	AZ	HOLBROOK	11	11	3.2	54	74722	345505	1100825	8819	16	0
24753	AZ	KINGMAN	6	19	1000	585	74805	350157	1142156	30420	175	0
35486	AZ	MESA	12	12	22	543	74517	332000	1120348	33724	3236	0
2728	AZ	PHOENIX	8	8	30.7	527	75007	332000	1120349	35929	3239	0
35587	AZ	PHOENIX	10	10	22.2	558	74488	332003	1120343	34519	3236	0
59440	AZ	PHOENIX	15	15	218	509	.....	332000	1120346	28668	3229	0
41223	AZ	PHOENIX	5	17	1000	507	67336	332002	1120340	31756	3237	0
67868	AZ	PHOENIX	21	20	500	489	.....	332002	1120342	30913	3232	0
40993	AZ	PHOENIX	3	24	1000	501	43557	332001	1120345	31415	3234	0
68886	AZ	PHOENIX	45	26	1000	517	33195	332001	1120332	32353	3237	0
35705	AZ	PHOENIX	33	33	196	510	74503	332000	1120346	22493	3226	0
81458	AZ	PHOENIX	39	39	50	538	80243	332003	1120338	17660	3209	0.1
7143	AZ	PHOENIX	61	49	531	497	43560	332002	1120344	24945	3227	0
35811	AZ	PRESCOTT	7	7	3.2	850	74984	344115	1120701	24427	266	0.6
35095	AZ	SIERRA VISTA	58	44	1000	319	65401	314532	1104803	18972	893	0
26655	AZ	TOLLESON	51	51	197	546	.....	332003	1120338	25018	3227	0
36918	AZ	TUCSON	9	9	9.23	1134	74508	322454	1104259	39703	999	0.1
11908	AZ	TUCSON	18	19	480	1123	59934	322456	1104250	37731	924	0.1
25735	AZ	TUCSON	4	23	405	1123	68106	322456	1104250	35116	914	0.2
44052	AZ	TUCSON	11	25	480	1123	64314	322456	1104250	35738	911	0.2
2722	AZ	TUCSON	27	28	50	178	42999	321253	1110021	8550	831	0
2731	AZ	TUCSON	6	30	668	1092	.....	322455	1104251	45415	983	0
48663	AZ	TUCSON	13	32	108	1123	43979	322456	1104250	25662	807	0.7
30601	AZ	TUCSON	40	40	396	621	74564	321456	1110658	22249	933	0
74449	AZ	YUMA	11	11	22.3	468	74556	330310	1144940	34281	326	0
33639	AZ	YUMA	13	16	510	475	74806	330317	1144934	28310	324	0
24518	CA	ANAHEIM	56	32	1000	949	71423	341335	1180358	37118	15339	0.1
8263	CA	ARCATA	23	22	45	550	81081	404339	1235817	18586	122	0
29234	CA	AVALON	54	47	350	937	66764	341337	1180357	31249	14695	0.2
40878	CA	BAKERSFIELD	23	10	4.6	1128	74808	352714	1183537	23144	841	0
34459	CA	BAKERSFIELD	17	25	135	405	44570	352617	1184422	18738	698	0
4148	CA	BAKERSFIELD	29	33	110	1128	27939	352711	1183525	24592	992	0
7700	CA	BAKERSFIELD	45	45	210	387	74619	352620	1184424	16819	697	0
63865	CA	BARSTOW	64	44	1000	596	.....	343634	1171711	27479	1578	0
83825	CA	BISHOP	20	20	50	928	74744	372443	1181106	16923	23	0
40517	CA	CALIPATRIA	54	36	155	476	75040	330302	1144938	20044	318	0
4939	CA	CERES	23	15	15	172	.....	372934	1211329	11349	1202	0
33745	CA	CHICO	24	24	331	537	.....	401531	1220524	28699	422	0
24508	CA	CHICO	12	43	1000	396	74809	395730	1214248	25916	597	1.5
23302	CA	CLOVIS	43	43	283	642	.....	364446	1191657	31884	1452	0.1
21533	CA	CONCORD	42	14	50	942	80194	375254	1215505	29972	8383	0.1
19783	CA	CORONA	52	39	54	912	41582	341248	1180341	21797	14149	0.2
57945	CA	COTATI	22	23	110	628	68181	382054	1223438	23262	4471	0
51208	CA	EL CENTRO	9	9	19.5	414	75031	330319	1144944	31675	325	0
36170	CA	EL CENTRO	7	22	1000	477	36690	330302	1144938	33284	325	0
53382	CA	EUREKA	3	3	8.39	503	74390	404352	1235706	35110	149	0
55435	CA	EUREKA	13	11	40	550	.....	404338	1235817	39817	149	0
42640	CA	EUREKA	6	17	30	550	44483	404339	1235817	17975	118	0
58618	CA	EUREKA	29	28	119	381	28858	404336	1235826	15820	121	0
8378	CA	FORT BRAGG	8	8	44.9	733	74379	394138	1233443	38696	142	0.5
67494	CA	FRESNO	53	7	38	560	29423	370423	1192552	33624	1631	0.2
8620	CA	FRESNO	30	30	182	614	74349	370437	1192601	22934	1437	0.1
56034	CA	FRESNO	47	34	185	577	44959	370414	1192531	24853	1422	0.1
35594	CA	FRESNO	24	38	326	601	69073	370419	1192548	28138	1466	0.1
69733	CA	FRESNO	18	40	250	698	67432	364445	1191651	29501	1441	0
34439	CA	HANFORD	21	20	350	580	29793	370422	1192550	28070	1509	0
4328	CA	HUNTINGTON BEACH	50	48	1000	949	65049	341335	1180357	35188	15139	0
35608	CA	LONG BEACH	18	18	111	889	75204	341250	1180340	19277	14109	2.8
282	CA	LOS ANGELES	7	7	11.2	978	74603	341337	1180358	37164	15562	0.1
21422	CA	LOS ANGELES	9	9	12	951	69629	341338	1180400	34447	15439	0
22208	CA	LOS ANGELES	11	11	40.2	902	74702	341329	1180348	40526	15807	0.1
33742	CA	LOS ANGELES	13	13	14.1	899	74704	341342	1180402	36927	15505	0
13058	CA	LOS ANGELES	28	28	107	927	84837	341326	1180344	25793	14197	1.9
35670	CA	LOS ANGELES	5	31	1000	954	32823	341336	1180356	42312	15543	0.2
35123	CA	LOS ANGELES	34	34	392	956	74509	341336	1180359	31607	15014	0
47906	CA	LOS ANGELES	4	36	711	984	74810	341332	1180352	41039	15464	0
38430	CA	LOS ANGELES	58	41	162	901	41475	341326	1180345	22058	13992	1
26231	CA	LOS ANGELES	22	42	486	892	42167	341248	1180341	24724	14376	1.4
9628	CA	LOS ANGELES	2	43	300	947	69117	341338	1180400	31477	14815	0.5
58608	CA	MERCED	51	11	58	575	75200	370419	1192549	35621	1691	0

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
58609	CA	MODESTO	19	18	500	555	36726	380707	1204327	29812	3331	0
35611	CA	MONTEREY	67	31	50	701	29629	364523	1213005	14541	1065	42.1
26249	CA	MONTEREY	46	32	46	758	44481	363205	1213714	16387	761	9
49153	CA	NOVATO	68	47	1000	402	28688	380900	1223531	15940	5258	3
35703	CA	OAKLAND	2	44	811	433	74637	374519	1222706	23024	6336	0
60549	CA	ONTARIO	46	29	400	937	68117	341336	1180359	32847	14976	1
56384	CA	OXNARD	63	24	85	533	40843	341949	1190124	16934	2418	38.4
25577	CA	PALM SPRINGS	42	42	50	219	72090	335158	1162602	7331	372	4.4
16749	CA	PALM SPRINGS	36	46	50	207	74811	335200	1162556	7220	371	0
58605	CA	PARADISE	30	20	661	448	27908	395750	1214238	23929	576	0
35512	CA	PORTERVILLE	61	48	197	804	38116	361714	1185017	27716	1741	0
55083	CA	RANCHO PALOS VERDES.	44	51	1000	937	65079	341335	1180357	33638	15007	0
8291	CA	REDDING	7	7	11.6	1106	74504	403610	1223900	38353	371	0.1
47285	CA	REDDING	9	9	9.69	1097	74412	403609	1223901	37993	370	1.4
22161	CA	RIVERSIDE	62	45	670	907	74510	341250	1180340	31637	15069	0
35855	CA	SACRAMENTO	6	9	19.2	567	74604	381618	1213018	34662	5980	2.7
25048	CA	SACRAMENTO	10	10	22.3	595	84845	381424	1213003	38949	6597	0
51499	CA	SACRAMENTO	31	21	850	581	.....	381554	1212924	39963	6384	0
33875	CA	SACRAMENTO	3	35	1000	591	74812	381554	1212924	37884	5024	17.7
10205	CA	SACRAMENTO	40	40	765	581	70334	381618	1213018	31502	4587	4.2
52953	CA	SACRAMENTO	29	48	1000	489	44981	381554	1212924	30324	4218	1.1
19653	CA	SALINAS	8	8	19.2	736	70343	364523	1213005	28304	2557	14.9
14867	CA	SALINAS	35	13	19.8	720	44925	364522	1213006	23793	1122	49.2
58795	CA	SAN BERNARDINO	24	26	475	510	.....	335757	1171705	20569	13293	0
58978	CA	SAN BERNARDINO	30	38	1000	909	46152	341246	1180341	23330	14414	0.1
42122	CA	SAN DIEGO	8	8	14.9	226	80224	325017	1171456	24515	3087	0.2
40876	CA	SAN DIEGO	10	10	11	205	74985	325020	1171456	19575	2948	0.7
10238	CA	SAN DIEGO	51	18	355	576	39587	324150	1165604	29082	2910	3.5
58827	CA	SAN DIEGO	69	19	323	598	65036	324147	1165607	29443	3106	0.2
6124	CA	SAN DIEGO	15	30	350	567	33507	324153	1165603	27819	3013	0.3
35277	CA	SAN DIEGO	39	40	370	563	68010	324148	1165606	26970	2968	0.3
34470	CA	SAN FRANCISCO	7	7	21	509	74465	374520	1222705	32516	6516	7.3
51189	CA	SAN FRANCISCO	20	19	383	418	19024	374519	1222706	22989	6360	1
37511	CA	SAN FRANCISCO	26	27	500	403	67202	374112	1222603	21218	6116	1.8
25452	CA	SAN FRANCISCO	5	29	1000	506	74813	374520	1222705	36730	7115	0
35500	CA	SAN FRANCISCO	9	30	709	509	74814	374519	1222706	33404	6593	4.7
43095	CA	SAN FRANCISCO	32	33	50	491	74815	374520	1222705	16151	5924	0.1
65526	CA	SAN FRANCISCO	4	38	712	446	74655	374519	1222706	23165	6338	1.4
71586	CA	SAN FRANCISCO	38	39	1000	428	29544	374519	1222706	24293	6266	4
69619	CA	SAN FRANCISCO	44	45	400	446	27801	374519	1222706	19753	6005	2.9
33778	CA	SAN FRANCISCO	14	51	476	701	28493	372957	1215216	19534	6377	0.1
35280	CA	SAN JOSE	11	12	103	377	64426	374107	1222601	36145	6703	0.1
34564	CA	SAN JOSE	36	36	740	668	74585	372917	1215159	28576	6601	4.5
22644	CA	SAN JOSE	65	41	1000	418	60706	374115	1222601	23495	6250	3.3
64987	CA	SAN JOSE	48	49	257	688	38067	372957	1215216	21071	6083	1.5
35663	CA	SAN JOSE	54	50	290	662	34197	372917	1215159	16608	6021	1.7
19654	CA	SAN LUIS OBISPO	6	15	1000	515	28386	352137	1203918	30360	439	0
12930	CA	SAN LUIS OBISPO	33	34	82	441	44369	352138	1203921	18410	410	0.2
58912	CA	SAN MATEO	60	43	536	428	44617	374519	1222706	20821	6089	2.4
59013	CA	SANGER	59	36	372	600	43974	370437	1192601	27078	1440	0
67884	CA	SANTA ANA	40	23	50	900	39876	341327	1180344	21304	13620	5.6
12144	CA	SANTA BARBARA	38	21	1000	923	33205	343128	1195735	36089	1343	0
60637	CA	SANTA BARBARA	3	27	699	917	74818	343132	1195728	42055	1299	2.1
63165	CA	SANTA MARIA	12	19	188	591	74819	345437	1201108	26167	413	0
34440	CA	SANTA ROSA	50	32	19.9	928	72086	384010	1223752	18189	742	4.5
56550	CA	STOCKTON	13	25	1000	594	32519	381424	1213003	39491	6024	7.9
20871	CA	STOCKTON	64	26	425	599	71124	381424	1213003	27821	4135	4.8
10242	CA	STOCKTON	58	46	600	580	.....	381554	1212924	32953	4769	10.3
16729	CA	TWENTYNINE PALMS	.....	23	150	784	36709	340217	1164847	20848	1940	44.1
51429	CA	VALLEJO	66	34	150	419	39592	374519	1222706	17320	5876	3.3
14000	CA	VENTURA	57	49	1000	937	65163	341335	1180357	34730	15072	0
51488	CA	VISALIA	26	28	219	763	28096	364002	1185242	30550	1433	0
16950	CA	VISALIA	49	50	185	834	.....	361714	1185017	31085	1753	0
8214	CA	WATSONVILLE	25	25	81.1	699	70678	364522	1213004	17432	1895	7.1
57219	CO	BOULDER	14	15	200	351	66988	394017	1051306	21679	2934	0
22685	CO	BROOMFIELD	12	13	34.4	730	80221	394055	1052949	33459	3042	0
37101	CO	CASTLE ROCK	53	46	300	178	30026	392557	1043918	13108	2332	0
35037	CO	COLORADO SPRINGS	11	10	20.1	725	20589	384441	1045141	29268	959	54
35991	CO	COLORADO SPRINGS	21	22	51	641	44318	384443	1045140	22342	1109	0
52579	CO	COLORADO SPRINGS	13	24	459	652	74820	384445	1045138	30518	2149	0
40875	CO	DENVER	7	7	37.4	295	74403	394350	1051353	24932	2899	2
23074	CO	DENVER	9	9	39.6	318	74392	394350	1051353	25732	2925	1.8
14040	CO	DENVER	6	18	115	331	76810	394017	1051306	16903	2641	1.7
68581	CO	DENVER	20	19	1000	295	44187	394350	1051353	25055	2956	0
126	CO	DENVER	31	32	1000	314	30041	394345	1051412	23205	2875	0
35883	CO	DENVER	2	34	1000	318	.....	394358	1051408	26818	2981	0.2
47903	CO	DENVER	4	35	1000	373	44452	394351	1051354	25932	2957	0.2
20476	CO	DENVER	41	40	74.8	344	.....	393559	1051235	17700	2624	0
68695	CO	DENVER	59	43	1000	356	27960	394024	1051303	24751	2922	2.9

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
24514	CO	DENVER	50	51	900	233	36173	394358	1051408	19718	2711	0
48589	CO	DURANGO	6	15	46	90	44437	371546	1075358	8794	91	0
84224	CO	DURANGO	.....	20	46	130	65291	371546	1075358	7843	65	0
82613	CO	DURANGO	33	33	50	122	75068	371546	1075345	6607	54	0
125	CO	FORT COLLINS	22	21	50	233	.....	403832	1044905	15477	620	0
70578	CO	GLENWOOD SPRINGS	3	23	16.1	771	71566	392507	1072206	14435	82	0
70596	CO	GRAND JUNCTION	5	2	0.8	28	29734	390517	1083358	7398	116	0
52593	CO	GRAND JUNCTION	8	7	9.7	829	74825	390255	1081506	31964	185	0
24766	CO	GRAND JUNCTION	11	12	5.3	452	44527	390400	1084445	17978	138	0.3
31597	CO	GRAND JUNCTION	4	15	71.5	407	29771	390358	1084446	12155	130	0
14042	CO	GRAND JUNCTION	18	18	51.2	883	74404	390314	1081513	19336	121	0
166510	CO	GREELEY	45	38	816	382	.....	402448	1041940	32307	2403	0
38375	CO	LONGMONT	25	29	540	379	71598	400559	1045402	24252	2839	0
70579	CO	MONTROSE	10	13	2.6	35	29766	383102	1075112	7576	53	1
69170	CO	PUEBLO	8	8	20.3	727	74992	384444	1045139	29601	900	56.5
59014	CO	PUEBLO	5	42	880	660	68141	384442	1045139	30727	752	15
166331	CO	PUEBLO	.....	48	50	695	80244	384442	1045137	21123	914	0
20373	CO	STEAMBOAT SPRINGS	24	10	0.481	175	44199	402743	1065057	6228	29	0
63158	CO	STERLING	3	23	599	204	.....	403457	1030156	21554	73	0
70493	CT	BRIDGEPORT	43	42	1000	156	.....	412143	730648	18461	5591	1.7
13594	CT	BRIDGEPORT	49	49	50	222	74586	411643	731108	10597	3792	3.3
147	CT	HARTFORD	61	31	380	506	66902	414213	724957	23488	3645	16.3
53115	CT	HARTFORD	3	33	1000	289	44846	414630	724820	21115	3536	16.1
13602	CT	HARTFORD	24	45	465	505	65933	414213	724957	26813	4226	1.3
3072	CT	HARTFORD	18	46	217	269	.....	414630	724804	16467	3302	7.6
74170	CT	NEW BRITAIN	30	35	250	434	65777	414202	724957	24346	4252	3.8
13595	CT	NEW HAVEN	65	6	0.4	88	.....	411942	725425	9068	2713	10.1
74109	CT	NEW HAVEN	8	10	20.5	342	65037	412522	725706	25651	6215	12
33081	CT	NEW HAVEN	59	39	170	301	46284	412522	725706	17709	4376	2.9
51980	CT	NEW LONDON	26	26	76	368	80220	412503	721155	18575	3333	2.6
13607	CT	NORWICH	53	9	3.2	192	75021	413114	721003	11997	1198	29.8
14050	CT	WATERBURY	20	20	58.5	515	74364	414213	724957	21645	3935	9.5
1051	DC	WASHINGTON	7	7	13.6	235	84823	385701	770447	24275	7250	0.1
65593	DC	WASHINGTON	9	9	13.6	235	84830	385701	770447	24047	7238	0.2
65670	DC	WASHINGTON	26	27	90	254	66360	385701	770447	16086	6626	1.6
27772	DC	WASHINGTON	32	33	100	254	.....	385701	770447	17550	6781	0.1
51567	DC	WASHINGTON	20	35	500	227	.....	385722	770459	20241	6949	0.2
22207	DC	WASHINGTON	5	36	1000	235	74830	385721	770457	22334	7096	0.8
47904	DC	WASHINGTON	4	48	1000	237	74831	385624	770454	22223	7074	0.1
30576	DC	WASHINGTON	50	50	123	253	.....	385744	770136	17031	6767	0.1
72335	DE	SEAFORD	64	44	98	196	66096	383915	753642	11086	465	7.4
72338	DE	WILMINGTON	12	12	14.9	294	84855	400230	751424	23192	8187	1.2
51984	DE	WILMINGTON	61	31	200	374	39302	400230	751411	18478	6836	9.5
51349	FL	BOCA RATON	63	40	1000	310	.....	255934	801027	29971	4925	0
6601	FL	BRADENTON	66	42	210	476	.....	274910	821539	28906	3722	1
70649	FL	CAPE CORAL	36	35	930	404	67859	264742	814805	28363	1378	1.1
11125	FL	CLEARWATER	22	21	1000	409	32885	274910	821539	26800	3503	0.1
53465	FL	CLERMONT	18	17	1000	472	38022	283512	810458	36917	3225	0.1
6744	FL	COCOA	68	30	182	491	38429	283635	810335	26292	2631	0
24582	FL	COCOA	52	51	50	514	.....	283512	810458	23814	2623	0
25738	FL	DAYTONA BEACH	2	11	54.9	511	41527	283635	810335	43816	3125	4.4
131	FL	DAYTONA BEACH	26	49	150	459	.....	285516	811909	25951	2645	0.1
81669	FL	DESTIN	.....	48	1000	318	65951	305952	864313	23444	743	1.5
64971	FL	FORT LAUDERDALE	51	30	329	304	74587	255909	801137	20549	4770	0.2
22093	FL	FORT MYERS	11	9	20	445	.....	264801	814548	37322	1532	0
71085	FL	FORT MYERS	20	15	1000	454	59198	264921	814554	36098	1643	0
62388	FL	FORT MYERS	30	31	50	293	74833	264854	814544	17120	943	0.1
35575	FL	FORT PIERCE	34	34	522	438	75041	270719	802320	28293	2144	0
29715	FL	FORT PIERCE	21	38	765	297	71509	270132	801043	22636	2117	0
31570	FL	FORT WALTON BEACH	53	40	33.5	219	29918	302409	865935	11996	581	0
54938	FL	FORT WALTON BEACH	58	49	50	59	74834	302343	863011	3785	163	12
6554	FL	FORT WALTON BEACH	35	50	1000	221	.....	302346	865913	21954	689	0
83965	FL	GAINESVILLE	29	9	3.2	278	75127	293747	823425	18401	500	1.7
16993	FL	GAINESVILLE	20	16	344	254	70423	293211	822400	18598	793	0
69440	FL	GAINESVILLE	5	36	1000	263	.....	294234	822340	26470	1150	0
7727	FL	HIGH SPRINGS	53	28	168	265	73079	293747	823424	17693	635	0.1
60536	FL	HOLLYWOOD	69	47	575	297	43915	255909	801137	21946	4801	0
73130	FL	JACKSONVILLE	7	7	16.2	288	74527	301651	813412	25919	1314	0.5
65046	FL	JACKSONVILLE	12	13	25	310	.....	301624	813313	31176	1381	1.6
35576	FL	JACKSONVILLE	47	19	1000	291	42083	301651	813412	27268	1345	0.3
11909	FL	JACKSONVILLE	30	32	1000	291	42562	301651	813412	25771	1324	0.2
29712	FL	JACKSONVILLE	17	34	863	283	71837	301636	813347	24352	1304	0.1
53116	FL	JACKSONVILLE	4	42	976	294	41583	301624	813313	26562	1329	0
29719	FL	JACKSONVILLE	59	44	715	235	69233	301634	813353	19675	1267	0
72053	FL	KEY WEST	22	3	1	62	.....	243318	814807	9983	45	0
27387	FL	KEY WEST	8	8	3.2	33	74365	243419	814425	5713	45	0
27290	FL	LAKE WORTH	67	36	1000	385	43353	263520	801244	28708	4345	12.9
53819	FL	LAKELAND	32	19	1000	458	.....	274910	821539	41503	4346	1.7
60018	FL	LEESBURG	55	40	1000	514	32830	283511	810458	37186	3155	0.2
9881	FL	LEESBURG	45	46	1000	472	59171	283512	810458	31806	3050	0.2

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
22245	FL	LIVE OAK	57	48	1000	597		304051	835821	44034	970	0
81594	FL	MARIANNA	51	51	50	254	74785	303042	852917	13673	278	0
5802	FL	MELBOURNE	43	43	1000	300	74433	281822	805445	23789	2340	0.3
67602	FL	MELBOURNE	56	48	1000	456	67869	280537	810728	31239	2955	3.5
63840	FL	MIAMI	7	7	145	291	80184	255749	801244	36091	5031	0
53113	FL	MIAMI	10	10	30	294	74350	255759	801244	27703	4931	0
13456	FL	MIAMI	2	18	1000	309	30258	255730	801244	26169	4906	0
10203	FL	MIAMI	39	19	1000	239	67745	255807	801320	20430	4771	0.4
66358	FL	MIAMI	17	20	625	301	42558	255846	801146	23263	4880	0
47902	FL	MIAMI	4	22	1000	298		255807	801320	31232	4922	0
73230	FL	MIAMI	23	23	485	257	74466	255807	801320	18379	4714	0
63154	FL	MIAMI	6	31	1000	311		255807	801320	30510	4920	0
12497	FL	MIAMI	33	32	1000	263	41330	255802	801234	21017	4771	0
48608	FL	MIAMI	35	35	242	282	74993	255909	801137	18162	4564	2.8
67971	FL	MIAMI	45	46	500	308	36387	255934	801027	19031	4815	0
19183	FL	NAPLES	26	41	1000	454	59197	264921	814554	32033	1491	2
61504	FL	NAPLES	46	45	1000	456	33429	264708	814740	28232	1369	0.4
12171	FL	NEW SMYRNA BEACH	15	33	308	491	59744	283635	810335	28477	2677	0.1
70651	FL	OCALA	51	31	500	259	39152	292132	821943	19210	910	0.2
11893	FL	ORANGE PARK	25	10	12	298		301624	813313	26962	1318	0.9
41225	FL	ORLANDO	35	22	1000	392	28032	283613	810511	34755	2981	0.2
12855	FL	ORLANDO	24	23	950	380	40155	283608	810537	32898	2991	0
71293	FL	ORLANDO	6	26	547	516	71980	283635	810335	35732	2960	0.2
55454	FL	ORLANDO	27	27	247	477		283407	810316	32237	2872	0
72076	FL	ORLANDO	9	39	1000	492		283407	810316	40585	3220	0.2
54940	FL	ORLANDO	65	41	1000	515		283635	810335	40291	3165	2.7
11123	FL	PALM BEACH	61	49	800	125	44853	264547	801219	13671	2395	0
73136	FL	PANAMA CITY	7	7	52	244	74969	302600	852451	25857	372	0.4
2942	FL	PANAMA CITY	28	9	2.3	142	67964	302342	853202	12161	238	2.4
66398	FL	PANAMA CITY	13	13	35.5	405	74426	302108	852328	32536	721	0.1
6093	FL	PANAMA CITY	56	38	49.2	137		302202	855528	12069	275	0
4354	FL	PANAMA CITY BEACH	46	47	50	59	74838	301059	854642	5037	154	0
71363	FL	PENSACOLA	3	17	1000	579		303645	873843	47474	1408	0
17611	FL	PENSACOLA	23	31	1000	549	75266	303640	873626	33317	1254	0.1
10894	FL	PENSACOLA	33	34	1000	415	33836	303735	873850	27979	1210	0
41210	FL	PENSACOLA	44	45	1000	457	42957	303516	873313	28956	1244	0
61251	FL	SARASOTA	40	24	116	233		273321	822149	15298	2563	12
11290	FL	ST. PETERSBURG	10	10	18.1	458	84846	281104	824539	33246	3447	0.2
4108	FL	ST. PETERSBURG	38	38	1000	438	70212	275032	821546	30498	3664	0.1
74112	FL	ST. PETERSBURG	44	44	463	452		275052	821548	32510	3887	0.8
83929	FL	STUART		44	773	80		264337	800448	14826	2240	0
82735	FL	TALLAHASSEE		24	24	39	65784	302940	842503	5304	304	0
41065	FL	TALLAHASSEE	27	27	1000	487		304006	835810	41970	951	0.1
21801	FL	TALLAHASSEE	11	32	938	237		302131	843638	25384	516	0
66908	FL	TALLAHASSEE	40	40	1000	600	70213	304051	835821	38436	784	0.1
64592	FL	TAMPA	8	7	19	465		275032	821545	37491	4250	0.8
68569	FL	TAMPA	13	12	72.3	436	17613	274908	821426	41899	4200	6.7
21808	FL	TAMPA	3	13	17.1	473	75058	274948	821559	36363	4123	1.2
64588	FL	TAMPA	28	29	987	475	67821	275032	821545	38497	4186	0
69338	FL	TAMPA	16	34	475	453		275052	821548	32898	3939	2
60559	FL	TAMPA	50	47	500	317	59290	275032	821545	22988	3453	0.3
51988	FL	TEQUESTA	25	16	1000	454	29425	270717	802342	33467	2807	0.9
71580	FL	TICE	49	33	1000	429	32880	264708	814741	27350	1275	0.4
16788	FL	VENICE	62	25	750	472	39529	274910	821539	32426	3786	0.1
59443	FL	WEST PALM BEACH	5	12	41	302	84819	263520	801243	33128	4986	0.1
52527	FL	WEST PALM BEACH	12	13	29.5	291	39117	263518	801230	28983	4782	0
61084	FL	WEST PALM BEACH	42	27	400	440	44609	263437	801432	26429	4992	0
39736	FL	WEST PALM BEACH	29	28	630	458	38600	263437	801432	31715	5137	0
70713	GA	ALBANY	10	10	18.2	272	74405	311952	835144	24614	626	1.2
70815	GA	ALBANY	31	12	60	287	38373	311952	835143	28865	746	0.7
23948	GA	ATHENS	8	8	15.9	326	80225	334818	840840	28087	4632	0.4
48813	GA	ATHENS	34	48	1000	310		334826	842022	27603	4694	0.1
51163	GA	ATLANTA	11	10	80	303		334524	841955	34627	4867	0.6
72120	GA	ATLANTA	46	19	1000	329		334826	842022	32016	4822	0.1
64033	GA	ATLANTA	17	20	1000	310		334826	842022	30474	4766	0.5
4190	GA	ATLANTA	30	21	50	334	74839	334535	842007	18186	4148	3.2
22819	GA	ATLANTA	36	25	500	332		334826	842022	26868	4612	2
70689	GA	ATLANTA	5	27	1000	332		334751	842002	30573	4773	0.6
23960	GA	ATLANTA	2	39	1000	301	65852	334551	842142	27454	4618	0.1
13206	GA	ATLANTA	57	41	165	319		340359	842717	20717	4373	0.5
6900	GA	ATLANTA	69	43	1000	335		334440	842136	29766	4733	0.1
73937	GA	AUGUSTA	12	12	20.2	485	74489	332429	815036	37025	1357	0.6
70699	GA	AUGUSTA	26	30	400	483		332420	815001	35012	1261	0
27140	GA	AUGUSTA	6	42	1000	507		332420	815001	40539	1454	0
3228	GA	AUGUSTA	54	51	37	363	67958	332500	815006	16372	615	0.1
23486	GA	BAINBRIDGE	49	49	226	597		304051	835821	34589	873	0
69446	GA	BAXLEY	34	35	1000	349	77877	320248	812027	29995	725	0
71236	GA	BRUNSWICK	21	24	500	418	75243	304939	814427	29155	1290	0
23942	GA	CHATSWORTH	18	33	426	537	32774	344506	844254	27651	2782	1.2
23935	GA	COCHRAN	29	7	22	369		322811	831517	32901	784	1.7

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
595	GA	COLUMBUS	9	9	1	503	70342	321925	844646	22410	642	4.7
3359	GA	COLUMBUS	3	15	1000	449		321925	844646	39904	1113	11.5
23918	GA	COLUMBUS	28	23	250	462	33233	325108	844204	27183	1332	0
37179	GA	COLUMBUS	38	35	50	399	74840	322728	845308	21298	660	0
12472	GA	COLUMBUS	54	49	500	312	67961	322739	845243	19986	638	2.4
63867	GA	CORDELE	55	51	200	109		315335	834818	14405	356	0.3
60825	GA	DALTON	23	16	300	425	28422	345707	852258	24445	1157	2.7
23930	GA	DAWSON	25	8	6	313	44505	315615	843315	19598	471	21
46991	GA	MACON	13	13	30	238		324510	833332	27301	820	4.2
58262	GA	MACON	24	16	1000	216	77955	324458	833335	21248	676	0.3
43847	GA	MACON	41	40	110	189		324512	833346	15105	538	0
24618	GA	MACON	64	45	1000	223	60980	324551	833332	19160	655	0.8
68058	GA	MONROE	63	44	700	303		334441	842136	25422	4531	0.2
23917	GA	PELHAM	14	6	3.8	474	74339	304013	835626	30535	844	0
54728	GA	PERRY	58	32	100	186	68372	324504	833327	13242	504	0
51969	GA	ROME	14	51	1000	622	32746	341848	843855	35465	5192	0.4
23947	GA	SAVANNAH	9	9	15.2	320	80230	320848	813705	28965	759	0.3
590	GA	SAVANNAH	11	11	14.8	420	74380	320314	812101	28682	752	0
37174	GA	SAVANNAH	22	22	166	436	74457	320330	812020	25120	667	0
48662	GA	SAVANNAH	3	39	1000	442		320331	811755	37667	832	0.1
31590	GA	THOMASVILLE	6	46	1000	619		304013	835626	45196	972	0.1
63329	GA	TOCCOA	32	24	600	209		343644	832205	20917	1161	1.8
28155	GA	VALDOSTA	44	43	50	253	40583	311018	832157	13316	328	0
23929	GA	WAYCROSS	8	8	20	286		311317	823424	28624	426	5.9
23937	GA	WRENS	20	6	30	436	74332	331533	821709	25555	782	0
36914	HI	HILO	9	9	3.2	33	74970	194300	1550813	10655	79	0
4146	HI	HILO	11	11	3.35	33	74440	194357	1550404	5336	78	0
64544	HI	HILO	13	13	3.73	1	74413	194357	1550404	6703	79	0
34846	HI	HILO	2	22	8	1	44792	194351	1550411	1638	64	0.5
37103	HI	HILO	14	23	35	33	28420	194300	1550813	7064	78	0
4144	HI	HONOLULU	2	8	7.2	1		211746	1575036	11570	817	0
36917	HI	HONOLULU	9	9	7	33	74971	211746	1575036	9210	826	0
51241	HI	HONOLULU	38	10	14.3	577	66350	212345	1580558	26942	812	7.5
26431	HI	HONOLULU	11	11	3.2	637	74414	212403	1580610	22766	862	0
34527	HI	HONOLULU	20	19	60.7	606	43104	212351	1580600	16294	788	0
34445	HI	HONOLULU	5	23	5.4	453	67839	212255	1580619	6285	764	0
3246	HI	HONOLULU	26	27	262	580	45219	212345	1580558	14530	829	0
36846	HI	HONOLULU	14	31	50	33	28782	211849	1575143	6227	746	0
65395	HI	HONOLULU	32	33	49.6	1	77218	211849	1575143	5500	751	0
34867	HI	HONOLULU	13	35	5.9	453	69970	212255	1580619	6006	759	0
64548	HI	HONOLULU	4	40	85	1	68040	211737	1575034	4992	767	1.4
27425	HI	HONOLULU	44	43	6.46	577		212345	1580558	14133	764	0
83180	HI	KAILUA	50	50	50	632	74783	211949	1574524	25899	841	0
664	HI	KAILUA KONA	6	25	700	871	66907	194316	1555515	42674	64	3.4
77483	HI	KANEOHE	66	41	297	632		211949	1574524	37079	778	8.5
4145	HI	WAILUKU	7	7	3.69	1809	74519	204241	1561526	44292	146	0
26428	HI	WAILUKU	10	10	3.2	1811	74479	204240	1561534	41025	131	2.2
64551	HI	WAILUKU	12	12	3.94	1664	75008	204216	1561635	30905	139	0
34859	HI	WAILUKU	15	16	50	1723	74846	204234	1561554	27836	135	0
37105	HI	WAILUKU	21	21	53.1	1298	75029	204058	1561907	28579	146	0
36920	HI	WAILUKU	3	24	72.4	1814		204241	1561535	48982	137	9.2
89714	HI	WAIMANALO	56	38	50	632	74789	211949	1574524	27066	843	0
8661	IA	AMES	5	5	3.91	613	74683	414947	933656	43150	987	0
51502	IA	AMES	23	23	246	613	74753	414947	933656	38510	952	0
82619	IA	AMES	34	34	50	150	75070	415849	934423	12611	598	0
7841	IA	BURLINGTON	26	41	500	388	29888	410808	904830	26895	855	0.4
9719	IA	CEDAR RAPIDS	9	9	19.2	607	74589	421859	915131	42342	970	0.8
35336	IA	CEDAR RAPIDS	28	27	1000	449	29380	420525	920513	33845	815	0
21156	IA	CEDAR RAPIDS	48	47	500	309		421717	915254	25135	694	0
25685	IA	CEDAR RAPIDS	2	51	500	585		421859	915130	38136	900	0.1
29108	IA	COUNCIL BLUFFS	32	33	200	98		411515	955008	13206	816	0
5471	IA	DAVENPORT	36	34	3.5	233	80421	411844	902246	8144	424	0
6885	IA	DAVENPORT	6	36	696	329		411844	902246	29295	999	0.2
54011	IA	DAVENPORT	18	49	1000	344	44477	411844	902245	28483	958	0
33710	IA	DES MOINES	8	8	29.4	566	74490	414835	933716	43129	983	1.3
29102	IA	DES MOINES	11	11	19.8	600	75043	414833	933653	43085	983	0.4
66221	IA	DES MOINES	13	13	36.1	609	74427	414947	933656	47702	1038	2.2
56527	IA	DES MOINES	17	16	500	612	39534	414947	933656	40497	974	0
78915	IA	DES MOINES		31	628	589	74639	414947	933656	37868	947	0.1
17625	IA	DUBUQUE	40	43	800	262	39740	423109	903711	19008	305	0.9
29100	IA	FORT DODGE	21	25	600	355	75579	424903	942441	27727	295	0.3
29095	IA	IOWA CITY	12	12	17.8	439	75030	414315	912030	35040	1110	0.1
35096	IA	IOWA CITY	20	25	1000	419	39521	414329	912110	33241	1058	1.4
29086	IA	MASON CITY	24	18	250	449	76886	432832	924229	25774	479	0
66402	IA	MASON CITY	3	42	1000	447		432220	924959	38283	717	1.2
81509	IA	NEWTON	39	39	116	154	74772	414905	931232	11998	651	0
53820	IA	OTTUMWA	15	15	50	332	74372	411142	915715	17119	305	0.1
29085	IA	RED OAK	36	35	600	475	32182	412040	951521	30526	932	0.1
11265	IA	SIOUX CITY	9	9	22.3	616	74480	423512	961357	44501	639	1.5
29096	IA	SIOUX CITY	27	28	400	348		423053	961815	28422	342	0

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
39665	IA	SIOUX CITY	14	39	1000	611		423512	961319	45543	662	0
66170	IA	SIOUX CITY	4	41	873	609		423512	961318	44386	655	0
77451	IA	SIOUX CITY	44	44	914	587	75037	423512	961318	37919	553	0.7
593	IA	WATERLOO	7	7	22.6	604	84824	422404	915043	43266	990	0.5
81595	IA	WATERLOO	22	22	80.9	198	74750	422453	920034	14283	453	0.2
29114	IA	WATERLOO	32	35	250	584		421859	915131	35668	869	1
34858	ID	BOISE	7	7	17.2	808	84825	434516	1160556	41139	555	0
62442	ID	BOISE	4	21	725	858	66936	434521	1160554	35287	552	0
49760	ID	BOISE	2	28	978	777	74847	434517	1160553	45215	558	0
35097	ID	BOISE	39	39	50	534	74773	434423	1160815	10348	464	0
59363	ID	CALDWELL	9	10	14	818	41421	434518	1160552	30230	551	0
62424	ID	COEUR D'ALENE	26	45	50	465	74848	474354	1164347	14948	548	0
12284	ID	FILER	19	18	50	161	74849	424347	1142452	13431	132	0
66258	ID	IDAHO FALLS	8	8	63	463		433003	1123936	42673	272	0
41238	ID	IDAHO FALLS	20	20	50	223	74745	434544	1115730	14669	165	0
56028	ID	IDAHO FALLS	3	36	200	457	28614	432951	1123950	22981	247	0
56032	ID	LEWISTON	3	32	200	361	29292	462727	1170556	16016	133	0
62382	ID	MOSCOW	12	12	78	340		464054	1165813	35158	238	12.7
28230	ID	NAMPA	12	13	17	829		434518	1160552	41141	555	0
59255	ID	NAMPA	6	24	823	811	74850	434520	1160555	45069	558	0
86205	ID	POCATELLO	15	15	251	327	74733	425150	1123110	16199	216	0
62430	ID	POCATELLO	10	17	190	465	74851	433002	1123936	29893	260	0
1270	ID	POCATELLO	6	23	505	452	28852	425515	1122044	24439	241	0
78910	ID	POCATELLO	31	31	72.3	447	75065	425515	1122044	13633	207	0
81570	ID	SUN VALLEY	5	5	6.09	572	84839	432647	1141252	32640	163	0
35200	ID	TWIN FALLS	11	11	16.4	323	74393	424348	1142452	27640	152	0
62427	ID	TWIN FALLS	13	22	50	161	74852	424347	1142452	12892	124	0
1255	ID	TWIN FALLS	35	34	21.7	152	66302	424342	1142443	7375	99	0
60539	IL	AURORA	60	50	172	509	74684	415244	873808	23585	9162	1
5875	IL	BLOOMINGTON	43	28	1000	293		403845	891045	30031	1013	0.2
4297	IL	CARBONDALE	8	8	14.1	271	74549	380611	891440	25125	737	3.2
25684	IL	CHAMPAIGN	15	41	950	375	68470	400411	875445	28692	921	7
42124	IL	CHAMPAIGN	3	48	1000	245		400621	882700	23439	761	0.3
18301	IL	CHARLESTON	51	50	255	146	69577	393415	881825	14097	449	0
73226	IL	CHICAGO	7	7	3.2	515	74590	415244	873810	29074	9389	0.7
9617	IL	CHICAGO	2	12	3.2	497		415244	873808	28938	9367	0.5
72115	IL	CHICAGO	9	19	645	453	39765	415244	873810	31644	9509	0.5
12279	IL	CHICAGO	20	21	98.9	378	33366	415356	873723	20821	8983	0.1
71428	IL	CHICAGO	26	27	160	510	45223	415244	873810	26129	9287	0.1
47905	IL	CHICAGO	5	29	350	508	31269	415244	873810	32080	9520	0.2
22211	IL	CHICAGO	32	31	690	475		415244	873810	37880	9711	0.1
10981	IL	CHICAGO	38	43	200	509	38347	415244	873808	26028	9256	0.5
70119	IL	CHICAGO	44	45	467	472	27856	415244	873810	28750	9402	0.2
10802	IL	CHICAGO	11	47	300	465	33534	415244	873810	27544	9338	0.3
70852	IL	DECATUR	17	18	350	375	29834	395707	884955	25571	913	0
16363	IL	DECATUR	23	22	253	401	46084	395656	885012	25397	918	0
57221	IL	EAST ST. LOUIS	46	47	187	345	74855	382318	902916	19175	2686	0
4689	IL	FREEPORT	23	23	50	219	74557	421748	891015	14184	909	6.1
81946	IL	GALESBURG		8	15	333	80193	411844	902245	24719	795	0.7
73999	IL	HARRISBURG	3	34	1000	302		373650	885220	31461	703	0.1
70536	IL	JACKSONVILLE	14	15	75	295		393609	900247	19431	508	1.2
12498	IL	JOLIET	66	38	137	401	74605	415356	873723	19882	8980	0.2
998	IL	LASALLE	35	10	16	403	28403	411651	885613	29036	2834	2.1
70537	IL	MACOMB	22	21	75	131		402354	904355	13181	224	0.2
67786	IL	MARION	27	17	800	213	41637	373326	890124	20778	529	0
5468	IL	MOLINE	24	23	80	269	45050	411844	902245	16674	596	0.1
73319	IL	MOLINE	8	38	1000	334		411844	902246	30696	927	13.3
40861	IL	MOUNT VERNON	13	21	1000	242	68044	383253	892917	22609	2280	0.6
4301	IL	OLNEY	16	19	46	284		385019	880747	17582	308	0
6866	IL	PEORIA	19	19	52.7	160	74550	403911	893514	12050	556	0.8
24801	IL	PEORIA	25	25	246	212	75203	403746	893253	17471	652	1.7
42121	IL	PEORIA	31	30	800	193	71928	403806	893219	19343	710	0
52280	IL	PEORIA	59	39	100	180		403834	893238	14576	599	0.1
28311	IL	PEORIA	47	46	190	216		403744	893412	17264	655	0
54275	IL	QUINCY	10	10	13.9	238	80231	395703	911954	25734	311	1.3
4593	IL	QUINCY	16	32	50	302	74856	395818	911942	17825	236	0
71561	IL	QUINCY	27	34	58.6	153		395841	911832	13069	187	0
13950	IL	ROCK ISLAND	4	4	3.88	408	74670	413249	902835	33309	983	0
73940	IL	ROCKFORD	13	13	12.4	216	80211	421750	891424	22246	1487	8.7
72945	IL	ROCKFORD	17	16	196	201		421714	891015	18378	1234	0
52408	IL	ROCKFORD	39	42	1000	149	40572	421726	890951	16227	1101	9.1
42116	IL	SPRINGFIELD	49	13	5.08	183	74606	394727	893053	19180	552	0.4
25686	IL	SPRINGFIELD	20	42	950	402	68475	394815	892740	29924	963	1.4
62009	IL	SPRINGFIELD	55	44	335	416		394757	892646	28977	881	0
68939	IL	URBANA	12	9	30	302		400218	884010	30279	1066	4.6
69544	IL	URBANA	27	26	507	138	44738	401846	875500	15153	385	0
67787	IN	ANGOLA	63	12	16.5	132	33342	412715	844810	17294	874	6.2
66536	IN	BLOOMINGTON	30	14	224	221	43429	390831	862943	17415	1005	0
10253	IN	BLOOMINGTON	63	27	165	310		392416	860837	22019	1993	0
68007	IN	BLOOMINGTON	42	42	391	297		392412	860850	23254	2054	0.1

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
56523	IN	BLOOMINGTON	4	48	870	337	66628	392427	860852	22528	2100	1.8
74007	IN	ELKHART	28	28	205	335	85074	413658	861138	20931	1296	3.7
24215	IN	EVANSVILLE	25	7	3.2	301	80191	375157	873404	21506	699	0.1
67802	IN	EVANSVILLE	9	9	11.7	177	84831	380127	872143	20611	694	5.3
3661	IN	EVANSVILLE	7	28	1000	273	39643	380127	872143	24657	765	0
72041	IN	EVANSVILLE	44	45	500	288		375317	873237	23639	730	0.2
13991	IN	EVANSVILLE	14	46	250	310		375314	873107	22329	711	0
13960	IN	FORT WAYNE	33	19	285	239		410539	851036	19941	1027	2.7
73905	IN	FORT WAYNE	21	24	335	224		410608	851105	20240	1052	0.1
39270	IN	FORT WAYNE	15	31	1000	242	66172	410538	851048	21871	1106	2
25040	IN	FORT WAYNE	55	36	1000	219	77897	410633	851142	19630	1048	0.2
22108	IN	FORT WAYNE	39	40	90	221		410613	851128	16043	835	0
49803	IN	GARY	56	17	300	290	46333	412056	872402	17974	6919	0
48772	IN	GARY	50	51	1000	523	30328	415244	873810	36200	9648	0
32334	IN	HAMMOND	62	36	50	455	20094	415244	873810	13905	7988	0.2
39269	IN	INDIANAPOLIS	8	9	19.5	284		395325	861220	26105	2488	3.1
70162	IN	INDIANAPOLIS	13	13	15.1	299	80212	395543	861055	26707	2510	0.8
37102	IN	INDIANAPOLIS	40	16	225	284	28275	395340	861221	19773	2154	0.4
41397	IN	INDIANAPOLIS	20	21	200	236	33405	395359	861201	16842	1912	0.1
40877	IN	INDIANAPOLIS	6	25	898	294		395357	861204	29516	2604	0.1
7908	IN	INDIANAPOLIS	69	44	215	167		395320	861207	14297	1830	3.7
146	IN	INDIANAPOLIS	59	45	700	285		395320	861207	24873	2432	1
56526	IN	KOKOMO	29	29	624	285	75202	395320	861207	22949	2371	0.5
73204	IN	LAFAYETTE	18	11	30	214	46110	402320	863646	26505	1953	4.4
28462	IN	MARION	23	32	1000	271	33152	400856	855615	24181	2240	1.2
3646	IN	MUNCIE	49	23	79.1	246		400537	852332	17374	1494	0.1
67869	IN	RICHMOND	43	39	500	281	17601	393044	843809	20981	3107	0.7
34167	IN	SALEM	58	51	1000	390	43303	382100	855057	30937	1759	0.7
73983	IN	SOUTH BEND	22	22	192	332		413700	861301	24663	1521	2.2
41671	IN	SOUTH BEND	34	35	50	333		413649	861120	18549	1202	1.2
41674	IN	SOUTH BEND	16	42	695	299		413620	861246	26344	1633	0.8
36117	IN	SOUTH BEND	46	48	300	295	30032	413543	860938	20015	1214	2.2
70655	IN	TERRE HAUTE	10	10	14.2	293	74468	391436	872307	26481	742	2.5
20426	IN	TERRE HAUTE	2	36	1000	248		391433	872329	24733	706	0.3
65247	IN	TERRE HAUTE	38	39	850	248		391433	872329	23495	664	0.1
4329	IN	VINCENNES	22	22	50	174	74592	383906	872837	11671	268	0.5
65523	KS	COLBY	4	17	1000	232		391509	1012109	26138	40	0
162115	KS	COLBY		19	500	384	67184	391431	1012138	28456	43	0.6
166332	KS	DERBY		46	570	276		374801	973129	23316	712	0
79258	KS	DODGE CITY	21	21	8.42	99		374933	1001040	8571	41	0
66414	KS	ENSIGN	6	6	20	198		373828	1002039	35374	155	0
72361	KS	GARDEN CITY	11	11	7.4	244	74394	374640	1005208	23078	136	0
65535	KS	GARDEN CITY	13	13	21.2	250	74415	373900	1004006	26607	139	0.6
66416	KS	GOODLAND	10	10	34.7	285	74373	392810	1013319	29681	45	0
72359	KS	GREAT BEND	2	22	1000	296	74857	382554	984618	30069	200	0
66415	KS	HAYS	7	7	10.3	216	74434	385301	992015	23256	93	0
60675	KS	HAYS	9	16	496	304	43521	384616	984416	26243	116	0.4
83181	KS	HOISINGTON	14	14	50	163	74728	383754	985052	13887	84	0
33345	KS	HUTCHINSON	8	8	9.28	244	75009	380321	974635	22260	672	4.1
66413	KS	HUTCHINSON	12	12	18.5	463	74428	380340	974549	36509	822	0.1
77063	KS	HUTCHINSON	36	35	1000	310	29560	375623	973042	22741	712	0
60683	KS	LAKIN	3	8	33	153	68690	374940	1010635	20351	80	2.4
42636	KS	LAWRENCE	38	41	551	291	74520	385842	943201	19399	1978	0
58552	KS	PITTSBURG	7	7	15.5	332	80204	371315	944225	29037	542	0.8
83992	KS	PITTSBURG	14	13	0.167	302		371315	944225	11630	289	0.3
11912	KS	SALINA	18	17	65	314	28829	390616	972315	15730	202	0
70938	KS	TOPEKA	11	11	15.4	305	80233	390351	954549	27153	1122	0.4
166546	KS	TOPEKA	22	12	3.2	225	80241	390350	954549	13374	420	8.6
63160	KS	TOPEKA	13	13	18.1	421	75026	390019	960258	33546	674	0.5
67335	KS	TOPEKA	27	27	50	320	74472	390534	954704	18654	485	0
49397	KS	TOPEKA	49	49	123	451	75032	390134	955458	19858	519	0
65522	KS	WICHITA	10	10	24.6	310	74441	374653	973108	30061	743	0.1
72348	KS	WICHITA	33	19	765	345		374801	973129	32518	748	0
11911	KS	WICHITA	24	26	350	303	43659	374640	973037	21248	704	0
72358	KS	WICHITA	3	45	891	312		374626	973051	28473	740	0.1
34171	KY	ASHLAND	25	26	61.3	137	31365	382744	823712	11240	483	0.8
67798	KY	ASHLAND	61	44	50	189	74858	382511	822406	9527	517	1.8
27696	KY	BEATTYVILLE	65	7	28	322		373647	834018	29307	1000	0.8
4692	KY	BOWLING GREEN	13	13	12.6	226	84860	370352	862607	22905	602	2.8
61217	KY	BOWLING GREEN	40	16	600	224	43547	370210	861020	18291	424	1.5
71861	KY	BOWLING GREEN	24	18	61	177		370349	862607	14430	362	0.9
34177	KY	BOWLING GREEN	53	48	54.8	234	44491	370522	863805	13561	342	0.1
25173	KY	CAMPBELLSVILLE	34	19	1000	370	32906	373151	852645	30014	2015	0.5
34204	KY	COVINGTON	54	24	53.5	117	31523	390150	843023	10320	1949	2.2
64017	KY	DANVILLE	56	4	26.5	327	64813	375251	841916	36995	1251	0
34181	KY	ELIZABETHTOWN	23	43	61	178	31543	374055	855031	12210	840	0
37809	KY	HARLAN	44	51	550	577		364800	832236	33564	1196	3.3
24915	KY	HAZARD	57	12	50	398		371138	831052	32160	793	8
34196	KY	HAZARD	35	16	53.2	369	31615	371135	831117	16906	377	2.2
24914	KY	LEXINGTON	27	13	30	282	40363	380223	842410	23841	919	3.2

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
73203	KY	LEXINGTON	18	39	475	286	70206	380203	842339	19494	830	3.5
51597	KY	LEXINGTON	36	40	69.5	305	74859	380203	842339	17819	810	0.1
34207	KY	LEXINGTON	46	42	45.8	258	70943	375245	841933	13515	738	0.4
73692	KY	LOUISVILLE	21	8	27	200	45865	380159	854517	22004	1500	0.7
32327	KY	LOUISVILLE	11	11	6.72	390	84851	382123	855052	26983	1617	0.2
21432	KY	LOUISVILLE	15	17	60.3	237	17602	382201	854954	15178	1350	0
53939	KY	LOUISVILLE	32	26	600	392	39847	382208	854948	29065	1687	0.1
34195	KY	LOUISVILLE	68	38	61.6	218	64196	382201	854954	13653	1295	0
13989	KY	LOUISVILLE	3	47	1000	392	42782	382208	854948	29288	1681	0.1
28476	KY	LOUISVILLE	41	49	1000	390	29606	382100	855057	32130	1759	0.7
74592	KY	MADISONVILLE	19	20	1000	216	.....	372456	873130	23946	744	0.4
34212	KY	MADISONVILLE	35	42	55.1	298	31621	371121	873049	15780	419	0.1
34202	KY	MOREHEAD	38	15	51.4	289	31617	381038	832417	16277	340	0.3
23128	KY	MOREHEAD	67	21	719	428	67075	375426	833801	30369	1018	1.5
34174	KY	MURRAY	21	36	56.9	187	31619	364134	883211	12682	320	0.6
39738	KY	NEWPORT	19	29	227	290	19124	390719	843252	17827	2366	12.3
34205	KY	OWENSBORO	31	30	63.3	124	31660	375107	871944	11399	529	0
34211	KY	OWENTON	52	44	49.7	214	31662	383131	844839	12714	763	2.4
51991	KY	PADUCAH	6	32	906	492	.....	371131	885853	40545	865	0.1
65758	KY	PADUCAH	29	41	55.7	143	44512	370539	884020	11313	239	0.1
39561	KY	PADUCAH	49	49	550	324	.....	372342	885623	26292	631	0.4
34200	KY	PIKEVILLE	22	24	50.4	423	32103	371706	823128	16779	419	0.6
34222	KY	SOMERSET	29	14	53.3	429	31822	371003	844930	21530	541	0.2
38590	LA	ALEXANDRIA	25	26	76	413	64838	313356	923250	20973	324	0
52907	LA	ALEXANDRIA	31	31	50	333	75022	313354	923300	19028	273	0.1
51598	LA	ALEXANDRIA	5	35	1000	457	.....	310215	922945	36973	878	2.2
16940	LA	ALEXANDRIA	41	41	191	307	74775	305420	923717	16241	368	0
589	LA	BATON ROUGE	9	9	0.36	509	70344	302158	911247	16013	847	1.1
38616	LA	BATON ROUGE	2	13	30	515	36880	301749	911140	34334	1962	8
38586	LA	BATON ROUGE	27	25	200	295	65435	302222	911216	19288	997	0
70021	LA	BATON ROUGE	33	34	1000	522	32895	301934	911636	37357	1695	0.1
12520	LA	BATON ROUGE	44	45	1000	424	29743	301935	911636	30315	1564	0
52046	LA	COLUMBIA	11	11	17.8	572	74657	320319	921112	41209	677	0.3
83945	LA	HAMMOND	.....	42	1000	294	58980	295841	895626	25352	1754	0
35059	LA	LAFAYETTE	10	10	17.2	507	74641	301919	921659	39308	1166	1.9
33261	LA	LAFAYETTE	15	16	800	359	29847	302144	921253	29700	851	0
38588	LA	LAFAYETTE	24	23	50	463	32658	301919	921658	21068	658	0
33471	LA	LAFAYETTE	3	28	1000	537	75545	301925	921724	42222	1279	0.2
13994	LA	LAKE CHARLES	7	7	17	451	.....	302346	930003	36541	1017	0
38587	LA	LAKE CHARLES	18	20	55	299	59155	302346	930003	16195	351	0
35852	LA	LAKE CHARLES	29	30	1000	315	17585	301726	933435	25760	730	0
81507	LA	MINDEN	21	21	1000	502	66613	324108	935600	36243	952	2.4
48975	LA	MONROE	8	8	17	518	.....	321150	920414	39190	663	0.3
38589	LA	MONROE	13	13	21.1	543	74429	321145	920410	38390	679	2.1
82476	LA	NEW IBERIA	50	50	179	303	74784	302032	915832	17747	767	0
4149	LA	NEW ORLEANS	8	8	14.7	302	75010	295714	895658	28567	1795	0
25090	LA	NEW ORLEANS	12	11	70.8	306	67937	295713	895658	29992	1898	0
54280	LA	NEW ORLEANS	38	15	775	286	80216	295659	895728	24543	1724	0
37106	LA	NEW ORLEANS	20	21	300	254	41946	295511	900129	19099	1617	0
72119	LA	NEW ORLEANS	26	26	1000	286	80217	295659	895728	24703	1734	0
18819	LA	NEW ORLEANS	32	31	200	274	31303	295857	895709	17661	1516	0
74192	LA	NEW ORLEANS	4	36	958	311	.....	295422	900222	30245	1829	0
71357	LA	NEW ORLEANS	6	43	1000	283	74862	295701	895728	28471	1791	0
21729	LA	NEW ORLEANS	49	50	1000	272	44211	295511	900129	21583	1671	0
70482	LA	SHREVEPORT	12	17	175	518	.....	324028	935600	33403	943	1.5
38591	LA	SHREVEPORT	24	25	50	326	74863	324041	935535	19407	591	0
35652	LA	SHREVEPORT	3	28	1000	543	74864	324108	935600	42940	1075	1.7
12525	LA	SHREVEPORT	33	34	1000	551	29201	323958	935559	38998	1012	0.1
73706	LA	SHREVEPORT	45	44	500	505	32870	323957	935558	30463	888	0.1
13938	LA	SLIDELL	54	24	1000	272	43616	295511	900129	24235	1729	0
3658	LA	WEST MONROE	14	36	1000	521	.....	320542	921034	40964	625	10.2
38584	LA	WEST MONROE	39	38	1000	154	.....	323021	920855	19639	356	0
74419	MA	ADAMS	19	36	48	631	68110	423814	731008	20520	1724	7.7
72145	MA	BOSTON	7	7	15.4	306	80205	421840	711300	27184	7035	0.1
72099	MA	BOSTON	2	19	700	374	.....	421837	711414	32268	7320	0.4
65684	MA	BOSTON	5	20	625	390	.....	421837	711414	30535	7199	2.1
25456	MA	BOSTON	4	30	825	390	.....	421837	711414	31712	7274	1.2
6463	MA	BOSTON	25	31	1000	341	30342	421812	711308	26108	6911	3.2
7692	MA	BOSTON	68	32	300	292	41971	421827	711327	19086	6346	2.3
73982	MA	BOSTON	38	39	70.8	354	74865	421812	711308	19832	6586	1.1
72098	MA	BOSTON	44	43	500	391	.....	421837	711414	28103	7091	0.6
73238	MA	CAMBRIDGE	56	41	550	345	46190	421812	711308	22764	6870	0.2
41436	MA	LAWRENCE	62	18	1000	357	67714	421827	711327	29071	6975	1.9
60551	MA	MARLBOROUGH	66	27	100	334	69136	422302	712937	17821	6431	0.4
3978	MA	NEW BEDFORD	28	22	350	203	64975	414639	705541	17274	4604	0.9
22591	MA	NEW BEDFORD	6	49	350	284	66255	415154	711715	19160	5455	0.6
23671	MA	NORWELL	46	10	5	144	.....	420038	710242	15414	5297	3.4
136751	MA	PITTSFIELD	51	13	12.6	396	71986	423731	740038	7287	653	27.5
6868	MA	SPRINGFIELD	22	11	10	247	72934	420505	724214	16158	2473	11.6
72096	MA	SPRINGFIELD	57	22	50	306	74672	421430	723854	14133	2074	9.7

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
25682	MA	SPRINGFIELD	40	40	380	324	70318	421430	723857	17575	2286	10.6
6476	MA	VINEYARD HAVEN	58	40	300	153	42283	414120	702049	14774	973	3.7
30577	MA	WORCESTER	27	29	200	453	.....	422007	714254	24769	6977	8.9
18783	MA	WORCESTER	48	47	365	217	40890	421827	711327	15283	5984	0
65942	MD	ANNAPOLIS	22	42	350	265	74866	390036	763633	19332	6752	2.4
65696	MD	BALTIMORE	11	11	6.91	312	74686	392005	763903	22401	6953	3.9
25455	MD	BALTIMORE	13	13	21.4	312	70306	392005	763903	25622	7452	5
65944	MD	BALTIMORE	67	29	50	250	74867	392701	764637	14260	5285	4.6
59442	MD	BALTIMORE	2	38	775	305	74593	392005	763903	26023	7730	0.3
7933	MD	BALTIMORE	54	40	845	373	46004	392010	763859	26825	7782	0.5
60552	MD	BALTIMORE	24	41	200	313	66845	391715	764538	17292	6151	5.6
10758	MD	BALTIMORE	45	46	550	373	46108	392010	763859	22879	7062	5.2
40626	MD	FREDERICK	62	28	30	159	67466	391537	771844	7313	2448	34.6
25045	MD	HAGERSTOWN	25	26	575	359	74627	393945	775754	22215	1362	28.7
10259	MD	HAGERSTOWN	68	39	82.5	394	74528	395331	775802	13861	814	6
65943	MD	HAGERSTOWN	31	44	209	359	33311	393904	775815	15728	977	4.1
40619	MD	OAKLAND	36	36	71.7	291	75062	392414	791737	10550	216	6.7
71218	MD	SALISBURY	16	21	635	279	64847	383017	753837	21695	659	0
40618	MD	SALISBURY	28	28	76.7	157	.....	382309	753533	14077	426	0
16455	MD	SALISBURY	47	47	225	292	75201	383006	754400	18155	579	0.4
39659	ME	AUGUSTA	10	10	15.3	305	74406	440916	700037	25690	818	1.3
39644	ME	BANGOR	2	2	3.02	192	84817	444410	684017	22407	339	0
3667	ME	BANGOR	7	7	14.5	250	74374	444535	683401	24704	334	0.6
17005	ME	BANGOR	5	19	465	402	74868	444213	690447	30384	488	1.1
39656	ME	BIDDEFORD	26	45	50	231	41344	432500	704817	10502	659	5
39649	ME	CALAIS	13	10	3.5	133	.....	450145	671925	13040	29	3.4
48408	ME	LEWISTON	35	35	57.2	241	80218	435106	701940	13589	641	0.4
39648	ME	ORONO	12	9	15	375	40127	444211	690447	25072	442	5.5
73288	ME	POLAND SPRING	8	8	21.3	586	74574	435044	704543	33555	1358	4.1
25683	ME	PORTLAND	13	38	1000	491	28274	435528	702928	34527	1169	0
53065	ME	PORTLAND	51	43	137	254	.....	435106	701940	14615	619	11
39664	ME	PORTLAND	6	44	1000	610	74869	435132	704240	34340	1319	1
48305	ME	PRESQUE ISLE	8	8	3.2	333	80189	463305	674836	19268	58	0
39662	ME	PRESQUE ISLE	10	10	16.4	332	74435	463305	674837	25597	66	0.6
83708	ME	PRESQUE ISLE	47	47	50	86	75129	464512	681028	6607	39	0
84088	ME	WATERVILLE	23	23	213	331	74754	440915	700037	18925	769	0
67048	MI	ALPENA	11	11	19.8	202	74982	444211	833126	20697	131	1.9
9917	MI	ALPENA	6	24	106	393	.....	450818	840945	24405	219	1.5
5800	MI	ANN ARBOR	31	31	106	328	74499	422225	840410	18881	4073	7.1
16530	MI	BAD AXE	35	15	200	309	.....	433233	833937	23073	1204	6.1
10212	MI	BATTLE CREEK	41	20	270	311	.....	423415	852807	25083	2119	0.4
71871	MI	BATTLE CREEK	43	44	212	305	.....	424045	850357	20028	1909	4.7
41221	MI	BAY CITY	5	22	1000	275	67337	432814	835036	26723	1507	4.6
82627	MI	BAY CITY	46	46	50	306	74778	432826	835044	12942	965	0
26994	MI	CADILLAC	9	9	20.1	497	74551	440812	852033	38645	826	0
9922	MI	CADILLAC	27	17	338	393	60511	444453	850408	26844	392	0
25396	MI	CADILLAC	33	47	500	393	67847	444453	850408	25466	378	0
76001	MI	CALUMET	5	5	6.89	295	84820	470212	884142	23406	55	0
21254	MI	CHEBOYGAN	4	35	78	168	58961	453901	842037	11815	82	0
73123	MI	DETROIT	2	7	11.2	305	74673	422738	831250	24569	5547	2.6
51570	MI	DETROIT	50	14	50	293	74870	422901	831844	18484	5122	0.1
74211	MI	DETROIT	20	21	500	324	28693	422653	831023	25252	5597	3
10267	MI	DETROIT	7	41	1000	305	74871	422815	831500	27193	5767	0.3
16817	MI	DETROIT	56	43	200	318	.....	422652	831023	22343	5247	0
72123	MI	DETROIT	62	44	345	323	.....	422653	831023	22657	5131	5.6
53114	MI	DETROIT	4	45	973	281	19013	422858	831219	22741	5397	1.2
6104	MI	EAST LANSING	23	40	50	296	74628	424208	842451	16787	1481	4.4
9630	MI	ESCANABA	3	48	989	327	.....	460805	865655	29896	159	0
21735	MI	FLINT	12	12	13.7	287	74521	431348	840335	26526	2103	5.5
21737	MI	FLINT	66	16	1000	287	28994	431318	840314	23878	2363	1.7
69273	MI	FLINT	28	28	126	258	74594	425356	832741	17128	4320	0
36838	MI	GRAND RAPIDS	8	7	30	288	.....	424114	853034	25304	2187	9.2
24784	MI	GRAND RAPIDS	35	11	50	238	64586	425735	855345	25748	1697	3.1
49713	MI	GRAND RAPIDS	13	13	15.1	305	74541	431834	855444	27942	1392	0.1
68433	MI	GRAND RAPIDS	17	19	725	306	43453	424115	853157	22476	1789	6.1
15498	MI	IRON MOUNTAIN	8	8	3.2	190	74452	454910	880235	16892	112	2.6
59281	MI	ISHPEMING	10	10	4.54	105	74721	462110	875115	11139	84	3.2
29706	MI	JACKSON	18	34	130	299	39980	422513	843125	18640	1398	2.2
24783	MI	KALAMAZOO	52	5	10	174	.....	421823	853925	26295	2246	4.9
74195	MI	KALAMAZOO	3	8	20	305	74333	423756	853216	28492	2333	1.8
11033	MI	KALAMAZOO	64	45	420	331	69393	423352	852731	18737	1717	11.8
74420	MI	LANSING	6	36	663	288	72523	424119	842235	25555	3054	2
74094	MI	LANSING	47	38	1000	281	29954	422803	843906	20865	1458	0
36533	MI	LANSING	53	51	900	300	59127	422513	843125	24069	1807	0.2
9913	MI	MANISTEE	21	21	50	93	74674	440357	861958	9143	81	4.3
4318	MI	MARQUETTE	13	13	15.7	332	74500	462109	875132	29278	183	0.1
81448	MI	MARQUETTE	19	19	50	248	74742	463614	873715	12597	69	0
21259	MI	MARQUETTE	6	35	83	262	67896	462011	875056	13760	93	0
455	MI	MOUNT CLEMENS	38	39	1000	170	32831	423315	825315	16235	4698	1.2
9908	MI	MOUNT PLEASANT	14	26	226	299	.....	434511	851240	22581	643	0

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
67781	MI	MUSKEGON	54	24	280	281	40886	425725	855407	20561	1480	2.3
6863	MI	ONONDAGA	10	10	14.8	299	84847	422633	843421	27690	2439	1.9
72052	MI	SAGINAW	25	30	193	356		431301	834317	24095	2170	13.5
67792	MI	SAGINAW	49	48	1000	287	40887	431318	840314	23991	2035	0.1
59279	MI	SAULT STE. MARIE	8	8	24	288	74353	460308	840638	23547	98	0.1
26993	MI	SAULT STE. MARIE	10	10	16.3	370	75038	460349	840608	30785	103	0.1
21253	MI	TRAVERSE CITY	7	7	19.1	411	84826	441633	854249	30172	393	18.5
59280	MI	TRAVERSE CITY	29	29	62.1	393	74491	444453	850408	19503	332	0
9632	MN	ALEXANDRIA	7	7	15.6	341	74469	454103	950814	30282	438	0.1
35584	MN	ALEXANDRIA	42	42	395	358		454159	951035	27590	404	0.3
71549	MN	APPLETON	10	10	24.2	364	74492	451003	960002	28995	219	0.4
28510	MN	AUSTIN	15	20	400	303		433834	923135	26035	497	0.1
18285	MN	AUSTIN	6	36	500	295		433742	930912	25023	484	0.1
49578	MN	BEMIDJI	9	9	15.4	329	74416	474203	942915	29401	114	2
83714	MN	BEMIDJI	26	26	50	141	74758	472807	944923	12672	72	0
49579	MN	BRAINERD	22	28	46.8	227		462521	942742	15201	153	0
82698	MN	CHISHOLM	11	11	12.2	200	74723	475139	925646	22244	112	2.9
132606	MN	CROOKSTON		16	105	220	38385	475838	963618	15345	124	0
17726	MN	DULUTH	8	8	17.4	290	80226	464731	920721	27233	271	1
71338	MN	DULUTH	10	10	17.5	301	84848	464713	920717	27702	274	0.2
35525	MN	DULUTH	21	17	1000	299		464737	920703	30737	294	0.2
166511	MN	DULUTH	27	27	50	268	80242	464715	920721	13164	204	0.4
4691	MN	DULUTH	3	33	381	312		464721	920651	24856	252	0
71336	MN	HIBBING	13	13	3.9	211	74522	472253	925715	15849	116	0.2
159007	MN	HIBBING		31	500	212	59939	472253	925715	16478	118	0
68853	MN	MANKATO	12	12	15.3	317	84856	435614	942441	29045	399	0.9
68883	MN	MINNEAPOLIS	9	9	17.9	435	74995	450330	930727	34544	3381	0.6
23079	MN	MINNEAPOLIS	11	11	24	435	74511	450344	930821	36645	3437	0.1
36395	MN	MINNEAPOLIS	23	22	1000	410	30005	450344	930821	33367	3310	0
11913	MN	MINNEAPOLIS	29	29	1000	352	74442	450330	930727	29943	3302	0
9629	MN	MINNEAPOLIS	4	32	1000	432		450344	930821	37736	3468	0
35843	MN	MINNEAPOLIS	45	45	1000	430		450345	930821	35610	3421	0
35585	MN	REDWOOD FALLS	43	27	50	167	74875	442903	952927	10112	84	0
35678	MN	ROCHESTER	10	10	16.8	381	74523	433415	922537	31210	565	0.9
35906	MN	ROCHESTER	47	46	1000	343	28767	433834	923135	19950	424	0.7
35907	MN	ST. CLOUD	41	40	1000	430	64438	452300	934230	30570	3263	0
68597	MN	ST. PAUL	17	26	63.1	396	74396	450329	930727	19236	3053	0
68594	MN	ST. PAUL	2	34	662	411	75131	450330	930727	30531	3331	0.2
28010	MN	ST. PAUL	5	35	755	433		450344	930821	35389	3408	0.1
55370	MN	THIEF RIVER FALLS	10	10	9.7	113	74660	480119	962212	16952	121	0.3
9640	MN	WALKER	12	12	14.3	283	74436	465603	942725	26923	214	1.5
71558	MN	WORTHINGTON	20	15	200	290	33521	435352	955650	19967	290	0
592	MO	CAPE GIRARDEAU	12	12	4.01	564	74661	372546	893014	32285	689	0.5
19593	MO	CAPE GIRARDEAU	23	22	435	543	66965	372423	893344	31966	691	1
65583	MO	COLUMBIA	8	8	13.6	242	80227	385316	921548	25205	492	0.5
63164	MO	COLUMBIA	17	17	50	348		384629	923322	20656	475	0
4690	MO	HANNIBAL	7	7	13.6	271	75011	395822	911954	25042	309	0.2
41110	MO	JEFFERSON CITY	13	12	15.1	308		384130	920544	27879	590	0.7
48521	MO	JEFFERSON CITY	25	20	1000	293	29933	384215	920521	25334	533	0.2
51101	MO	JOPLIN	26	25	55	281		370437	943215	17523	402	0
18283	MO	JOPLIN	12	43	1000	269		370437	943215	25289	533	1.6
67766	MO	JOPLIN	16	46	175	322		370433	943316	21648	461	0.2
65686	MO	KANSAS CITY	9	9	85	357	74967	390501	943057	34707	2334	0
53843	MO	KANSAS CITY	19	18	55	355		390459	942849	21206	2033	0
41230	MO	KANSAS CITY	5	24	1000	319	67335	390414	943457	29705	2259	0
64444	MO	KANSAS CITY	29	31	1000	332		390501	943057	31265	2227	0.1
11291	MO	KANSAS CITY	4	34	1000	344	74877	390420	943545	31293	2286	0.5
59444	MO	KANSAS CITY	41	42	450	276	43791	385842	943201	21585	1987	0
33336	MO	KANSAS CITY	62	47	1000	356		390526	942818	31520	2174	0
33337	MO	KANSAS CITY	50	51	1000	339		390120	943049	30240	2158	0
21251	MO	KIRKSVILLE	3	33	87	290	44120	403147	922629	15915	149	0
166319	MO	OSAGE BEACH	49	49	204	463	80245	374910	924452	23362	524	0
73998	MO	POPLAR BLUFF	15	15	50	184	74417	364804	902706	11945	143	1.2
4326	MO	SEDALIA	6	15	322	603		383736	925203	41154	733	0.1
28496	MO	SPRINGFIELD	10	10	19.6	573	74595	371308	925656	41152	838	0.3
35630	MO	SPRINGFIELD	33	19	1000	596		371308	925656	47586	935	0.1
51102	MO	SPRINGFIELD	21	23	100	617		371011	925630	33191	715	0
3659	MO	SPRINGFIELD	27	28	1000	493		371308	925656	41263	844	0.5
36003	MO	SPRINGFIELD	3	44	967	628		371026	925627	43607	870	2.2
20427	MO	ST. JOSEPH	2	7	7.45	247	74608	394612	944753	21812	952	2.6
999	MO	ST. JOSEPH	16	21	1000	316	68463	390120	943049	27013	2118	0
48525	MO	ST. LOUIS	24	14	1000	396	33092	382140	903254	32831	2821	0
70034	MO	ST. LOUIS	4	24	540	335	74644	383147	901758	29120	2842	0
35417	MO	ST. LOUIS	11	26	1000	288		383424	901930	29590	2841	0
56524	MO	ST. LOUIS	30	31	1000	321		383450	901945	31023	2858	0
46981	MO	ST. LOUIS	5	35	1000	332	74879	383405	901955	31112	2855	0.1
62182	MO	ST. LOUIS	9	39	991	326	74880	382856	902353	29480	2832	0.1
35693	MO	ST. LOUIS	2	43	1000	337		383207	902223	30721	2851	0
13995	MS	BILOXI	13	13	14.1	366	74542	304323	890528	27980	951	4.8
43197	MS	BILOXI	19	16	150	477	45861	304518	885644	25127	877	16.8

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
43170	MS	BOONEVILLE	12	12	5.89	227	74629	344000	884505	20440	418	2.9
43184	MS	BUDE	17	18	1000	341		312222	904504	34462	721	0
12477	MS	COLUMBUS	4	35	1000	610	74881	334506	885240	44464	727	3.8
83735	MS	COLUMBUS		43	81	204	43679	335031	884148	18843	412	2.6
25236	MS	GREENVILLE	15	15	330	269		333926	904218	23434	322	0
43176	MS	GREENWOOD	23	25	625	317		332234	903232	28909	387	3.6
43203	MS	GREENWOOD	6	32	1000	572	68863	332223	903225	34348	442	0.9
53517	MS	GULFPORT	25	48	300	456	28507	304448	890330	26058	946	14.2
48668	MS	HATTIESBURG	22	22	140	244		312420	891413	18687	353	0.1
60830	MS	HOLLY SPRINGS	40	41	500	122		345920	894113	16080	1279	0.1
83310	MS	HOUSTON	45	45	537	491	72853	334739	890515	27543	525	0
68542	MS	JACKSON	3	7	7	393		321249	902256	28100	725	0.2
48667	MS	JACKSON	12	12	20.3	497	84857	321426	902415	38592	854	0.1
43168	MS	JACKSON	29	20	400	482		321129	902422	36368	826	0.1
49712	MS	JACKSON	16	21	1000	332	39758	321641	901740	28450	740	2.5
71326	MS	JACKSON	40	40	981	598	80223	321249	902256	40292	886	0
166512	MS	JACKSON	51	51	184	384	80213	321426	902415	24384	681	0.7
21250	MS	LAUREL	7	28	79	128	42804	312712	891705	11124	251	0.1
136749	MS	MAGEE	34	34	98.7	305	75071	320718	893239	19444	680	0.4
4686	MS	MERIDIAN	11	11	11.8	165	84852	321938	884128	21080	294	2
73255	MS	MERIDIAN	24	24	956	170	74996	321940	884131	18636	278	0.1
24314	MS	MERIDIAN	30	31	1000	183	27899	321940	884131	18932	263	0.3
43169	MS	MERIDIAN	14	44	880	369		320818	890536	31834	662	0
43192	MS	MISSISSIPPI STATE	2	10	4.3	349		332114	890900	24623	370	0.3
16539	MS	NATCHEZ	48	49	1000	313	38528	314008	914130	24104	338	0.4
43193	MS	OXFORD	18	36	225	421	33510	341728	894221	23767	905	2.1
74148	MS	TUPELO	9	8	9	542	74662	334740	890516	35700	634	3.2
84253	MS	VICKSBURG	35	41	209	253	84840	321935	903703	11835	445	16.2
37732	MS	WEST POINT	27	16	450	494	39741	334740	890516	33099	599	0.6
35694	MT	BILLINGS	2	10	26.1	180		454601	1082726	21980	155	0
35724	MT	BILLINGS	8	11	14.5	229	74882	454535	1082714	21681	152	0
5243	MT	BILLINGS	6	18	1000	228		454826	1082025	24478	153	0
43567	MT	BOZEMAN	9	8	17.9	271	69541	454024	1105202	14163	84	0.3
33756	MT	BOZEMAN	7	13	18.9	271	67232	454024	1105202	13985	84	0
35959	MT	BUTTE	4	5	10.7	588	43752	460027	1122630	43135	183	0
18066	MT	BUTTE	6	6	11.2	591	80201	460027	1122630	42931	192	0
14674	MT	BUTTE	18	19	125	585	42948	460024	1122630	15884	65	0
81438	MT	BUTTE	24	24	50	570	74755	460024	1122630	15762	67	0
24287	MT	GLENDIVE	5	10	30	152		470315	1044045	20893	21	1.3
35567	MT	GREAT FALLS	3	7	28.5	150	73758	473209	1111702	19067	89	0
34412	MT	GREAT FALLS	5	8	28.6	180		473208	1111702	22360	91	0
81331	MT	GREAT FALLS	26	26	50	65	74759	473223	1111706	8905	84	0
13792	MT	GREAT FALLS	16	45	157	300	30029	473626	1112127	16946	90	0
47670	MT	HARDIN	4	22	1000	248		454424	1080818	24748	151	0
83689	MT	HAVRE	9	9	3.2	389	74719	482032	1094341	22474	25	0
5290	MT	HELENA	12	12	9.36	697	74375	464935	1114233	26659	152	0
68717	MT	HELENA	10	29	43.4	697	68037	464935	1114233	14425	139	0
18079	MT	KALISPELL	9	9	3.2	850	80210	480048	1142155	28213	110	0
84794	MT	LEWISTOWN	13	13	3.2	636	74726	471046	1093205	25112	16	0.4
5237	MT	MILES CITY	3	3	1.03	30	74367	462534	1055138	7580	11	0
35455	MT	MISSOULA	8	7	22.5	654		470106	1140041	36798	170	0
66611	MT	MISSOULA	11	11	3.2	631	74999	464809	1135821	18430	132	0
18084	MT	MISSOULA	13	13	26.7	610	80239	470104	1140047	35664	168	0.1
81348	MT	MISSOULA	17	17	50	628	74739	464808	1135819	16846	132	0
14675	MT	MISSOULA	23	23	92.6	618	74525	470110	1140046	18786	150	0
56537	NC	ASHEVILLE	13	13	29.8	853	70317	352532	824525	37735	2348	2.1
69300	NC	ASHEVILLE	33	25	185	797	41130	352532	824525	22420	1437	5.8
70149	NC	ASHEVILLE	62	45	1000	555		351320	823258	34531	2043	0.1
73152	NC	BELMONT	46	47	1000	595		352144	810919	40397	3404	0.6
65074	NC	BURLINGTON	16	14	95	213		361454	793921	16777	1712	1.1
69080	NC	CHAPEL HILL	4	25	300	448	69110	355159	791000	26537	2744	0.4
10645	NC	CHARLOTTE	42	11	2.2	363		351714	804145	20685	2180	3.7
32326	NC	CHARLOTTE	36	22	791	577	64697	352049	811015	36927	3095	1.4
30826	NC	CHARLOTTE	3	23	1000	565		352151	811113	43975	3599	0.1
49157	NC	CHARLOTTE	18	27	1000	368	28621	351601	804405	30079	2748	6.1
74070	NC	CHARLOTTE	9	34	1000	348		351541	804338	31482	2747	5.7
69124	NC	CONCORD	58	44	149	422	74886	352130	803637	24194	2537	3.7
8617	NC	DURHAM	11	11	19.2	607	74597	354005	783158	40935	2807	4.5
54963	NC	DURHAM	28	28	225	610		354028	783140	36204	2685	1.5
69292	NC	EDENTON	2	20	543	489		355400	762045	39125	1359	0
21245	NC	FAYETTEVILLE	62	36	1000	242	36997	345305	790429	20290	985	0.2
16517	NC	FAYETTEVILLE	40	38	500	509	60837	353044	785841	33401	2898	0.6
50782	NC	GOLDSBORO	17	17	244	628	70663	354029	783140	32343	2496	7
25544	NC	GREENSBORO	48	33	700	575	38478	355203	794926	33109	2816	11.6
54452	NC	GREENSBORO	61	43	105	527	42438	355202	794926	25142	2207	5.7
72064	NC	GREENSBORO	2	51	1000	569		355213	795025	41290	3777	5.9
57838	NC	GREENVILLE	9	10	35	575		352155	772338	45399	1370	15.8
35582	NC	GREENVILLE	14	14	50	205		352644	772208	15450	649	0
69149	NC	GREENVILLE	25	23	71	331	42548	353310	773606	17438	801	0.1
81508	NC	GREENVILLE	38	51	90.7	155	74769	352409	772510	13446	594	0.1

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
65919	NC	HICKORY	14	40	600	182	67111	354359	811951	11030	776	19.1
72106	NC	HIGH POINT	8	8	15	398	70590	354846	795029	29992	2769	3.7
69444	NC	JACKSONVILLE	19	19	66.6	561	74418	350618	772015	23999	799	0.4
37971	NC	JACKSONVILLE	35	34	600	199	41098	343110	772652	18502	568	0
12793	NC	KANNAPOLIS	64	50	50	348		351541	804338	18157	2047	2.1
35385	NC	LEXINGTON	20	19	800	576		355202	794926	44456	4288	2
69114	NC	LINVILLE	17	17	61.6	546	74613	360347	815033	18558	1085	4.1
69416	NC	LUMBERTON	31	31	109	319	69624	344750	790242	17337	889	3.5
76324	NC	MANTEO	4	9	21.3	274	74336	363254	761116	29530	1725	0
37982	NC	MOREHEAD CITY	8	8	9.88	216	74470	345301	763021	20774	299	0
18334	NC	NEW BERN	12	12	22.2	591	80237	350618	772015	42635	1324	2.9
73205	NC	RALEIGH	22	27	568	610		354028	783140	41286	2847	2.8
8688	NC	RALEIGH	5	48	916	629	69133	354029	783139	41666	2852	0.1
64611	NC	RALEIGH	50	49	1000	614		354029	783140	44278	2980	0.1
69397	NC	ROANOKE RAPIDS	36	36	50	368	74543	361728	775010	19141	604	8.4
20590	NC	ROCKY MOUNT	47	15	180	354	36353	360611	781129	22787	1759	0.1
594	NC	WASHINGTON	7	32	806	594	74887	352155	772338	44561	1497	1.1
69332	NC	WILMINGTON	39	29	700	297		341916	781343	28039	801	0.3
72871	NC	WILMINGTON	26	30	80	590	73235	340753	781117	26462	609	0
48666	NC	WILMINGTON	6	44	575	280	59015	341916	781343	20378	591	0
12033	NC	WILMINGTON	3	46	1000	594	74888	340751	781116	44363	1060	0
10133	NC	WILSON	30	42	873	539	68096	354953	780850	32166	2162	2
414	NC	WINSTON-SALEM	45	29	990	576	39890	355203	794926	37521	3484	4.8
53921	NC	WINSTON-SALEM	12	31	815	572		362231	802226	37577	2625	4.2
69360	NC	WINSTON-SALEM	26	32	263	504	74889	362234	802214	22287	1868	6.9
55686	ND	BISMARCK	12	12	19.1	466	74459	463517	1004826	35627	127	0.3
22121	ND	BISMARCK	17	16	1000	275	68012	463515	1004820	25005	113	0
53324	ND	BISMARCK	3	22	97.3	392	18952	463523	1004802	21415	110	0
82611	ND	BISMARCK	26	26	50	300	74760	463523	1004739	17826	104	0
41427	ND	BISMARCK	5	31	500	389	73210	463620	1004822	26522	118	0
22124	ND	DEVILS LAKE	8	8	16.2	451	74687	480824	975938	35778	150	0
162016	ND	DEVILS LAKE		25	134	245	66852	480348	992009	18198	39	0
41430	ND	DICKINSON	7	7	11.3	223	74419	465649	1025917	22461	33	0.9
53329	ND	DICKINSON	9	9	8.35	246	74437	464334	1025456	22539	36	0
55684	ND	DICKINSON	2	19	50	217	59817	464335	1025457	13157	28	0
53315	ND	ELLENDALE	19	20	72.3	163	64873	461756	985156	13632	18	0
53321	ND	FARGO	13	13	11.4	344	74460	470048	971137	28996	257	0
55372	ND	FARGO	15	19	1000	379	28940	464029	961340	28028	320	0.1
22129	ND	FARGO	6	21	1000	356		470028	971202	34973	345	0
61961	ND	FARGO	11	44	356	576	73213	472032	971720	31290	314	0
53320	ND	GRAND FORKS	2	15	50	408	74645	480818	975935	20362	116	0
86208	ND	GRAND FORKS	27	27	50	96	74762	475745	970312	11054	108	0
55364	ND	JAMESTOWN	7	7	13	135	80206	465530	984621	18175	42	0.5
41425	ND	MINOT	10	10	7.69	207	80232	481256	1011905	21143	75	1.7
55685	ND	MINOT	13	13	16.1	344	74570	480302	1012029	29701	89	0
22127	ND	MINOT	14	14	60	216		480311	1012305	16113	70	0
82615	ND	MINOT	24	24	50	239	74756	480314	1012603	15862	69	0
53313	ND	MINOT	6	40	146	249	59853	480302	1012325	15514	70	0
55362	ND	PEMBINA	12	12	28.7	413	74382	485944	972428	35647	43	0.1
49134	ND	VALLEY CITY	4	38	382	573	73275	471645	972026	32236	317	0
41429	ND	WILLISTON	8	8	7.21	323	74598	480802	1035136	24857	38	0
55683	ND	WILLISTON	11	14	50	257	59878	480830	1035334	14655	32	0.5
53318	ND	WILLISTON	4	51	53.9	248	64823	480830	1035334	12463	31	0
47996	NE	ALLIANCE	13	13	20.9	469	74471	415024	1030318	33136	89	1.5
47981	NE	BASSETT	7	7	18.7	453	74383	422005	992901	35064	41	3.3
7894	NE	GRAND ISLAND	11	11	15.2	308	74493	403520	984810	28343	219	0.3
27220	NE	GRAND ISLAND	17	19	1000	186	28644	404344	983413	18605	195	0
48003	NE	HASTINGS	5	5	6.78	223	80198	403906	982304	28719	229	0
47987	NE	HASTINGS	29	28	200	366	39665	404620	980521	22116	179	0.1
21162	NE	HAYES CENTER	6	18	1000	216	74892	403729	1010158	24515	76	0
21160	NE	KEARNEY	13	36	753	338	74893	403928	985204	30484	227	0
47975	NE	LEXINGTON	3	26	375	251	32442	402305	992730	19875	107	0
11264	NE	LINCOLN	8	8	17.8	440	75015	405259	971820	35535	695	2.8
7890	NE	LINCOLN	10	10	18.4	454	74987	404808	971046	36426	887	0.4
66589	NE	LINCOLN	12	12	8.16	253	74553	410818	962719	23215	1145	0.1
84453	NE	LINCOLN	51	51	200	461	74786	404738	971422	25974	454	0
72362	NE	MCCOOK	8	12	10.4	218		394948	1004204	23270	48	0.3
47971	NE	MERRIMAN	12	12	15.7	328	74407	424038	1014236	26524	27	1.8
47995	NE	NORFOLK	19	19	53.8	348	74397	421415	971641	15941	214	5.9
49273	NE	NORTH PLATTE	2	2	6.75	192	80195	411213	1004358	27013	67	0
47973	NE	NORTH PLATTE	9	9	15.5	311	74398	410116	1010910	28103	66	0
23277	NE	OMAHA	15	15	295	475		410416	961331	34708	1240	0
47974	NE	OMAHA	26	17	200	117		411528	960032	15002	836	0
53903	NE	OMAHA	7	20	700	396		411832	960133	35092	1220	0
65528	NE	OMAHA	6	22	1000	398		411840	960137	37205	1242	0
51491	NE	OMAHA	42	43	700	475		410414	961333	36280	1255	0
35190	NE	OMAHA	3	45	1000	426		411824	960136	35409	1221	0.3
17683	NE	SCOTTSBLUFF	4	7	32	475		415028	1030427	37186	95	3.4
136747	NE	SCOTTSBLUFF	16	17	91.5	238	74736	415023	1034935	14585	56	0.2
63182	NE	SCOTTSBLUFF	10	29	1000	256	74894	415958	1033955	24074	74	1.1

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
21161	NE	SUPERIOR	4	34	1000	344	74895	400515	975512	31807	185	0.1
48406	NH	CONCORD	21	33	100	344	42932	431104	711912	16703	2327	3.5
14682	NH	DERRY	50	35	7.3	191		424407	712331	8996	3843	2.3
69237	NH	DURHAM	11	11	15.8	302	80234	431033	711229	26397	4074	0.5
69271	NH	KEENE	52	49	50	329	74896	430200	722204	11793	404	5
69328	NH	LITTLETON	49	48	50	390	74897	442114	714423	11253	131	0
73292	NH	MANCHESTER	9	9	7.11	305	74688	425902	713524	20862	4589	2.6
51864	NH	MERRIMACK	60	34	80	293	28154	425902	713520	13421	3094	4
9739	NJ	ATLANTIC CITY		44	200	284	40339	394341	745039	13582	5320	11
23142	NJ	ATLANTIC CITY	62	49	130	296	27898	393753	742112	15516	1908	0.2
7623	NJ	BURLINGTON	48	27	160	354	68951	400230	751411	19775	7092	4.5
48481	NJ	CAMDEN	23	22	197	266		394341	745039	20659	6862	0
73333	NJ	LINDEN	47	36	832	408	42433	404454	735910	28663	19700	1.6
48477	NJ	MONTCLAIR	50	51	200	238		405153	741203	16560	17216	0.3
48457	NJ	NEW BRUNSWICK	58	8	20.2	212	32754	403717	743015	20769	16912	10.5
18795	NJ	NEWARK	13	13	3.2	500	74696	404243	740049	25695	19240	1.6
60555	NJ	NEWARK	68	30	189	321	80192	404522	735912	16609	17182	2.8
43952	NJ	NEWTON	63	18	1000	250	67170	405153	741203	18520	17260	0
74215	NJ	PATERSON	41	40	300	421	29858	404454	735910	23316	19038	0.4
74197	NJ	SECAUCUS	9	38	136	500	74898	404243	740049	26502	19428	0.3
48465	NJ	TRENTON	52	43	50	271	74899	401700	744120	14079	8751	11.3
60560	NJ	VINELAND	65	29	225	396	72018	400230	751411	20524	7421	5.7
20818	NJ	WEST MILFORD	66	29	200	167	33869	404718	741519	8192	13959	12.2
61111	NJ	WILDWOOD	40	36	200	128		390728	744556	14738	739	0.9
53928	NM	ALBUQUERQUE	7	7	27.6	1243	74445	351253	1062701	53948	961	0
48575	NM	ALBUQUERQUE	13	13	7.03	1287	74399	351240	1062657	43540	925	0
1151	NM	ALBUQUERQUE	32	17	65.6	1247	58949	351251	1062701	34322	913	0
57220	NM	ALBUQUERQUE	14	22	303	376	74730	352444	1064332	16156	820	0
993	NM	ALBUQUERQUE	23	24	200	1243		351254	1062702	47308	935	0
35313	NM	ALBUQUERQUE	4	26	270	1277		351242	1062658	48914	934	0.1
55528	NM	ALBUQUERQUE	5	35	250	1287		351249	1062701	46539	929	0
35084	NM	ALBUQUERQUE	41	42	321	1262		351241	1062656	46959	928	0
55049	NM	ALBUQUERQUE	50	45	245	1287	41944	351248	1062700	42560	921	0
53908	NM	CARLSBAD	6	19	912	333		324738	1041229	32390	153	0.6
83707	NM	CARLSBAD	25	25	50	134	74757	322609	1041114	11804	51	0
40450	NM	CLOVIS	12	20	598	204	74900	341134	1031644	21451	87	0
53904	NM	FARMINGTON	3	8	40	166		364017	1081352	23531	151	0
35321	NM	FARMINGTON	12	12	13.7	125	84833	364143	1081314	16977	138	0
27431	NM	HOBBS	29	29	67.4	159	74400	324328	1030546	13761	81	0
55516	NM	LAS CRUCES	22	23	200	205	68952	321733	1064151	15162	540	0
36916	NM	LAS CRUCES	48	47	200	134	74901	320230	1062741	8205	693	0
18338	NM	PORTALES	3	32	82.6	190		341508	1031420	15679	81	0
62272	NM	ROSWELL	8	8	20.8	499	74533	332231	1034612	38887	159	0
48556	NM	ROSWELL	10	10	24.3	610	74558	330320	1034912	43742	187	0.1
84157	NM	ROSWELL	21	21	164	128	74747	330601	1041515	11510	77	0
53539	NM	ROSWELL	27	27	50	115	74474	332458	1043359	7382	63	0
84215	NM	SANTA FE		9	0.2	1241	67438	351245	1062658	20827	857	0.8
60793	NM	SANTA FE	11	10	30	608		354648	1063133	38985	904	1.3
32311	NM	SANTA FE	2	27	255	1278		351250	1062701	48241	933	0.2
76268	NM	SANTA FE	19	29	245	1289		351244	1062657	47629	935	0
53911	NM	SILVER CITY	10	10	3.2	485	74976	325146	1081428	22295	59	0.2
85114	NM	SILVER CITY	6	12	3.2	502	74712	325149	1081427	16454	58	0
63845	NV	ELKO	10	10	3.2	557		404152	1155413	21628	36	0
86537	NV	ELY	3	3	1	279	74709	391446	1145536	6317	8	0
86538	NV	ELY	6	27	1000	270	74713	391553	1145335	13318	8	0
86201	NV	GOLDFIELD	7	50	50	448	74716	380305	1171330	8739	3	0
35870	NV	HENDERSON	5	9	86	385		360026	1150022	29838	1362	0.1
69677	NV	LAS VEGAS	3	2	27.7	384		360030	1150020	41187	1418	0.1
35042	NV	LAS VEGAS	8	7	30.1	609		355644	1150233	33021	1366	0
11683	NV	LAS VEGAS	10	11	105	371		360027	1150024	30092	1360	0
74100	NV	LAS VEGAS	13	13	16	606		355643	1150232	27920	1363	0
67089	NV	LAS VEGAS	15	16	1000	571	36067	355646	1150234	24277	1352	0
10179	NV	LAS VEGAS	21	22	630	383	73225	360028	1150024	18735	1351	0
10195	NV	LAS VEGAS	33	29	1000	383	73223	360028	1150024	19334	1351	0
41237	NV	LAUGHLIN	34	32	1000	607	66737	353907	1141842	27099	1276	0.1
63768	NV	PARADISE	39	40	200	357		360036	1150020	14586	1350	0
60307	NV	RENO	4	7	16.1	879		391857	1195302	39288	677	3
63331	NV	RENO	8	8	15.6	893	80185	391849	1195300	39660	667	2.6
59139	NV	RENO	2	13	16.1	876		391857	1195302	38571	678	0.3
10228	NV	RENO	5	15	50	140	74902	393501	1194752	6245	389	0
19191	NV	RENO	21	20	53	176	42485	393503	1194751	6065	363	0
51493	NV	RENO	27	26	1000	894	28095	391847	1195259	36813	577	0.5
48360	NV	RENO	11	44	1000	836	44000	393523	1195537	19310	403	0
86643	NV	TONOPAH	9	9	3.2	448	74720	380305	1171330	12955	3	0
63846	NV	WINNEMUCCA	7	7	3.2	650		410041	1174559	23096	17	0
11970	NY	ALBANY	23	7	10	434		423731	740038	26077	1488	1.1
73363	NY	ALBANY	13	12	9.1	436		423731	740038	26438	1477	0.2
74422	NY	ALBANY	10	26	700	426	67986	423731	740038	27072	1496	1.5
13933	NY	AMSTERDAM	55	50	450	207	38556	425904	741056	13763	993	0
2325	NY	BATAVIA	51	23	445	279	74609	425342	780056	19868	2211	0.5

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
72623	NY	BATH	14	14	50	318	74731	421828	771317	15650	468	14.6
23337	NY	BINGHAMTON	12	7	20.4	342		420331	755706	27192	1000	1.9
62210	NY	BINGHAMTON	40	8	7.9	371	70921	420322	755639	21243	751	1.4
11260	NY	BINGHAMTON	34	34	450	263	70326	420339	755636	16714	635	2.2
74034	NY	BINGHAMTON	46	42	50	408		420340	755645	17846	603	1.2
415	NY	BUFFALO	29	14	1000	300	76608	430132	785543	20685	1403	1.1
71905	NY	BUFFALO	23	32	1000	303		430148	785515	28159	1513	2.1
64547	NY	BUFFALO	2	33	480	295		424307	783347	22900	1848	1.2
67784	NY	BUFFALO	49	34	175	288	78226	430132	785543	12091	1291	1.9
54176	NY	BUFFALO	7	38	358	433		423815	783712	29175	1990	0.2
7780	NY	BUFFALO	4	39	790	417		423933	783733	32947	2280	0.1
71928	NY	BUFFALO	17	43	156	330	74905	430148	785515	21439	1386	0.1
68851	NY	CARTHAGE	7	7	15.1	221	84827	435716	754345	22614	259	5.6
78908	NY	CORNING	30	30	25	334	76601	420830	770439	12414	352	2.1
62219	NY	CORNING	48	48	50	166	75045	420943	770215	9513	285	1
60653	NY	ELMIRA	18	18	90	363	70327	420622	765217	16933	606	3.1
71508	NY	ELMIRA	36	36	50	320	74631	420620	765217	15737	545	0.2
38336	NY	GARDEN CITY	21	21	89.9	111	74455	404719	732709	10930	13638	0.1
34329	NY	ITHACA	52	20	0.015	1		422546	762948	382	66	2.6
30303	NY	JAMESTOWN	26	26	234	463	75000	422336	791344	22922	1548	0.2
74156	NY	KINGSTON		48	950	378	65356	412918	735656	23706	14181	1.2
1328	NY	NEW YORK	7	7	3.2	491	74571	404243	740049	26537	19365	0.9
73881	NY	NEW YORK	11	11	3.2	506	80235	404243	740049	26002	19228	2
6048	NY	NEW YORK	25	24	151	310		404522	735912	20860	18221	1.3
47535	NY	NEW YORK	4	28	164	515	74906	404243	740049	28669	19696	1
73356	NY	NEW YORK	31	31	225	458	74482	404243	740049	20490	17944	5.8
9610	NY	NEW YORK	2	33	239	482	74646	404243	740049	26765	19217	3.4
22206	NY	NEW YORK	5	44	225	515	74907	404243	740049	27036	19135	3.6
57476	NY	NORTH POLE	5	14	650	845	72521	443132	724858	39057	642	0
62137	NY	NORWOOD	18	23	40	242		442929	745127	14994	163	0.1
46755	NY	PLATTSBURGH	57	38	100	737	66309	444143	735300	26048	413	0
67993	NY	POUGHKEEPSIE	54	27	800	358	43683	412920	735653	23834	10810	34.2
73206	NY	RIVERHEAD	55	47	410	196	72009	405350	725456	14328	4541	1
70041	NY	ROCHESTER	10	10	12.7	152	84849	430807	773502	20451	1207	0
73371	NY	ROCHESTER	13	13	5.83	152	74689	430807	773503	17099	1134	0.7
57274	NY	ROCHESTER	21	16	180	130	68025	430807	773503	12874	1118	0.1
413	NY	ROCHESTER	31	28	320	161	66841	430805	773507	13190	1127	0
73964	NY	ROCHESTER	8	45	1000	122	69994	430807	773502	15154	1146	0.4
77515	NY	SARANAC LAKE	40	40	50	440	74774	440935	742834	11926	38	1.7
73942	NY	SCHENECTADY	6	6	4.46	426	74544	423731	740038	30364	1567	1.7
73263	NY	SCHENECTADY	17	34	325	426		423731	740038	24147	1423	0.8
73264	NY	SCHENECTADY	45	43	676	413	67289	423731	740038	24332	1399	0.9
60553	NY	SMITHTOWN	67	23	150	204	39829	405323	725713	13615	4096	15.2
9088	NY	SPRINGVILLE	67	7	15.5	411	74575	423814	783711	16459	1363	1.1
64352	NY	SYRACUSE	56	15	78.2	379	74790	431818	760300	17835	1053	0.8
73113	NY	SYRACUSE	9	17	105	402	44725	425642	760128	22102	1222	0.1
40758	NY	SYRACUSE	68	19	621	445	29285	425250	761200	29954	1648	0.3
21252	NY	SYRACUSE	3	24	210	405		425642	760707	26516	1368	0.1
53734	NY	SYRACUSE	24	25	97	393		425642	760707	22555	1272	0.1
58725	NY	SYRACUSE	43	44	680	445	68111	425250	761200	27037	1403	0
74151	NY	SYRACUSE	5	47	500	290		425719	760634	22565	1246	0
43424	NY	UTICA	33	27	688	433	59327	430213	752641	25154	1066	2.1
60654	NY	UTICA	2	29	708	402	45240	430609	745627	28378	1294	3.3
57837	NY	UTICA	20	30	50	227	45963	430843	751035	10520	449	8.4
16747	NY	WATERTOWN	50	21	25	331	44780	435247	754312	15745	186	0
62136	NY	WATERTOWN	16	41	50	370	74911	435144	754340	18784	234	0.3
70491	OH	AKRON	23	23	317	296	74690	410353	813459	21976	4065	0.2
72958	OH	AKRON	55	30	1000	331	71743	412302	814144	25072	3710	0
49421	OH	AKRON	49	50	180	305		410458	813802	18680	3641	6.7
49439	OH	ALLIANCE	45	45	388	223	74576	405423	805439	15811	2304	0
50147	OH	ATHENS	20	27	250	242		391852	820859	19481	708	1.9
6568	OH	BOWLING GREEN	27	27	110	320		410812	835424	21416	1313	0
50141	OH	CAMBRIDGE	44	35	310	385	68039	400532	811719	24017	1218	1.1
67893	OH	CANTON	17	39	200	292		410320	813538	20718	3970	1
43870	OH	CANTON	67	47	1000	134	40562	410633	812010	15841	3693	0
21158	OH	CHILLICOTHE	53	46	1000	328	33138	393520	830644	27391	2595	0.2
59438	OH	CINCINNATI	9	10	15.4	305	75072	390731	842957	27029	3082	0.6
11289	OH	CINCINNATI	12	12	15.6	305	75016	390658	843005	26169	3013	1.9
11204	OH	CINCINNATI	64	33	500	337	39190	391201	843122	24994	3100	0
65666	OH	CINCINNATI	48	34	400	326	78227	390727	843118	23378	2979	0.1
46979	OH	CINCINNATI	5	35	1000	311		390727	843118	29790	3176	0.1
73150	OH	CLEVELAND	8	8	15.7	305	75017	412147	814258	27926	3964	1.5
59441	OH	CLEVELAND	5	15	1000	311	75073	412227	814306	31477	4147	3.2
73195	OH	CLEVELAND	3	17	1000	296	84838	412310	814121	30387	4263	0
18753	OH	CLEVELAND	25	26	100	313	42131	412028	814425	18860	3498	0.1
60556	OH	CLEVELAND	61	34	525	334	40362	412258	814207	25232	3931	0.3
56549	OH	COLUMBUS	6	13	59	286	39803	395614	830116	26405	2526	10.4
50781	OH	COLUMBUS	4	14	902	264		395816	830140	28164	2467	0.4
71217	OH	COLUMBUS	10	21	1000	279		395816	830140	28074	2497	2.6
74137	OH	COLUMBUS	28	36	1000	271		395614	830116	25893	2312	1.6

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
66185	OH	COLUMBUS	34	38	250	291		400933	825523	21605	2191	0.4
25067	OH	DAYTON	16	16	126	320		394316	841500	21274	3118	2.2
411	OH	DAYTON	45	30	425	351	29247	394328	841518	22696	2885	7
41458	OH	DAYTON	7	41	1000	290	67218	394402	841453	24364	3196	0.5
65690	OH	DAYTON	2	50	1000	323		394307	841522	29198	3497	0.3
73155	OH	DAYTON	22	51	138	351		394328	841518	21345	3050	1.9
37503	OH	LIMA	35	8	27.5	148	72830	404451	840755	22513	995	8.8
1222	OH	LIMA	44	44	47.4	207	84841	404547	841059	14071	556	0.1
8532	OH	LORAIN	43	28	200	337	38130	412245	814312	22230	3706	0
41893	OH	MANSFIELD	68	12	14	180	69497	404550	823704	19484	1109	12.2
11118	OH	NEWARK	51	24	1000	132	39194	400445	824141	18218	1935	0.2
25065	OH	OXFORD	14	28	400	268	43343	390719	843252	20730	2781	0
65130	OH	PORTSMOUTH	30	17	50	358	75391	384542	830341	12136	492	0.7
66190	OH	PORTSMOUTH	42	43	50	382		384542	830341	19181	604	8.3
11027	OH	SANDUSKY	52	42	700	213	41148	412348	824731	18330	1542	0.1
39746	OH	SHAKER HEIGHTS	19	10	3.5	304	19316	412315	814143	18665	3558	1.3
70138	OH	SPRINGFIELD	26	26	50	291	74421	394328	841518	15181	2003	0.9
74122	OH	STEUBENVILLE	9	9	8.82	261	74665	402033	803714	21161	2829	0.1
17076	OH	TOLEDO	40	5	10	155	43356	414441	840106	18262	2235	17.4
13992	OH	TOLEDO	11	11	13.1	263	74409	414022	832247	22521	2387	0.5
74150	OH	TOLEDO	13	13	14.6	305	84861	414100	832449	22715	2547	3
66285	OH	TOLEDO	30	29	50	314	75078	413927	832555	18428	2208	0
19190	OH	TOLEDO	36	46	110	356	40304	413922	832641	18875	2041	0.8
73354	OH	TOLEDO	24	49	59	409	42576	414003	832122	18182	1915	0
72062	OH	YOUNGSTOWN	21	20	460	295	43442	410448	803825	23468	3296	0
4693	OH	YOUNGSTOWN	33	36	50	148		410343	803807	12151	1299	3.1
73153	OH	YOUNGSTOWN	27	41	700	418		410324	803844	29686	3817	26.3
61216	OH	ZANESVILLE	18	40	620	169		395542	815907	18268	818	1.3
35666	OK	ADA	10	26	1000	426		342134	963334	37746	516	1.1
1005	OK	BARTLESVILLE	17	17	210	296	74384	363059	954610	20962	949	0
50194	OK	CHEYENNE	12	8	30	303		353536	994002	30020	102	2.7
57431	OK	CLAREMORE	35	36	144	255	76140	362403	953630	15572	915	0
50198	OK	EUFAULA	3	31	1000	364		351101	952019	31391	600	0
35645	OK	LAWTON	7	11	138	327		341255	984313	40168	446	1.7
78322	OK	MUSKOGEE	19	20	245	252	80215	354508	954815	20096	1001	0.4
84225	OK	NORMAN	46	46	50	416	74779	353552	972922	18745	1211	0.1
12508	OK	OKLAHOMA CITY	5	7	34	430	41104	353345	972924	33879	1406	0.1
25382	OK	OKLAHOMA CITY	9	9	19.4	465	74545	353258	972950	36596	1436	0.2
50205	OK	OKLAHOMA CITY	13	13	26.4	465	74494	353552	972922	38931	1456	0
67999	OK	OKLAHOMA CITY	14	15	500	358		353435	972909	29701	1365	1.1
35388	OK	OKLAHOMA CITY	25	24	1000	476	44126	353258	972918	37403	1448	0
66222	OK	OKLAHOMA CITY	4	27	790	489		353552	972922	39060	1449	0.7
50170	OK	OKLAHOMA CITY	34	33	1000	458		353258	972918	39194	1464	0
50182	OK	OKLAHOMA CITY	43	40	55.6	475	74566	353522	972903	23666	1272	0
2566	OK	OKLAHOMA CITY	62	50	200	483		353552	972922	28774	1341	0
38214	OK	OKLAHOMA CITY	52	51	1000	458		353552	972922	36936	1428	0
7078	OK	OKMULGEE	44	28	1000	219	19049	355002	960728	20118	978	0.5
77480	OK	SHAWNEE	30	29	770	474		353336	972907	38646	1451	0.5
59439	OK	TULSA	2	8	18.2	558	74648	360115	954032	40032	1292	0.3
35685	OK	TULSA	8	10	6.9	542	42996	355808	953655	28628	1166	1.9
66195	OK	TULSA	11	11	21.3	521	84853	360115	954032	38946	1281	0.4
11910	OK	TULSA	23	22	1000	400		360136	954044	35867	1235	1
54420	OK	TULSA	41	42	900	381		360136	954044	32279	1195	0.2
35434	OK	TULSA	6	45	840	573	74632	360115	954032	40750	1297	0.7
37099	OK	TULSA	47	47	50	460	75034	360115	954032	19212	1018	0
24485	OK	TULSA	53	49	50	182	74912	360234	955711	13058	893	0
86532	OK	WOODWARD	35	35	50	339	74767	361606	992656	16828	37	0
50588	OR	BEND	3	11	160	226		440441	1211957	29073	157	0
55907	OR	BEND	21	21	53.7	197	74422	440440	1211949	10195	150	0
166534	OR	BEND		51	84.1	206	75180	440440	1211956	10034	148	0
49750	OR	COOS BAY	11	11	3.2	188	74446	432326	1240746	12943	82	0
35183	OR	COOS BAY	23	22	10	179	44658	432339	1240756	8368	65	0.9
50590	OR	CORVALLIS	7	7	10.1	375	74546	443825	1231625	24451	1118	9.6
34406	OR	EUGENE	9	9	12.1	502	75028	440657	1225957	24311	513	0.1
49766	OR	EUGENE	13	13	30.9	407	74988	440007	1230653	28949	648	7.6
35189	OR	EUGENE	16	17	70	473	44473	440657	1225957	17731	465	0.1
50591	OR	EUGENE	28	29	100	403	60215	440007	1230653	15614	477	0
8322	OR	EUGENE	34	31	88	372	67996	440004	1230645	13922	460	0
83306	OR	GRANTS PASS	30	30	50	654	74763	422256	1231629	19481	185	0
8284	OR	KLAMATH FALLS	2	13	9	659		420548	1213757	29481	84	0.2
60740	OR	KLAMATH FALLS	31	29	50	691	74913	420550	1213759	19200	65	0
61335	OR	KLAMATH FALLS	22	33	50	656	74914	420550	1213759	20779	67	0
50592	OR	LA GRANDE	13	13	31.8	775	74341	451833	1174354	27852	78	3.3
81447	OR	LA GRANDE	16	29	50	773	74737	451835	1174357	20192	42	0
8260	OR	MEDFORD	5	5	6.35	823	74385	424149	1231339	49279	483	0
61350	OR	MEDFORD	8	8	16.9	818	74567	424132	1231345	36640	386	1
22570	OR	MEDFORD	10	10	11.5	1009	74513	420455	1224307	38336	337	0
60736	OR	MEDFORD	12	12	16.9	823	74535	424132	1231346	35257	377	2.2
32958	OR	MEDFORD	26	26	50	428	75001	421754	1224459	11117	216	0
12729	OR	PENDLETON	11	11	22	472	74974	454451	1180211	30211	316	0

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
34874	OR	PORTLAND	8	8	21.9	509	74577	453121	1224446	30424	2379	3.6
50589	OR	PORTLAND	10	10	32	509	75002	453121	1224445	32672	2474	0.1
50633	OR	PORTLAND	12	12	21.9	543	74483	453119	1224453	30824	2429	1.2
35380	OR	PORTLAND	6	40	1000	523		453058	1224358	30516	2489	0
21649	OR	PORTLAND	2	43	1000	524		453057	1224359	30145	2486	0
47707	OR	PORTLAND	24	45	1000	522		453058	1224359	29841	2479	0
31437	OR	ROSEBURG	36	18	50	213	34395	431409	1231916	9672	93	0
61551	OR	ROSEBURG	4	19	50	274	28609	431408	1231918	9394	89	0
35187	OR	ROSEBURG	46	45	12	109	44472	431222	1232156	5477	76	0.2
5801	OR	SALEM	22	22	1000	490	74337	453121	1224445	31809	2507	0
10192	OR	SALEM	32	33	750	523		453058	1224358	30060	2482	0.1
36989	PA	ALLENTOWN	39	39	50	302	74699	403358	752606	15373	4857	2.5
39884	PA	ALLENTOWN	69	46	400	331	75251	403352	752624	16472	6590	2
20287	PA	ALTOONA	23	24	1000	311	29784	403406	782638	19812	757	0.8
23341	PA	ALTOONA	10	32	883	305	70018	403401	782630	22736	817	1.5
13929	PA	ALTOONA	47	46	50	308	74915	403412	782626	13077	575	0.7
60850	PA	BETHLEHEM	60	9	3.2	284	59326	403352	752624	15693	5211	10.6
66219	PA	CLEARFIELD	3	15	810	413	59340	410720	782629	31830	862	1.4
24970	PA	ERIE	12	12	8.63	305	74599	420352	800019	24248	675	0.7
49711	PA	ERIE	35	16	200	279	30039	420215	800343	19713	636	0.6
19707	PA	ERIE	66	22	850	276	65637	420233	800356	14972	581	0
65749	PA	ERIE	24	24	523	310	70354	420225	800409	20313	702	1.1
53716	PA	ERIE	54	50	200	271	67971	420234	800356	18066	531	3.5
13924	PA	GREENSBURG	40	50	362	264	44438	402334	794654	16433	2646	2.3
72326	PA	HARRISBURG	27	10	14	346	40451	401857	765702	22368	2185	0.6
72313	PA	HARRISBURG	21	21	500	372	70325	402043	765209	22848	2357	4.6
73083	PA	HARRISBURG	33	36	50	411	19302	402044	765207	14856	1808	7.5
73375	PA	HAZLETON	56	45	420	488		411100	755210	26257	1879	16.5
69880	PA	JEANNETTE	19	11	6.5	303	80099	402334	794654	21639	2960	0.1
20295	PA	JOHNSTOWN	8	8	6.5	352	70335	401053	790905	20987	2536	0.8
73120	PA	JOHNSTOWN	6	34	1000	386	65822	402217	785856	24695	1984	3
53930	PA	LANCASTER	8	8	5.4	415	84829	400204	763708	24456	4088	3.6
23338	PA	LANCASTER	15	23	500	381	41227	401545	762751	25174	3340	1.1
8616	PA	PHILADELPHIA	6	6	6.22	332	80202	400239	751426	32281	10186	0.2
73879	PA	PHILADELPHIA	17	17	237	354	74615	400230	751411	24810	8188	0
25453	PA	PHILADELPHIA	3	26	770	375		400233	751433	31614	10075	1.6
12499	PA	PHILADELPHIA	57	32	250	400	44229	400230	751411	22512	7859	3.6
63153	PA	PHILADELPHIA	10	34	325	377	71122	400230	751411	27178	8934	1.6
28480	PA	PHILADELPHIA	35	35	358	377	71123	400230	751411	25483	8584	4.2
51568	PA	PHILADELPHIA	29	42	273	347	74917	400226	751420	22025	7599	8.5
41315	PA	PITTSBURGH	13	13	12.6	210	80240	402646	795751	21749	2933	1.3
25454	PA	PITTSBURGH	2	25	1000	311		402938	800109	29482	3587	0.1
41314	PA	PITTSBURGH	16	38	64.1	215	74997	402646	795751	14493	2602	0.2
73907	PA	PITTSBURGH	22	42	1000	315	43259	402943	800017	22255	2996	3.9
73875	PA	PITTSBURGH	53	43	1000	303	45946	402943	800018	23931	3093	0
73910	PA	PITTSBURGH	11	48	1000	289		402748	800016	25263	3258	0.1
65681	PA	PITTSBURGH	4	51	1000	273	40377	401649	794811	20794	2868	0.6
55305	PA	READING	51	25	900	395	67694	401952	754141	20961	5185	35.2
55350	PA	RED LION	49	30	50	177	74918	395418	763500	11529	1959	17.2
17010	PA	SCRANTON	22	13	30	471		411058	755226	32173	2482	5.9
64690	PA	SCRANTON	64	32	528	354	59210	412606	754335	20285	1051	5.2
73374	PA	SCRANTON	38	38	57.6	385	75018	412609	754345	15550	899	3.7
47929	PA	SCRANTON	44	41	200	487		411055	755217	23850	1905	2.3
73318	PA	SCRANTON	16	49	100	506		411100	755210	21428	1732	0.5
71225	PA	WILKES-BARRE	28	11	30	471		411058	755226	32642	2524	5.2
52075	PA	WILLIAMSPORT	53	29	200	223	17599	411157	770739	12710	326	2.1
10213	PA	YORK	43	47	933	385	45937	400141	763600	22845	3255	26.3
50063	RI	BLOCK ISLAND	69	17	1000	228	67093	412941	714706	21896	2966	4
73311	RI	PROVIDENCE	64	12	11.5	295	74616	415214	711745	21844	5899	0.8
47404	RI	PROVIDENCE	12	13	18	305		415236	711657	28045	6539	0.8
56092	RI	PROVIDENCE	36	21	50	268	65226	415154	711715	11209	2916	34.3
50780	RI	PROVIDENCE	10	51	1000	305	84850	415154	711715	27224	6489	0.4
61003	SC	ALLENDALE	14	33	427	241	67765	331115	812350	15210	603	0
56548	SC	ANDERSON	40	14	310	311	30073	343851	821613	22074	1365	0
61007	SC	BEAUFORT	16	44	440	365	70516	324242	804054	19925	835	0
61005	SC	CHARLESTON	7	7	12	562	70358	325528	794158	31487	849	0
416	SC	CHARLESTON	24	24	283	583	74554	325624	794145	30857	818	0
21536	SC	CHARLESTON	4	34	630	522	43263	325528	794158	32715	848	0
9015	SC	CHARLESTON	36	36	50	583	74514	325624	794145	21692	657	0
71297	SC	CHARLESTON	5	47	1000	521	45846	325528	794158	33547	866	0.3
10587	SC	CHARLESTON	2	50	1000	581	66300	325624	794145	35154	925	0
60963	SC	COLUMBIA	25	8	43.7	529	34078	340658	804551	40718	1723	9.5
13990	SC	COLUMBIA	10	10	18.1	462	74559	340729	804523	32006	1450	1.8
37176	SC	COLUMBIA	19	17	1000	500	43474	340549	804551	33240	1341	6.5
61013	SC	COLUMBIA	35	32	62	316		340706	805613	18857	966	0
136750	SC	COLUMBIA	47	47	50	192	74780	340238	805951	5835	584	16.7
19199	SC	COLUMBIA	57	48	520	464	43955	340658	804551	27312	1158	1.4
61004	SC	CONWAY	23	9	20	230		335658	790631	27745	778	0
66407	SC	FLORENCE	13	13	22.4	594	84834	342202	791922	43473	1647	1.4
17012	SC	FLORENCE	15	16	421	602		342153	791949	42129	1611	1.2

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
3133	SC	FLORENCE	21	21	384	581	74438	342153	791949	32639	1312	0.1
61008	SC	FLORENCE	33	45	45	242		341648	794435	14727	495	0.2
82494	SC	GEORGETOWN		38	500	171	66448	335012	785111	14797	379	2
61010	SC	GREENVILLE	29	9	65	378	64722	345629	822438	30476	1753	0.1
9064	SC	GREENVILLE	16	16	98.4	337		345626	822441	20693	1507	0.5
72300	SC	GREENVILLE	21	21	164	765	84836	351056	824056	29139	1820	0.7
53905	SC	GREENVILLE	4	36	1000	610	84818	350640	823617	38470	2132	0.5
60931	SC	GREENWOOD	38	18	49	230		342219	821005	15770	1009	0.7
27245	SC	HARDEEVILLE	28	28	1000	455	75003	320245	812027	34454	819	0
9054	SC	MYRTLE BEACH	43	18	1000	459	39594	341119	791100	36913	1343	0.9
83969	SC	MYRTLE BEACH	32	32	165	186	77954	334350	790432	13305	334	0
61009	SC	ROCK HILL	30	15	403	212	67767	345023	810107	15304	1610	0.2
20624	SC	ROCK HILL	55	39	200	595		352144	810919	30125	2793	2.7
66391	SC	SPARTANBURG	7	7	20.5	657	74611	351012	821727	40644	2745	0.4
61011	SC	SPARTANBURG	49	43	50	302		345311	814916	16629	1263	4
61012	SC	SUMTER	27	28	98.4	364		335251	801615	22690	1018	0.4
40902	SC	SUMTER	63	39	500	391	66995	340658	804551	23915	1157	7.1
48659	SD	ABERDEEN	9	9	19.4	427	74475	450632	975330	32920	127	2.8
61064	SD	ABERDEEN	16	17	50	357	74927	452955	974035	21097	80	0
61067	SD	BROOKINGS	8	8	9.16	230	70586	442016	971342	19513	123	4.1
61071	SD	EAGLE BUTTE	13	13	21.9	518	74989	450320	1021540	37160	18	3
41975	SD	FLORENCE	3	3	3.7	241	74334	445753	973450	25730	122	0
28501	SD	HURON	12	12	13.5	259	84858	441139	981905	24749	77	1.1
34348	SD	LEAD	5	5	6.71	564	84816	441930	1035014	43278	164	0
17686	SD	LEAD	11	10	34.8	576		441936	1035012	44028	162	0
61063	SD	LOWRY	11	11	10.6	317	74386	451634	995903	27187	27	0.7
61062	SD	MARTIN	8	8	12.9	265	74461	432606	1013314	24925	28	0
55375	SD	MITCHELL	5	26	1000	315		434533	982444	31314	100	0
61066	SD	PIERRE	10	10	21.4	488	74447	435755	993556	37734	62	1.3
48660	SD	PIERRE	4	19	1000	378	44050	440307	1000503	30333	45	0
17688	SD	RAPID CITY	3	2	7.1	185	39981	440407	1031503	21008	131	0
34347	SD	RAPID CITY	7	7	12.3	204	80208	440400	1031501	19308	129	1
41969	SD	RAPID CITY	15	16	150	154	68112	440413	1031501	14080	118	0
81464	SD	RAPID CITY	21	21	50	211	74748	440533	1031453	14030	121	0
61068	SD	RAPID CITY	9	26	76.3	202	74931	440307	1031436	13945	117	0
41964	SD	RELIANCE	6	13	40	318	45870	435757	993611	27251	49	6.7
28521	SD	SIOUX FALLS	17	7	65	126	29257	432920	964540	21044	318	2.5
41983	SD	SIOUX FALLS	11	11	24.1	589	74495	433107	963205	40976	530	2
48658	SD	SIOUX FALLS	13	13	22.7	610	75012	433107	963205	41131	542	6.5
60728	SD	SIOUX FALLS	23	24	29	75		433428	963919	9342	217	0
29121	SD	SIOUX FALLS	36	36	152	209		433019	963419	16927	287	0
55379	SD	SIOUX FALLS	46	47	1000	608		433018	963322	43736	577	0
61072	SD	VERMILLION	2	34	236	204		430301	964701	17956	395	1.4
22590	TN	CHATTANOOGA	9	9	10.7	317	74516	350941	851903	21462	1022	4.4
54385	TN	CHATTANOOGA	12	12	20.3	376	74582	350806	851925	25744	1171	1.8
59137	TN	CHATTANOOGA	3	13	34.8	335	39987	350940	851851	22294	1065	3.6
65667	TN	CHATTANOOGA	45	29	200	336		351226	851652	20169	974	1.1
71353	TN	CHATTANOOGA	61	40	84	350	68567	351234	851639	15882	880	0.3
72060	TN	CLEVELAND	53	42	500	333	67273	351234	851639	21132	1017	0.3
69479	TN	COOKEVILLE	22	22	50	425	74600	361026	852037	20663	419	4.3
28468	TN	COOKEVILLE	28	36	733	429	64292	361604	864744	28993	1833	0.5
72971	TN	CROSSVILLE	20	20	189	719	75046	360633	842017	33281	1435	0.8
40761	TN	GREENEVILLE	39	38	1000	795	59933	360124	824256	33197	1840	0.2
60820	TN	HENDERSONVILLE	50	51	264	417	62261	361603	864744	23496	1687	1.5
68519	TN	JACKSON	16	39	392	296		354722	890614	23937	609	0
65204	TN	JACKSON	7	43	920	323	74935	353815	884132	29064	630	0.5
52628	TN	JELLICO	54	23	18	608	29572	361153	841351	18076	1024	0.6
57826	TN	JOHNSON CITY	11	11	23	692	74679	362555	820815	33619	1273	5.9
27504	TN	KINGSPORT	19	27	200	699	29681	362552	820817	20047	817	1.1
83931	TN	KNOXVILLE		7	55	382	66337	360036	835557	27676	1275	2.7
46984	TN	KNOXVILLE	10	10	24.7	530	75019	360013	835635	32945	1396	3.2
18267	TN	KNOXVILLE	15	17	100	551		355944	835723	25572	1229	0.4
71082	TN	KNOXVILLE	6	26	930	529		360013	835634	33972	1438	1.9
35908	TN	KNOXVILLE	8	30	398	551		355944	835723	29948	1352	0.8
19200	TN	KNOXVILLE	43	34	460	529		360013	835634	29596	1344	0.2
7651	TN	LEBANON	66	44	50	161	74936	360913	862246	9894	1179	0
71645	TN	LEXINGTON	11	47	1000	195	74937	354212	883610	20726	465	0
19184	TN	MEMPHIS	5	5	7.26	308	84821	351009	895312	33239	1600	0.8
85102	TN	MEMPHIS		10	3.2	306	74651	350916	894920	18964	1299	0.2
12521	TN	MEMPHIS	13	13	12.9	308	75055	351028	895041	26711	1453	0.6
81692	TN	MEMPHIS	14	23	255	379	80188	352803	901127	19956	1415	0.1
11907	TN	MEMPHIS	24	25	1000	340		351633	894638	32105	1643	1.3
66174	TN	MEMPHIS	3	28	1000	305	74938	351052	894956	30178	1518	0.3
42061	TN	MEMPHIS	10	29	835	320		350916	894920	30623	1534	0
68518	TN	MEMPHIS	30	31	871	340		351633	894638	31598	1615	0.2
21726	TN	MEMPHIS	50	51	1000	298		351241	894854	27402	1452	0.1
11117	TN	MURFREESBORO	39	38	1000	250	32815	360458	862552	20770	1547	0.1
36504	TN	NASHVILLE	5	5	10.3	425	80199	361605	864716	39216	2087	0.2
41398	TN	NASHVILLE	8	8	17.6	411	74578	360250	864949	31972	1855	1.7
41232	TN	NASHVILLE	4	10	42.4	415		360827	865156	36974	2000	0.9

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
418	TN	NASHVILLE	17	15	1000	411	39931	361550	864739	31670	1874	3
9971	TN	NASHVILLE	30	21	1000	413	39919	361550	864739	31591	1916	0.9
73310	TN	NASHVILLE	58	23	350	367	65623	361550	864739	25194	1708	0.1
73188	TN	NASHVILLE	2	27	946	411		360250	864949	36057	2007	0.1
18252	TN	SNEEDVILLE	2	41	445	567		362252	831049	30546	1678	1.1
81750	TN	TAZEWELL	48	48	193	431	74781	361530	833743	16166	1003	0.3
62293	TX	ABILENE	15	15	165	298	74734	321631	993523	18689	215	2.4
59988	TX	ABILENE	32	24	1000	258		321638	993551	27447	268	0
306	TX	ABILENE	9	29	1000	258	77885	321638	993551	22366	226	0
60537	TX	ALVIN	67	36	1000	579	43470	293415	953037	41745	4843	0
40446	TX	AMARILLO	7	7	21.9	518	74462	352229	1015258	39374	350	0
1236	TX	AMARILLO	2	8	5	519		352230	1015256	29297	314	5.6
51466	TX	AMARILLO	10	10	20.8	466		351734	1015042	37002	347	0.1
33722	TX	AMARILLO	14	15	925	464		352033	1014921	40775	356	0.1
8523	TX	AMARILLO	4	19	400	455		352033	1014921	34791	341	0
68834	TX	ARLINGTON	68	42	1000	368	60704	323525	965823	26621	5223	0.9
35649	TX	AUSTIN	7	7	15.9	384	74653	301836	974733	31188	1835	0
35920	TX	AUSTIN	36	21	700	395		301933	974758	34015	1894	1.8
8564	TX	AUSTIN	18	22	700	358		301919	974812	33104	1897	0.1
35867	TX	AUSTIN	24	33	1000	376		301918	974811	33409	1874	3
33691	TX	AUSTIN	42	43	1000	395	60307	301918	974811	31315	1837	2.1
144	TX	AUSTIN	54	49	500	396	28952	301933	974758	26233	1589	3.2
70492	TX	BAYTOWN	57	41	1000	596	38691	293415	953037	40536	4831	0
10150	TX	BEAUMONT	12	12	12.9	292	75047	301124	935315	27428	707	0
22589	TX	BEAUMONT	6	21	50	254	44573	300824	935844	14995	489	0
12896	TX	BEAUMONT	34	33	500	312	29808	301041	935426	23659	661	0
9754	TX	BELTON	46	46	232	360	74537	305908	973751	22126	1398	5.6
42008	TX	BIG SPRING	4	33	174	83	66027	321655	1012934	10867	96	0
125710	TX	BLANCO	17	18	224	204	75128	294148	983045	16810	1769	0
83715	TX	BORGER		31	700	306	66220	352033	1014920	23168	314	0
12523	TX	BROWNSVILLE	23	24	1000	445	39305	260601	975020	35542	959	0
60384	TX	BRYAN	28	28	50	220	75013	304118	962535	12801	270	0
6669	TX	BRYAN	3	50	1000	477	43579	303316	960151	36945	2953	0
65301	TX	COLLEGE STATION	15	12	3.2	119	74940	303748	962033	13045	278	4.9
58835	TX	CONROE	49	32	1000	555	74342	293415	953037	38783	4814	0
28324	TX	CONROE	55	42	1000	597	43288	293344	953035	39190	4840	0
10188	TX	CORPUS CHRISTI	3	8	160	269	65123	273930	973604	36835	541	0.1
33079	TX	CORPUS CHRISTI	10	10	14.3	287	74423	274650	973803	27676	539	0
25559	TX	CORPUS CHRISTI	6	13	46.1	240	71769	274429	973609	24373	527	1.8
58408	TX	CORPUS CHRISTI	16	23	200	273	31667	273920	973355	18472	500	0
64877	TX	CORPUS CHRISTI	28	27	1000	287	38420	274227	973759	26335	536	0
82910	TX	CORPUS CHRISTI	38	38	50	280	74770	274522	973625	12804	476	0
72054	TX	DALLAS	8	8	21.5	512	74356	323506	965841	39164	5431	0.5
49324	TX	DALLAS	13	14	475	500		323443	965712	39475	5462	0
22201	TX	DALLAS	33	32	780	537	36873	323235	965732	36512	5404	0
33770	TX	DALLAS	4	35	1000	511	74941	323506	965841	41095	5492	0
17037	TX	DALLAS	27	36	1000	495	29430	323236	965732	37393	5405	0.1
35994	TX	DALLAS	39	40	1000	494		323507	965806	40034	5463	0.1
67910	TX	DALLAS	58	45	1000	494	65026	323236	965732	33987	5352	0
73701	TX	DECATUR	29	30	1000	544	65411	323519	965805	37279	5435	0
55762	TX	DEL RIO	10	28	1000	100		292039	1005139	17248	56	0
49326	TX	DENTON	2	43	1000	494	64993	323235	965732	33538	5346	0
32621	TX	EAGLE PASS	16	24	57.5	85	84815	284332	1002835	17905	68	0
49832	TX	EL PASO	7	7	38.1	574	74410	314818	1062858	42990	854	0
67760	TX	EL PASO	9	9	24	582	74401	314818	1062857	39562	854	0
19117	TX	EL PASO	13	13	24.4	265	74485	314715	1062847	22908	849	0
33716	TX	EL PASO	14	15	1000	602	68879	314855	1062920	39112	857	0
33764	TX	EL PASO	4	18	1000	475	74942	314746	1062857	35035	851	0
51708	TX	EL PASO	26	25	1000	439	36510	314746	1062857	28858	851	0
10202	TX	EL PASO	38	39	50	557	74943	314855	1062917	18504	851	0
68753	TX	EL PASO	65	51	70	525	29633	314818	1062859	16890	846	0
81445	TX	FARWELL	18	18	50	112	74740	342621	1031222	9122	77	0
29015	TX	FORT WORTH	52	9	6.87	545	75052	323519	965805	25183	5229	1.5
23422	TX	FORT WORTH	11	11	26.3	500	74431	323443	965712	38000	5412	1.3
51517	TX	FORT WORTH	21	18	220	535	19052	323235	965732	28958	5279	0.4
49330	TX	FORT WORTH	5	41	1000	514	74944	323515	965759	40533	5475	0
24316	TX	FREDERICKSBURG	2	5	10.2	413	74707	300813	983635	38961	2966	0
24436	TX	GALVESTON	22	23	247	566		291756	951411	35208	4479	2.3
64984	TX	GALVESTON	47	48	1000	597	43454	293415	953037	39815	4836	0
35841	TX	GARLAND	23	23	186	518		323521	965812	33002	5332	0
42359	TX	GREENVILLE	47	46	600	496	60867	323236	965732	30628	5313	0.1
34457	TX	HARLINGEN	4	31	1000	368	44581	260856	974918	26278	949	0
12913	TX	HARLINGEN	44	34	200	283	65860	261300	974648	18751	925	0
56079	TX	HARLINGEN	60	38	1000	346	46306	260714	974918	25290	944	0
69269	TX	HOUSTON	8	8	21.9	564	80228	293428	952937	37914	4826	0.1
34529	TX	HOUSTON	11	11	17	570		293340	953004	38950	4822	0.5
35675	TX	HOUSTON	13	13	22.2	588	70860	293427	952937	42534	4833	0.4
51569	TX	HOUSTON	20	19	421	596	33045	293344	953035	36222	4827	0
12895	TX	HOUSTON	14	24	900	579	59136	293415	953037	42319	4848	0
22204	TX	HOUSTON	26	26	234	594	75005	293428	952937	31274	4768	0.1

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
53117	TX	HOUSTON	2	35	1000	585	.....	293406	952957	45364	4862	0
23394	TX	HOUSTON	39	38	1000	582	33161	293406	952957	35952	4818	0
69531	TX	HOUSTON	61	44	1000	461	68030	293344	953035	32739	4777	0
60534	TX	IRVING	49	48	225	535	39591	323235	965732	27401	5245	0
55643	TX	JACKSONVILLE	56	22	1000	459	33098	320340	951850	35608	924	0.8
31870	TX	KATY	51	47	1000	597	69142	293415	953037	40037	4838	0
51518	TX	KERRVILLE	35	32	1000	531	46137	293638	985333	33391	1818	0.2
148	TX	KILLEEN	62	13	45	484	.....	304334	975923	41662	1828	1.2
17433	TX	LAKE DALLAS	55	39	57.3	494	74617	323236	965732	18912	5077	0.9
10061	TX	LAREDO	8	8	33.3	285	74387	274021	993951	27256	199	5.9
33078	TX	LAREDO	13	13	3.2	280	74376	273114	993119	19464	201	1.8
51479	TX	LAREDO	27	19	200	49	36711	273004	993037	8202	193	0
35909	TX	LLANO	14	27	660	249	.....	304036	983359	22137	903	9.7
70917	TX	LONGVIEW	51	31	1000	361	29517	321535	945702	29711	821	0.5
83913	TX	LONGVIEW	38	38	191	268	74771	321536	945702	15446	554	0.3
27507	TX	LUBBOCK	11	11	15	232	.....	333232	1015014	24161	371	0.6
53544	TX	LUBBOCK	16	16	50	83	74990	333312	1014913	9355	283	0
40820	TX	LUBBOCK	28	27	1000	219	.....	333133	1015207	23831	358	0
55031	TX	LUBBOCK	34	35	1000	274	.....	333008	1015220	27678	377	0
65355	TX	LUBBOCK	5	39	890	143	32592	333455	1015325	14440	342	1.4
3660	TX	LUBBOCK	13	40	1000	219	.....	333133	1015207	22626	354	0
68541	TX	LUFKIN	9	9	10	204	74363	312509	944803	20490	309	4.7
69692	TX	MCALLEN	48	49	1000	286	39111	260518	980344	23860	956	0
86263	TX	MIDLAND	18	18	240	284	74741	315019	1023159	16457	276	0
35131	TX	MIDLAND	2	26	1000	323	.....	320511	1021710	32226	345	0
55644	TX	NACOGDOCHES	19	18	640	457	.....	315420	950505	35050	829	8.3
6865	TX	ODESSA	7	7	13.1	226	80209	315150	1023441	25197	283	0
42007	TX	ODESSA	9	9	25.7	391	.....	315917	1025241	34523	341	0
12524	TX	ODESSA	24	23	600	333	39998	320551	1021721	26889	324	0
84410	TX	ODESSA	30	30	50	212	74764	320551	1021721	11292	254	0
50044	TX	ODESSA	36	38	500	82	.....	315158	1022248	14075	267	0
53541	TX	ODESSA	42	42	50	142	75023	320254	1021804	9745	254	0
61214	TX	PORT ARTHUR	4	40	1000	360	.....	300920	935910	32745	776	0
62354	TX	RIO GRANDE CITY	40	20	1000	287	.....	260723	980420	30426	971	0
53847	TX	ROSENBERG	45	45	356	578	74579	293344	953035	33056	4793	0
31114	TX	SAN ANGELO	8	11	18.8	434	.....	312201	1000248	33418	163	2.4
307	TX	SAN ANGELO	3	16	1000	160	.....	313722	1002614	21754	130	0
58560	TX	SAN ANGELO	6	19	1000	277	74948	313521	1003100	27865	132	0.3
749	TX	SAN ANTONIO	9	9	8.3	259	74347	291938	982117	21643	1787	0.4
53118	TX	SAN ANTONIO	12	12	18.4	427	70242	291611	981531	32978	1888	0.7
27300	TX	SAN ANTONIO	23	16	500	307	45032	291724	981520	24963	1830	0.2
56528	TX	SAN ANTONIO	29	30	1000	441	28869	291728	981612	34435	1982	0
64969	TX	SAN ANTONIO	60	38	1000	414	41078	291738	981530	29713	1891	0.2
26304	TX	SAN ANTONIO	5	39	751	424	74634	291607	981555	34215	1903	0.1
35881	TX	SAN ANTONIO	41	41	416	414	74547	291738	981530	25480	1848	0.2
69618	TX	SAN ANTONIO	4	48	844	451	74680	291610	981555	34527	1894	1.3
35954	TX	SHERMAN	12	12	14.4	543	74439	340158	964800	38337	946	13
77452	TX	SNYDER	17	17	184	138	74359	324652	1005352	8618	45	0
308	TX	SWEETWATER	12	20	561	427	74949	322448	1000625	31757	243	2.6
10245	TX	TEMPLE	6	9	25	527	41595	311624	971314	34738	1265	6.8
35648	TX	TEXARKANA	6	15	1000	454	.....	325411	940020	42049	1055	0.1
68540	TX	TYLER	7	7	15	302	74360	323223	951312	25397	761	0.5
61173	TX	UVALDE	26	26	235	560	74761	293711	990257	31324	1771	1.6
35846	TX	VICTORIA	19	11	18	290	.....	285042	970733	24235	256	13.4
73101	TX	VICTORIA	25	15	900	312	59285	285042	970733	29932	310	1.8
35903	TX	WACO	10	10	13.8	552	75056	311919	971858	38053	1164	1.1
6673	TX	WACO	34	20	700	319	69374	311917	972040	25553	679	0.9
9781	TX	WACO	25	26	1000	561	58939	312016	971836	38287	1343	2.2
12522	TX	WACO	44	44	160	552	74667	311852	971937	22371	743	10
43328	TX	WESLACO	5	13	57	445	38452	260602	975021	33861	962	0
7675	TX	WICHITA FALLS	18	15	1000	325	39767	341205	984345	24386	379	3
6864	TX	WICHITA FALLS	6	22	200	311	.....	335404	983221	23697	346	0
65370	TX	WICHITA FALLS	3	28	1000	274	.....	335323	983330	28507	377	0
77719	TX	WOLFFORTH	22	43	77.1	228	80190	333008	1015220	15511	312	0
59494	UT	CEDAR CITY	4	14	1000	819	.....	373229	1130404	45405	141	0
69694	UT	LOGAN	12	12	22.3	690	74725	414703	1121355	32963	792	5.9
77512	UT	OGDEN	24	24	450	1229	59860	403933	1121207	37197	1798	0
69582	UT	OGDEN	9	36	200	1256	38687	403933	1121207	29628	1781	0
1136	UT	OGDEN	30	48	200	1257	41318	403933	1121207	27529	1768	0
84277	UT	PRICE	3	11	51.1	658	74335	394522	1105922	39858	210	0
57884	UT	PROVO	16	29	530	1171	18846	403912	1121206	27532	1785	0
81451	UT	PROVO	32	32	138	812	75067	401645	1115600	17405	1617	0
6823	UT	PROVO	11	44	346	1257	32909	403933	1121207	31400	1787	0
82576	UT	RICHFIELD	.....	19	0.33	441	46081	383804	1120333	4806	22	0
22215	UT	SALT LAKE CITY	13	13	43.4	1234	74476	403932	1121208	38745	1812	0.4
10177	UT	SALT LAKE CITY	20	20	73.3	1171	74746	403912	1121206	24439	1734	0
35823	UT	SALT LAKE CITY	2	34	423	1267	39866	403933	1121207	34886	1796	0
6359	UT	SALT LAKE CITY	5	38	546	1267	19903	403933	1121207	34973	1791	0
68889	UT	SALT LAKE CITY	4	40	476	1256	27794	403933	1121207	33954	1790	0
69396	UT	SALT LAKE CITY	7	42	239	1266	30673	403933	1121207	30198	1785	0

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
36607	UT	SALT LAKE CITY	14	46	123	1181	75006	403912	1121206	27341	1761	0
35822	UT	ST. GEORGE	12	9	3.2	43	44874	370348	1133423	4214	85	0.4
82585	UT	ST. GEORGE		18	1.62	67	43602	370350	1133420	3637	81	0
83729	UT	VERNAL	6	16	1000	676	74714	402122	1090841	36226	44	0
69532	VA	ARLINGTON	14	15	900	173	29445	385624	770454	19793	6911	0.2
10897	VA	ASHLAND	65	47	1000	249	28058	374431	771515	20211	1398	0.3
2455	VA	BRISTOL	5	5	8.93	680	80200	362657	820631	46471	1934	0.7
363	VA	CHARLOTTESVILLE	19	19	50	326	74743	375903	782852	14121	381	1.2
70309	VA	CHARLOTTESVILLE	29	32	1000	368	67231	375902	782853	28673	1512	1.8
9990	VA	CHARLOTTESVILLE	41	46	340	332	41219	375859	782902	16348	439	7.4
15507	VA	DANVILLE	24	24	141	332		370210	793230	21206	917	0
9999	VA	FAIRFAX	56	24	50	215	74668	385228	771324	14900	5838	0.1
66378	VA	FRONT ROYAL	42	21	50	400	32594	385736	781952	13538	714	16.9
10019	VA	GOLDVEIN		30	160	229		383743	772621	17529	4650	0.5
37808	VA	GRUNDY	68	49	1000	662		364947	820445	35029	1179	0.8
74167	VA	HAMPTON	13	13	19.1	344	74561	364900	762806	31544	1937	1.1
25932	VA	HAMPTON-NORFOLK	15	16	950	361	33525	364831	763013	33081	2003	0
4688	VA	HARRISONBURG	3	49	65	638		383605	783757	15417	468	1.1
73988	VA	LYNCHBURG	13	13	19.6	568	74507	371854	793806	34544	1169	1.1
24812	VA	LYNCHBURG	21	20	400	500	39495	371914	793758	27193	972	3.4
74091	VA	MANASSAS	66	34	1000	254	72356	385701	770447	10594	3094	35.3
5982	VA	MARION	52	42	100	448		365407	813232	17079	494	1.1
40759	VA	NORFOLK	33	33	905	361	74538	364831	763013	26943	1894	0
47401	VA	NORFOLK	3	40	950	377		364831	763013	33295	2003	0
67077	VA	NORFOLK	49	46	1000	360	19107	364831	763013	27594	1786	0.2
5985	VA	NORTON	47	32	100	591		365353	823721	27184	974	0.1
74416	VA	PETERSBURG	8	22	450	328		373045	773605	28598	1526	0
71127	VA	PORTSMOUTH	10	31	1000	280		364914	763041	28778	1917	0
9762	VA	PORTSMOUTH	27	50	800	264		364843	762745	23806	1762	0
30833	VA	RICHMOND	12	12	5.41	241	74618	373023	773012	21438	1277	2.4
57832	VA	RICHMOND	6	25	410	347		373045	773605	28828	1531	0
412	VA	RICHMOND	35	26	800	328		373045	773605	30742	1594	1.4
9987	VA	RICHMOND	23	42	160	346		373045	773604	22009	1323	2.3
9989	VA	RICHMOND	57	44	100	328		373045	773605	20348	1242	0
5981	VA	ROANOKE	15	3	7.25	618	39733	371146	800917	42351	1469	0
24813	VA	ROANOKE	27	17	400	594	29905	371146	800916	28286	1106	5.1
71329	VA	ROANOKE	7	18	460	606		371142	800923	36523	1296	1.3
57840	VA	ROANOKE	10	30	950	592	69296	371203	800854	31210	1162	4
70251	VA	ROANOKE	38	36	700	623	27852	371137	800925	28659	1055	1.3
60111	VA	STAUNTON	51	11	3.2	680	31834	380954	791851	19631	552	5.6
82574	VA	VIRGINIA BEACH	21	7	4.86	310	75265	364831	763012	19356	1714	0.1
65387	VA	VIRGINIA BEACH	43	29	1000	241	30040	364914	763041	21875	1737	0
11259	VT	BURLINGTON	22	13	10	831	71724	443133	724857	32138	587	0.2
46728	VT	BURLINGTON	3	22	444	835	80197	443136	724857	42718	620	0.4
69944	VT	BURLINGTON	33	32	90	830		443132	724851	30304	536	0
10132	VT	BURLINGTON	44	43	47	839	71757	443133	724857	24761	479	0.8
73344	VT	HARTFORD	31	25	117	651	43680	432615	722708	21926	618	0.1
69946	VT	RUTLAND	28	9	15	385	67939	433931	730625	21748	544	2.8
69940	VT	ST. JOHNSBURY	20	18	67	590		443416	715339	21648	239	0.7
69943	VT	WINDSOR	41	24	55.7	692		432615	722708	23709	772	0.4
56852	WA	BELLEVUE	33	33	179	716	80219	473017	1215803	26579	3579	0
4624	WA	BELLEVUE	51	50	240	719	17552	473017	1215804	28362	3664	0
53586	WA	BELLINGHAM	24	19	165	757	43180	484046	1225031	33673	982	7.4
35862	WA	BELLINGHAM	12	35	612	722	74955	484040	1224948	43278	1644	0
62468	WA	CENTRALIA	15	19	43.7	334		463316	1230326	13904	489	22.8
35396	WA	EVERETT	16	31	700	218	44001	473755	1222059	18375	3525	0
2495	WA	KENNEWICK	42	44	160	390		460611	1190754	23073	373	0
56029	WA	PASCO	19	18	50	366	74956	460551	1191130	20149	362	0
71024	WA	PULLMAN	10	10	6.2	408	74411	465143	1171026	25722	259	0
78921	WA	PULLMAN	24	24	1000	569	66879	473444	1171746	32886	657	0
12427	WA	RICHLAND	25	26	200	411		460612	1190749	26245	384	0
71023	WA	RICHLAND	31	38	47.6	361	60199	460612	1190740	11914	290	0
33749	WA	SEATTLE	9	9	7.49	252	74562	473658	1221828	21801	3579	0
69571	WA	SEATTLE	22	25	1000	290		473657	1221826	27243	3646	0
21656	WA	SEATTLE	4	38	1000	247	74957	473755	1222109	22159	3592	0.1
66781	WA	SEATTLE	7	39	1000	230	65845	473801	1222120	19081	3534	0.1
49264	WA	SEATTLE	45	44	240	714	38740	473017	1215806	25492	3632	0
34847	WA	SEATTLE	5	48	960	239	18954	473755	1222059	18736	3562	0
34537	WA	SPOKANE	6	7	45.1	653	74388	473452	1171747	45079	684	0
61956	WA	SPOKANE	7	8	21.6	558		473434	1171758	36062	666	0.2
61978	WA	SPOKANE	4	13	23.3	936		475518	1170648	46084	655	0.3
34868	WA	SPOKANE	2	20	893	641	64696	473541	1171753	37651	663	0
58684	WA	SPOKANE	28	28	91.4	601	74486	473444	1171746	26401	586	0
81694	WA	SPOKANE	34	34	104	450	74766	473604	1171753	17181	537	0
35606	WA	SPOKANE	22	36	250	622	64693	473541	1171753	20760	538	0
23428	WA	TACOMA	11	11	14.7	271	84854	473656	1221829	24877	3628	0
33894	WA	TACOMA	13	13	23.1	610	84835	473253	1224822	35976	3815	0
67950	WA	TACOMA	20	14	90	473	39524	473250	1224740	22129	3629	0
62469	WA	TACOMA	28	27	47.2	224		471641	1223042	13991	3136	0
35419	WA	TACOMA	56	42	144	695		473017	1215806	29896	3638	0

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
35460	WA	VANCOUVER	49	30	741	528		453119	1224453	29877	2443	1.4
84238	WA	WALLA WALLA	9	9	45	432		460558	1190740	38298	459	0.1
2506	WA	YAKIMA	35	14	160	293		463157	1203037	15036	248	0.1
12395	WA	YAKIMA	23	16	200	266		463159	1203026	14954	247	0
33752	WA	YAKIMA	47	21	50	280		463158	1203033	11735	236	0
56033	WA	YAKIMA	29	33	50	296	74958	463158	1203033	10949	235	0
86496	WI	ANTIGO		46	50	286	38603	450322	892754	11094	243	0.1
361	WI	APPLETON	32	27	50	336	74693	442130	875848	19462	961	0
2709	WI	CHIPPEWA FALLS	48	49	1000	203		445724	914003	20780	395	0
81503	WI	CRANDON	4	12	3.2	119	74710	453423	885257	11762	86	0.4
77789	WI	EAGLE RIVER	34	28	70	144	67695	454630	891455	12379	92	0.2
7893	WI	EAU CLAIRE	13	13	22.9	607	74548	443951	905741	43031	858	2
64550	WI	EAU CLAIRE	18	15	200	280	67697	444800	912757	19543	336	0.2
60571	WI	FOND DU LAC	68	44	700	195	66227	432620	883129	18054	2137	0.1
4150	WI	GREEN BAY	11	11	17.2	384	75053	442431	875929	31619	1089	2.6
74417	WI	GREEN BAY	2	23	1000	372		442435	880006	35501	1152	0.6
9635	WI	GREEN BAY	5	39	1000	364	68312	442001	875856	30736	1115	1.4
2708	WI	GREEN BAY	26	41	1000	321	27828	442130	875848	26965	1084	0.8
18798	WI	GREEN BAY	38	42	200	375		442434	880006	25059	1041	0.5
26025	WI	JANESVILLE	57	32	200	387	65253	430303	892913	25102	1265	0.3
37104	WI	KENOSHA	55	40	830	358	43896	430544	875417	26695	2947	0.4
74424	WI	LA CROSSE	8	8	20.3	462	74563	440528	912016	35254	714	2.5
64549	WI	LA CROSSE	19	14	250	327		434823	912202	25195	419	0.8
2710	WI	LA CROSSE	25	17	450	349	29449	434815	912220	25973	487	0.6
18780	WI	LA CROSSE	31	30	308	345		434817	912206	25639	421	0
10221	WI	MADISON	47	11	15	471	30020	430321	893206	29375	1533	4.4
6870	WI	MADISON	15	19	56	387		430303	892913	21196	1026	3.9
6096	WI	MADISON	21	20	100	453		430321	893206	26579	1250	1.2
64545	WI	MADISON	27	26	400	455	33126	430321	893206	30128	1450	1.3
65143	WI	MADISON	3	50	603	466		430321	893206	32793	1639	2.5
68547	WI	MAYVILLE	52	43	300	186		432611	883134	16768	1878	7.9
18793	WI	MENOMONIE	28	27	291	350		450249	915147	26272	743	13.7
42663	WI	MILWAUKEE	10	8	25	354	67092	430546	875415	29509	3035	1.4
74174	WI	MILWAUKEE	18	18	368	302	74698	430544	875417	22781	2496	3.6
72342	WI	MILWAUKEE	30	22	196	297	42943	430544	875417	19180	2440	1.3
71278	WI	MILWAUKEE	24	25	625	340	41342	430544	875417	26207	2873	1.1
74098	WI	MILWAUKEE	4	28	1000	305	74959	430529	875407	30594	2856	4.5
73107	WI	MILWAUKEE	6	33	1000	305	74960	430524	875347	30009	2916	0.6
65680	WI	MILWAUKEE	12	34	863	263	59757	430642	875542	23269	2660	0
42665	WI	MILWAUKEE	36	35	500	355	66933	430546	875415	25395	2769	0.1
71427	WI	MILWAUKEE	58	46	1000	322	32644	430642	875550	27046	2827	1.9
63046	WI	PARK FALLS	36	36	50	445	74583	455643	901628	22223	139	0
68545	WI	RACINE	49	48	176	303	74961	430515	875401	17104	2279	0.1
49699	WI	RHINELANDER	12	16	538	489	28605	454003	891229	38587	375	0
33658	WI	SUPERIOR	6	19	384	312		464721	920651	26329	264	0
73042	WI	SURING	14	21	450	332	43297	442001	875856	20367	938	0.2
6867	WI	WAUSAU	7	7	16.9	369	74555	445514	894131	31405	527	0.7
64546	WI	WAUSAU	9	9	17	369	75014	445514	894131	31158	526	0.8
73036	WI	WAUSAU	20	24	172	387		445514	894128	26595	482	0.2
86204	WI	WITTENBERG	55	50	160	327	74788	450322	892754	18272	378	1.2
37806	WV	BLUEFIELD	40	40	1000	386	74377	371308	811539	24131	705	1.2
74176	WV	BLUEFIELD	6	46	1000	372		371520	811054	25413	700	0.2
417	WV	CHARLESTON	11	19	475	514		382428	815413	37398	1311	0.3
73189	WV	CHARLESTON	29	39	1000	350	40580	382812	814635	25868	924	2
71280	WV	CHARLESTON	8	41	475	514		382428	815413	33607	1168	3.1
10976	WV	CLARKSBURG	46	10	30	235	44599	391802	802037	21897	566	4.9
71220	WV	CLARKSBURG	12	12	11.3	262	80238	391706	801946	22840	584	2.1
71680	WV	GRANDVIEW	9	10	18.6	305	80261	375346	805921	24852	649	2.1
23342	WV	HUNTINGTON	13	13	16	396	70338	383021	821233	27894	1025	4.7
36912	WV	HUNTINGTON	3	23	724	402		383036	821310	33731	1182	0.6
71657	WV	HUNTINGTON	33	34	63.1	379	74962	382941	821203	16631	738	1
74169	WV	LEWISBURG	59	8	3.68		577	374622	804225	26153	590	1.7
23264	WV	MARTINSBURG	60	12	23	314		392727	780352	24844	2471	6.6
71676	WV	MORGANTOWN	24	33	145	457	74963	394145	794545	20788	1370	0.5
66804	WV	OAK HILL	4	50	1000	236	80182	375726	810903	18914	515	1.7
4685	WV	PARKERSBURG	15	49	47.4	193		392059	813356	12882	350	1.5
70592	WV	WESTON	5	5	7.09	268	84822	390427	802528	29741	640	0.5
6869	WV	WHEELING	7	7	15.5	293	74497	400341	804508	25673	2373	0.1
82575	WY	CASPER	6	6	1	536	74715	424426	1062134	20136	70	0
68713	WY	CASPER	13	12	3.2	534	74727	424426	1062134	18050	70	0
63177	WY	CASPER	14	14	53.3	573	74389	424426	1062134	25030	70	0
18286	WY	CASPER	2	17	741	588		424403	1062000	40682	80	0.1
74256	WY	CASPER	20	20	52.4	582	74425	424437	1061831	21652	70	0
18287	WY	CHEYENNE	33	11	16	650	67257	403247	1051150	28369	2763	0
40250	WY	CHEYENNE	27	27	169	232	74478	410255	1045328	13499	438	0
63166	WY	CHEYENNE	5	30	630	189		410601	1050023	18799	415	2.9
1283	WY	JACKSON	2	2	1	293	74378	432742	1104510	17622	31	0
35103	WY	JACKSON	11	11	3.2	327	74724	432742	1104510	10697	22	0
63162	WY	LANDER	5	7	31.7	82	74964	425343	1084334	15754	32	2.8
10036	WY	LANDER	4	8	60	463	74965	423459	1084236	36626	35	0.6

APPENDIX B.—DTV TABLE OF ALLOTMENTS INFORMATION—Continued

Facility ID	State	City	NTSC chan	DTV chan	DTV ERP (kW)	DTV HAAT (m)	DTV antenna ID	DTV latitude (DDMMSS)	DTV longitude (DDDMMSS)	DTV area (sq km)	DTV population (thousand)	DTV % interference received
10032	WY	LARAMIE	8	8	3.2	318	74718	411717	1052642	12970	109	0.1
21612	WY	RAWLINS	11	9	3.2	70	74966	414615	1071425	9432	11	0
21613	WY	RIVERTON	10	10	13.9	526	74402	432726	1081202	26335	49	0.1
63170	WY	ROCK SPRINGS	13	13	14.2	495	74448	412621	1090642	33002	43	0
81191	WY	SHERIDAN	7	7	3.2	349	74717	443720	1070657	12316	28	0
17680	WY	SHERIDAN	12	13	50	372		443720	1070657	32735	52	0
51233	GU	AGANA	8	8	3.2	282		132553	−1444236			
25511	GU	AGANA	12	12	38.9	75		132613	−1444817			
29232	GU	TAMUNING	14	14	50	1		133009	−1444817			
3255	PR	AGUADA	50	50	50	343	74700	181907	671048	13079	862	2.3
71725	PR	AGUADILLA	12	12	7.31	665	74705	180900	665900	35964	1570	1.9
61573	PR	AGUADILLA	44	17	50	372	74920	181906	671042	17148	918	2.5
26602	PR	AGUADILLA	32	34	250	605		180906	665923	35049	1393	6.6
26676	PR	ARECIBO	60	14	50	833	80214	180917	663316	23099	2851	9.4
3001	PR	ARECIBO	54	46	50	600	74610	181406	664536	16621	2420	5.7
4110	PR	BAYAMON	36	30	50	329	74691	181640	660638	14518	2514	0.5
19777	PR	CAGUAS	11	11	3.2	357	74649	181654	660646	16753	2655	0.1
8156	PR	CAGUAS	58	48	50	329	74666	181640	660638	12923	2406	2.3
54443	PR	CAROLINA	52	51	450	585	32803	181644	655112	30994	2770	0.1
73901	PR	FAJARDO	13	13	2.8	863		181836	654741	34770	2702	0.1
2174	PR	FAJARDO	40	16	140	852	79754	181835	654743	29992	2734	3.4
15320	PR	FAJARDO	34	33	50	848	74765	181836	654741	24915	2595	0
18410	PR	GUAYAMA	46	45	50	642	74921	181648	655108	23740	2490	0.9
67190	PR	HUMACAO	68	49	46	623	75154	181644	655110	20292	2501	0.9
60357	PR	MAYAGUEZ	16	22	50	338	74738	181851	671124	16336	808	14.3
73336	PR	MAYAGUEZ	22	23	400	693	65201	180900	665900	37898	1376	0.9
64865	PR	MAYAGUEZ	5	29	1000	607		180902	665920	45696	1574	14.2
53863	PR	MAYAGUEZ	3	35	620	674		180900	665900	43682	1920	0.1
19561	PR	NARANJITO	64	18	50	142	74703	181734	661602	12482	2515	0.1
60341	PR	PONCE	7	7	16.4	826	80207	180917	663316	46704	3722	0
19776	PR	PONCE	9	9	15.6	857	84832	181009	663436	47124	3693	0
26681	PR	PONCE	14	15	380	839	67269	181010	663436	41344	3361	5.7
58341	PR	PONCE	20	19	700	269	65948	180449	664453	24888	1701	0.1
2175	PR	PONCE	26	25	200	310	41622	180448	664456	19187	1516	0
29000	PR	PONCE	48	47	50	247	74924	180450	664450	11769	1118	0.3
58340	PR	SAN JUAN	24	21	1000	564		181645	655114	44300	3102	0.4
52073	PR	SAN JUAN	4	27	1000	794		180642	660305	53151	3389	0.5
64983	PR	SAN JUAN	2	28	871	861	74925	180654	660310	52474	3313	4
4077	PR	SAN JUAN	30	31	75.9	287		181630	660536	14563	2453	2.1
28954	PR	SAN JUAN	18	32	50	847	77557	181836	654741	23429	2359	1.9
53859	PR	SAN JUAN	6	43	791	825	74633	180642	660305	48283	3343	0
58342	PR	SAN SEBASTIAN	38	39	700	627	65242	180900	665900	34738	1692	0
39887	PR	YAUCO	42	41	185	832		181010	663436	39318	3448	0
3113	VI	CHARLOTTE AMALIE	17	17	50	455		182126	645650	24541	104	0.1
83270	VI	CHARLOTTE AMALIE		43	1.4	28		182043	645545	1687	0	0
70287	VI	CHARLOTTE AMALIE	12	44	30.4	505	75403	182128	645653	18332	11	0
84407	VI	CHRISTIANSTED	15	15	50	296	74735	174521	644756	14545	0	0
2370	VI	CHRISTIANSTED	8	20	501	292	74953	174521	644756	17484	7	0
83304	VI	CHRISTIANSTED	39	23	0.85	130		174440	644340	5461	0	0

Appendix C—List of Petitions for Reconsideration, Oppositions, and Replies

Petitions for Reconsideration (filed by October 26, 2007)

1. Ackerley Broadcasting Operations, LLC.
2. Allbritton Communications Company & Gannett Co., Inc.
3. American Christian Television Service, Inc.
4. Arkansas 49, Inc.
5. Arkansas Educational Television Commission.
6. Bahakel Communications, Ltd.
7. Barrington Traverse City Licensee, LLC.
8. Belo Corp.
9. BlueStone License Holdings, Inc.
10. Board of Regents of the Montana University System.
11. Board of Regents of the Montana University System.
12. Brigham Young University.
13. CBS Corporation.
14. CBS Corporation.
15. Channel 20 TV Company.
16. Community Television of Southern California.
17. Connecticut Public Broadcasting, Inc.
18. Corridor Television, LLP.
19. Davis Television Clarksburg, LLC.
20. Duluth-Superior Area Educational Television Corporation.
21. Ellis Communications KDOC Licensee, Inc.
22. Florida West Coast Public Broadcasting, Inc.
23. Fort Meyers Broadcasting Company.
24. Fox Television Stations, Inc.
25. Gannett Co., Inc.
26. Georgia Public Telecommunications Commission.
27. Granite Broadcasting Corporation.
28. Granite Broadcasting Corporation.
29. Gray Television, Inc.
30. Hawaii Public Television Foundation.
31. Hearst-Argyle Television, Inc.
32. Hoak Media, LLC.
33. Hoak Media, LLC.
34. Holston Valley Broadcasting Corporation.
35. Hubbard Broadcasting, Inc. KAAL–DT.
36. Hubbard Broadcasting, Inc. WDIO–DT.
37. Hubbard Broadcasting, Inc. WIRT–DT.
38. Hubbard Broadcasting, Inc.
39. Hubbard Broadcasting, Inc.
40. Independence Television Company.
41. Independent Communications, Inc.
42. Independent Communications, Inc.
43. International Broadcasting Corporation.
44. Joint Public Television Petitioners.
45. KAZT, LLC.
46. KEVN, Inc.
47. KTVU Partnership.
48. KWWL Television, Inc.
49. Lambert Broadcasting of Burlington, LLC.
50. Lehigh Valley Public Telecommunications Corp.
51. Lima Communications Corporation.
52. LIN Television Corporation.
53. Long Communications, LLC.

54. Malara Broadcast Group, Inc.
55. Maranatha Broadcasting Company, Inc.
56. Media General Communications Holdings, LLC.
57. Media General Communications Holdings, LLC.
58. Media General Communications Holdings, LLC.
59. Media General Communications Holdings, LLC.
60. Media General Communications Holdings, LLC.
61. Media General Communications Holdings, LLC.
62. Media General Communications Holdings, LLC.
63. Media General Communications Holdings, LLC.
64. Media General Communications Holdings, LLC.
65. Media General Communications Holdings, LLC.
66. Meredith Corporation.
67. Meredith Corporation.
68. Meredith Corporation.
69. Mississippi Authority for Educational Television.
70. Mississippi Television, LLC.
71. Montana State University.
72. Montecito Hawaii License, LLC.
73. Montecito Hawaii License, LLC.
74. The Association for Maximum Service Television—MSTV.
75. Mt. Mansfield Television, Inc.
76. Mullaney Engineering, Inc.
77. Nashville Public Television, Inc.
78. NBC Telemundo License Co.
79. Nexstar Broadcasting, Inc.
80. Oklahoma Educational Television Authority.
81. Pappas Telecasting of America & South Central Communications Corporation.
82. Paxson Denver License, Inc.
83. Post-Newsweek Stations, Orlando, Inc.
84. Radio Perry, Inc.
85. Raycom Media, Inc.
86. Red River Broadcast Co., LLC KBRR–DT.
87. Red River Broadcast Co., LLC KNRR–DT.
88. Rocky Mountain Public Broadcasting Network, Inc.
89. Schurz Communications, Inc.
90. Scripps Howard Broadcasting Company.
91. Silverton Broadcasting Company, Inc., Mark III Media, Inc. and First National Broadcasting Corp.
92. Sky Television, LLC.
93. South Carolina Educational Television Commission.
94. Southeastern Media Holdings, Inc.
95. Southern TV Corporation.
96. Sunflower Broadcasting.
97. Surtsey Media, LLC.
98. Tribune Broadcasting Company.
99. Tri-State Public Teleplex, Inc.
100. Marcia T. Turner d/b/a Turner Enterprises.
101. Twin Cities Public Television, Inc.
102. United Communications Corporation.
103. University of Alaska.
104. University of Houston System.
105. Univision Communications, Inc.
106. Univision New York, LLC.
107. Vermont ETV, Inc.
108. The Walt Disney Company.
109. WDEF–TV, Inc.
110. West Virginia Media Holdings LLC.
111. WHYY, Inc.
112. Winston Broadcasting Network, Inc.
113. Withers Broadcasting Company of West Virginia.
114. WMMP Licensee, L.P.
115. WNAC, LLC.
116. Woods Communications Corporation.
117. WSJV Television, Inc.
118. WTAT Licensee, LLC.
119. WTOV, Inc.
120. WTVZ Licensee, LLC.
121. WVTV Licensee, Inc.
122. WWAZ License, LLC.
123. WWBT, Inc.
124. Dr. Joseph A. Zavaletta.

Oppositions (Filed by November 6, 2007 or December 3, 2007)

1. Alamo Public Telecommunications Council.
2. KTBC License, Inc.
3. Mid State Television, Inc.
4. Primeland Television, Inc.
5. Sonshine Family Television, Inc.
6. Sonshine Family Television, Inc.
7. State of Wisconsin—Educational Communications Board.
8. The Association for Maximum Service Television, Inc.
9. The Board of Trustees of the University of Alabama.
10. West Virginia Educational Broadcasting Authority.
11. WOOD License Company, LLC.
12. WTNH Broadcasting, Inc.

Replies to Oppositions (Filed by November 16, 2007 or December 13, 2007)

1. Barrington Traverse City Licensee, LLC (12/21/07) (Request for Extension filed on 12/13).
2. Belo Corp.
3. Connecticut Public Broadcasting, Inc.
4. Corridor Television, LLP.
5. Gannett Co., Inc.
6. Gannett Co., Inc.
7. Robert E. Lee.
8. Twin Cities Public Television, Inc.

Other Pleadings

1. Allbritton Communications Company & Gannett Co., Inc.
2. Arkansas Educational Television Commission.
3. Bahakel Communications, Ltd.
4. Barrington Traverse City Licensee, LLC.
5. Brigham Young University.
6. Connecticut Public Broadcasting, Inc.
7. Corridor Television, LLP.
8. Corridor Television, LLP.
9. Dan Priestley.
10. Fox Television Stations of Philadelphia, Inc.
11. Gannett Co., Inc.
12. Hawaii Public Television Foundation.
13. Hoak Media, LLC.
14. Holston Valley Broadcasting Corporation.
15. Holston Valley Broadcasting Corporation.
16. Holston Valley Broadcasting Corporation.
17. Hubbard Broadcasting, Inc., KAAL–DT.
18. KEVN, Inc.
19. Koplar Communications International.
20. KWWL Television, Inc.
21. Lehigh Valley Public Telecommunications Corp.
22. Media General.
23. Media General.
24. Media General.
25. Robert E. Lee.
26. SagamoreHill Broadcasting of Wyoming/Northern Colorado, LLC.
27. Sangre de Cristo Communications, Inc.
28. Sunbelt Multimedia Co.
29. United Communications.
30. West Virginia Media Holdings, LLC.
31. WKYC–TV, Inc.
32. WMMP Licensee L.P.
33. WTAT Licensee, LLC.
34. WTVZ Licensee, LLC.
35. WVTV Licensee, Inc.

Ex Parte/Late Filed Comments (Filed After October 26, 2007, December 13, 2007 and November 16, 2007)

1. Davis Television Wasau, LLC.
2. EME Communications.
3. KMBC Hearst-Argyle Television, Inc.
4. Mountain TV, LLC.
5. School Board of Miami Dade County, Florida.
6. Lake Superior Community Broadcast Corporation.
7. Mullaney Engineering Inc.

Notices of Ex Parte Communications

1. Allbritton Communications Company & Gannett Co., Inc.
2. Association of Public Television Stations.
3. Capitol Broadcasting/Hubbard Broadcasting.
4. Cohen, Dippell and Everist, P.C.
5. Georgia Public Telecommunications Commission.
6. Holston Valley Broadcasting Corporation.
7. ION Media Networks.
8. ION Media Networks, Inc.
9. MSTV.
10. MSTV.
11. MSTV.
12. MSTV.
13. MSTV Inc.
14. MSTV Inc.
15. MSTV Inc.
16. MSTV Inc.
17. MSTV Inc.
18. MSTV Inc.
19. Sunflower Broadcasting, Inc.
20. The Association of Maximum Service Television—MSTV.
21. The Walt Disney Company, CBS Corporation, Capitol Broadcasting, Hubbard Broadcasting.
22. Tribune Broadcasting Company.

APPENDIX D1.—GRANTED REQUESTS FOR MINOR ADJUSTMENTS

Call sign	Facility ID No.	Community	State	Current NTSC channel	Current DTV channel	Post transition channel
WISE	13960	FORT WAYNE	IN	33	19	19
KCTV	41230	KANSAS CITY	MO	5	24	24
KMDE	162016	DEVILS LAKE	ND	.....	25	25
WCNY	53734	SYRACUSE	NY	24	25	25
KBJR	33658	SUPERIOR	WI	6	19	19

APPENDIX D2.—GRANTED REQUESTS FOR CHANGES TO CERTIFICATION THAT MEET THE INTERFERENCE CRITERIA

Call sign	Facility ID No.	Community	State	Current NTSC channel	Current DTV channel	Post transition channel	File No.
KAKM	804	ANCHORAGE	AK	7	8	8	BLEDT–20050915APL
WFIQ	715	FLORENCE	AL	36	22	22	BLEDT–20060718ACG
WHIQ	713	HUNTSVILLE	AL	25	24	24	BLEDT–20060927ALU
WAIQ	706	MONTGOMERY	AL	26	27	27	BLEDT–20060706ACK
KKYK	86534	CAMDEN	AR	49	.....	49	BPCDT–20050224ABE
KDOC	24518	ANAHEIM	CA	56	32	32	BMPCDT–20040323ATA
KAEF	8263	ARCATA	CA	23	22	22	BPCDT–20070914AAG
KVCR	58795	SAN BERNARDINO	CA	24	26	26	BLEDT–20070904AIC
KPXC	68695	DENVER	CO	59	43	43	BPCDT–19990923AAM
KRMA	14040	DENVER	CO	6	18	18	BMPEDT–20061205AAG
KFCT	125	FORT COLLINS	CO	22	21	21	BMPCDT–20050916ACG
WINK	22093	FORT MYERS	FL	11	9	9	BLCDT–20060531ADP
WCWJ	29712	JACKSONVILLE	FL	17	34	34	BLCDT–20060630AFM
WSRE	17611	PENSACOLA	FL	23	31	31	BLEDT–20060621AAS
WGSA	69446	BAXLEY	GA	34	35	35	BMPCDT–20060717AAC
WPGA	54728	PERRY	GA	58	32	32	BMPCDT–20041203ADW
KFVE	34445	HONOLULU	HI	5	23	23	BDSTA–20041012AKF
KHNL	34867	HONOLULU	HI	13	35	35	BLCDT–20070220ABH
KQIN	5471	DAVENPORT	IA	36	34	34	BMPEDT–20070809AAX
KTIN	29100	FORT DODGE	IA	21	25	25	BMPEDT–20060911AAJ
KYIN	29086	MASON CITY	IA	24	18	18	BMPEDT–20060714ABL
KSIN	29096	SIOUX CITY	IA	27	28	28	BLEDT–20050726AMC
WSBT	73983	SOUTH BEND	IN	22	30	22	BMPCDT–20050613AFU
KSWK	60683	LAKIN	KS	3	8	8	BLEDT–20050203ADS
WKLE	34207	LEXINGTON	KY	46	42	42	BLEDT–20060926AJQ
KALB	51598	ALEXANDRIA	LA	5	35	35	BPCDT–19991025ACQ
WWLP	6868	SPRINGFIELD	MA	22	11	11	BLCDT–20060619AAS
KDLH	4691	DULUTH	MN	3	33	33	BMPCDT–20060519AAE
KOZJ	51101	JOPLIN	MO	26	25	25	BLEDT–20060620ABP
KYTV	36003	SPRINGFIELD	MO	3	44	44	BLCDT–20020213AAA
KUSM	43567	BOZEMAN	MT	9	8	8	BLEDT–20050926ALC
WSFX	72871	WILMINGTON	NC	26	30	30	BMPCDT–20060630ADE
KRWG	55516	LAS CRUCES	NM	22	23	23	BMPEDT–20041104AXJ
WNLO	71905	BUFFALO	NY	23	32	32	BLCDT–20070320AAV
WSKA	78908	CORNING	NY	30	.....	30	BLEDT–20060705ABL
WBNX	72958	AKRON	OH	55	30	30	BLCDT–20070430AXX
WCET	65666	CINCINNATI	OH	48	34	34	BLEDT–20061031AAR
WLIO	37503	LIMA	OH	35	8	8	BMPCDT–20060517ABE
WQCW	65130	PORTSMOUTH	OH	30	17	17	BLCDT–20060630AFJ
WFMZ	39884	ALLENTOWN	PA	69	46	46	BLCDT–20060621AAU
WITF	73083	HARRISBURG	PA	33	36	36	BLEDT–20000922AHE
WMTJ	2174	FAJARDO	PR	40	16	16	BMPEDT–20070629AEN
WTCV	28954	SAN JUAN	PR	18	32	32	BPCDT–20070125AAX
WRLK	61013	COLUMBIA	SC	35	32	32	BMLEDT–20040826AAL
WSMV	41232	NASHVILLE	TN	4	10	10	BLCDT–20021029AAV
KXAN	35920	AUSTIN	TX	36	21	21	BLCDT–20050630AAG
KTLM	62354	RIO GRANDE CITY	TX	40	20	20	BPCDT–19991026ACA
KBYU	6823	PROVO	UT	11	44	44	BLEDT–20020813ABC
WDBJ	71329	ROANOKE	VA	7	18	18	BLCDT–20020502AAP
WETK	69944	BURLINGTON	VT	33	32	32	BLEDT–20061011ADW
WVNY	11259	BURLINGTON	VT	22	13	13	BLCDT–20061113ABH
WVTB	69940	ST. JOHNSBURY	VT	20	18	18	BPEDT–20071026ABW
WVTA	69943	WINDSOR	VT	41	24	24	BMPEDT–20060306BRA
WHLA	18780	LA CROSSE	WI	31	30	30	BMLEDT–20041013AAL
WHRM	73036	WAUSAU	WI	20	24	24	BLEDT–20051014AAW

APPENDIX D3.—GRANTED REQUESTS FOR MODIFIED COVERAGE AREA

Call sign	Facility ID No.	Community	State	Current NTSC channel	Current DTV channel	Post transition channel
WVTM	74173	BIRMINGHAM	AL	13	52	13
KETS	2770	LITTLE ROCK	AR	2	5	7
KNAZ	24749	FLAGSTAFF	AZ	2	22	2
KCET	13058	LOS ANGELES	CA	28	59	28
KXTV	25048	SACRAMENTO	CA	10	61	10
WJLA	1051	WASHINGTON	DC	7	39	7
WUSA	65593	WASHINGTON	DC	9	34	9
WHYY	72338	WILMINGTON	DE	12	55	12
WTSP	11290	ST. PETERSBURG	FL	10	24	10
WPTV	59443	WEST PALM BEACH	FL	5	55	12
WGTV	23948	ATHENS	GA	8	12	8
KWWL	593	WATERLOO	IA	7	55	7
KTVB	34858	BOISE	ID	7	26	7
WNIN	67802	EVANSVILLE	IN	9	12	9
WBKO	4692	BOWLING GREEN	KY	13	33	13
WHAS	32327	LOUISVILLE	KY	11	55	11
WLBZ	39644	BANGOR	ME	2	25	2
WBKP	76001	CALUMET	MI	5	11	5
WILX	6863	ONONDAGA	MI	10	57	10
WPBN	21253	TRAVERSE CITY	MI	7	50	7
WDIO	71338	DULUTH	MN	10	43	10
KEYC	68853	MANKATO	MN	12	38	12
WJTV	48667	JACKSON	MS	12	52	12
WTOK	4686	MERIDIAN	MS	11	49	11
KOBF	35321	FARMINGTON	NM	12	17	12
WWNY	68851	CARTHAGE	NY	7	35	7
WHEC	70041	ROCHESTER	NY	10	58	10
WTVG	74150	TOLEDO	OH	13	19	13
KOED	66195	TULSA	OK	11	38	11
WGAL	53930	LANCASTER	PA	8	58	8
WSUR	19776	PONCE	PR	9	43	9
WJAR	50780	PROVIDENCE	RI	10	51	51
WBTW	66407	FLORENCE	SC	13	56	13
WHNS	72300	GREENVILLE	SC	21	57	21
WYFF	53905	GREENVILLE	SC	4	59	36
KTTM	28501	HURON	SD	12	22	12
WMC	19184	MEMPHIS	TN	5	52	5
KCPQ	33894	TACOMA	WA	13	18	13
KSTW	23428	TACOMA	WA	11	36	11
WDTV	70592	WESTON	WV	5	6	5

APPENDIX D4.—GRANTED REQUESTS FOR ALTERNATIVE CHANNEL ASSIGNMENTS

Call sign	Facility ID No.	Community	State	Current NTSC channel	Current DTV channel	Post transition channel
KTVF	49621	FAIRBANKS	AK	11	26	26
KIDA	81570	SUN VALLEY	ID	5	.....	5
KSCW	72348	WICHITA	KS	33	31	19
WUFX	84253	VICKSBURG	MS	35	.....	41
WTLW	1222	LIMA	OH	44	47	44
KIVV	34348	LEAD	SD	5	29	5
WKPT	27504	KINGSPORT	TN	19	27	27
KVAW	32621	EAGLE PASS	TX	16	18	24

APPENDIX D5.—STATIONS REQUESTING CHANGES THAT SHOULD BE REQUESTED IN AN APPLICATION

Call sign	Facility ID No.	Community	State	Current NTSC channel	Current DTV channel	Post transition channel
Stations Whose Post-Transition Channel is Different from Their Pre-Transition Channel						
KBRR	55370	THIEF RIVER FALLS	MN	10	57	10
KBSH	66415	HAYS	KS	7	20	7
KCBS	9628	LOS ANGELES	CA	2	60	43
KDSE	53329	DICKINSON	ND	9	20	9
KETZ	92872	EL DORADO	AR	.....	12	10

APPENDIX D5.—STATIONS REQUESTING CHANGES THAT SHOULD BE REQUESTED IN AN APPLICATION—Continued

Call sign	Facility ID No.	Community	State	Current NTSC channel	Current DTV channel	Post transition channel
KFME	53321	FARGO	ND	13	23	13
KFVS	592	CAPE GIRARDEAU	MO	12	57	12
KGIN	7894	GRAND ISLAND	NE	11	32	11
KHAS	48003	HASTINGS	NE	5	21	5
KNOP	49273	NORTH PLATTE	NE	2	22	2
KNRR	55362	PEMBINA	ND	12	15	12
KOLN	7890	LINCOLN	NE	10	25	10
KPNE	47973	NORTH PLATTE	NE	9	16	9
KRMJ	14042	GRAND JUNCTION	CO	18	17	18
KTCI	68597	ST. PAUL	MN	17	16	26
KTSC	69170	PUEBLO	CO	8	26	8
KUAC	69315	FAIRBANKS	AK	9	24	9
KUHT	69269	HOUSTON	TX	8	9	8
KUPK	65535	GARDEN CITY	KS	13	18	13
KWCH	66413	HUTCHINSON	KS	12	19	12
KWTX	35903	WACO	TX	10	53	10
WAKA	701	SELMA	AL	8	55	42
WBKO	4692	BOWLING GREEN	KY	13	33	13
WCAX	46728	BURLINGTON	VT	3	53	22
WDSE	17726	DULUTH	MN	8	38	8
WEAU	7893	EAU CLAIRE	WI	13	39	13
WEDU	21808	TAMPA	FL	3	54	13
WIBW	63160	TOPEKA	KS	13	44	13
WJHG	73136	PANAMA CITY	FL	7	8	7
WLEF	63046	PARK FALLS	WI	36	47	36
WLVT	36989	ALLENTOWN	PA	39	62	39
WNPT	41398	NASHVILLE	TN	8	46	8
WPTD	25067	DAYTON	OH	16	58	16
WPVI	8616	PHILADELPHIA	PA	6	64	6
WRDW	73937	AUGUSTA	GA	12	31	12
WSAW	6867	WAUSAU	WI	7	40	7
WSKY	76324	MANTEO	NC	4	4	9
WTAT	416	CHARLESTON	SC	24	40	24
WTVM	595	COLUMBUS	GA	9	47	9
WTVZ	40759	NORFOLK	VA	33	38	33
WVTV	74174	MILWAUKEE	WI	18	61	18
Stations Whose Post-Transition Channel is the Same as Their Pre-Transition Channel						
KBTV	61214	PORT ARTHUR	TX	4	40	40
KFNR	21612	RAWLINS	WY	11	9	9
KGWL	63162	LANDER	WY	5	7	7
KMID	35131	MIDLAND	TX	2	26	26
KQTV	20427	ST. JOSEPH	MO	2	53	7
KTWO	18286	CASPER	WY	2	17	17
KUPN	63158	STERLING	CO	3	23	23
KVEA	19783	CORONA	CA	52	39	39
WBBJ	65204	JACKSON	TN	7	43	43
WFXV	43424	UTICA	NY	33	27	27
WHKY	65919	HICKORY	NC	14	40	40
WMYO	34167	SALEM	IN	58	51	51

Appendix E—Supplemental Final Regulatory Flexibility Analysis

151. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Seventh Further Notice of Proposed Rulemaking* (''*Seventh FNPRM*'') in MB Docket 87–268. The Commission sought written public comment on the proposals in the *Seventh FNPRM*, including comment on the IRFA. In addition, a Final Regulatory Flexibility Analysis (''FRFA'') was incorporated in the *Seventh R&O* in MB Docket 87–268. This present Supplemental Final Regulatory Flexibility Analysis (''Supplemental FRFA'') on the *MO&OR* conforms to the RFA.

A. Need for, and Objectives of, the Order on Reconsideration

152. The Commission initiated this proceeding to establish a final DTV Table of Allotments with the *Seventh FNPRM*, which proposed a final, post-transition DTV channel for each eligible, (Only Commission licensees and permittees were eligible to participate in the channel election process to select a final DTV channel. *See Second DTV Periodic Report and Order*, 19 FCC Rcd at 1830, paragraph 66.), full power television broadcast station. After reviewing comments, the Commission adopted a final DTV Table in the *Seventh R&O*. The Commission received approximately 124 petitions for reconsideration of the *Seventh R&O* requesting changes to the Table and/or to the station operating parameters on Appendix B for more than 200 stations. The *MO&OR* responds to these petitions and, in response to some of the petitions, modifies the DTV Table and/or Appendix B adopted in the *Seventh R&O*. This Supplemental FRFA is associated with the *MO&OR* and discusses the changes made to the DTV Table and Appendix B in response to the petitions for reconsideration.

153. The final post-transition DTV Table, as modified herein on reconsideration, finalizes the channel and facilities necessary to complete the digital transition for full power television stations, including full power commercial and noncommercial broadcast television stations. The changes we made to the DTV Table and Appendix B in response to the petitions will help promote overall spectrum efficiency and ensure the best possible service to the public, including service to local communities. For example, for 55 stations, we made changes to Appendix B station operating parameters to be consistent with current authorizations for these stations. For 8 stations, we granted channel changes requested by the station, which will assist those stations in making the transition to digital service and in continuing to serve their communities. For 40 stations, we modified the station's post-transition coverage area to help the station better serve their community post-transition, and for 6 stations we granted minor changes to Appendix B station parameters to reflect correct coordinates for the station. These and other changes to the final DTV Table and Appendix B made herein will assist these broadcasters in transitioning to digital service.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

154. There were no comments filed that specifically addressed the FRFA in this proceeding.

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

155. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. *Id.* § 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive. The rules of this *MO&O* will primarily affect full power television stations, as opposed to low power television stations and television translator stations. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

156. *Television Broadcasting*. The rules and policies adopted in this *MO&OR* apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' *Id.* This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in-turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199. The Commission has estimated the number of licensed commercial television stations to be 1,376. *See* News Release, ''Broadcast Station Totals as of December 31, 2006,'' 2007 WL 221575 (dated Jan. 26, 2007) (''*Broadcast Station Totals*''); also available at *http://www.fcc.gov/mb/*. According to Commission staff review of the BIA Financial Network, MAPro Television Database (''BIA'') on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or about 72 percent) have revenues of $13.0 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations, (''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).), must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

157. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

158. *Class A TV, LPTV, and TV translator stations*. The rules and policies adopted in this *MO&OR* do not directly affect low power television stations, as the DTV Table adopted in the *MO&O* finalizes post-transition digital channels only for full power television stations. Nonetheless, as discussed in Section E, *infra*, low power television stations will also eventually transition from analog to digital technology and may be indirectly affected by the channel allotment decisions herein. The broadcast stations indirectly affected include licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. In general, low power television stations are secondary to full power television stations and must accept interference from full power stations. The Community Broadcasters Protection Act, and the Commission's rules implementing that statute, give certain low power television (LPTV) stations, known as Class A stations, some limited protection from interference by full-service stations. *See* Community Broadcasters Protection Act of 1999, Pub. L. No. 106–113, 113 Stat. Appendix I at pp. 1501A–594–1501A–598 (1999), codified at 47 U.S.C. 336(f). *See also* 47 CFR 73.6000–6027. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

159. The rules adopted in the *MO&OR* involve no changes to reporting, recordkeeping, or other compliance requirements beyond what is already required under the current regulations.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

160. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

161. As noted in paragraph 3 of this Supplemental FRFA, we made a number of changes to the final DTV Table and Appendix B in the *MO&OR* in response to petitions for reconsideration filed on behalf of stations. The changes we made will help promote overall spectrum efficiency and ensure the best possible service to the public, including service to local communities. In general, we accommodated the requests made by petitioners to the extent possible consistent with the interference and other standards outlined in the *Seventh FNPRM* and the *Seventh R&O* in this proceeding. Making changes wherever possible in response to station requests and consistent with previous standards advances the Commission's overall goal of facilitating the digital transition. An alternative, which we did not pursue, would have been to consider petitions without reference to the interference and other standards set forth in the *Seventh FNPRM* and the *Seventh R&O*. We rejected that alternative on the ground that station requests should be treated consistently to the extent possible, so that stations that requested relief earlier in the proceeding, in a comment filed in response to the *Seventh FNPRM*, do not get treated differently from those that requested relief later, in a petition for reconsideration filed in response to the *Seventh R&O*.

162. The changes to the final post-transition DTV Table adopted in the *MO&OR* provides stations that filed petitions for reconsideration—large and small alike—with the best channels and facilities possible for accomplishing the digital transition. Large and small broadcasters alike benefited from our approach of accommodating petitioner requests where possible, which was taken in an effort to expedite finalization of the DTV Table and Appendix B so that stations can complete construction of their post-transition facilities by the statutory deadline for the DTV transition. Where petitioners made specific requests for changes to the proposals in the *Seventh FNPRM*, requests that provided for an alternative service area for the station or parameters that differed from those adopted by the Commission, those requests were granted to the extent possible consistent with the standards of the *Seventh FNPRM* and the *Seventh R&O* and, in particular, with the applicable interference standards. This process has been open and transparent, and has provided consistent treatment for large and small broadcasters.

163. The final DTV Table adopted herein does not provide for channels for low power television stations, and we received no petitions for reconsideration from low power stations. The Commission will address the digital transition for low power television (''LPTV'') stations in a separate proceeding. The statutory transition deadline established by Congress in 2006—February 17, 2009—applies only to full-power stations. *See* Digital Television and Public Safety Act of 2005, which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109–171, 120 Stat. 4 (2006) (codified at 47 U.S.C. 309(j)(14) and 337(e)). One of the Commission's goals in this proceeding is to permit full power stations to finalize their post-transition facilities by this rapidly approaching deadline. The Commission previously determined that it has discretion under 47 U.S.C. 336(f)(4) to set the date by which analog operations of stations in the low power and translator service must cease. *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03–185, Report and Order, *19 FCC Rcd 19331, 19336 paragraph 12 (2004)* (*'' LPTV DTV Report and Order ''*). The Commission has stated that the intent is to ensure that low power and translator stations not be required to prematurely convert to digital operation in a manner that could disrupt their analog service or, more importantly, that might cause them to cease operation. The Commission decided not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations. The Commission has recognized that low power television stations are a valuable component of the nation's television system and has stated its intention to facilitate, wherever possible, the digital transition of these stations.

F. Report to Congress

164. The Commission will send a copy of this *MO&OR*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *MO&OR*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *MO&OR* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

Appendix F—Eighth Report and Order,List of Comments and Replies

1. Richland Reserve, LLC.
2. Fox Television Stations of Philadelphia, Inc.
3. Maryland Public Broadcasting Commission d/b/a Maryland Public Television.
4. Saga Quad States Communications.
5. Gray Television Licensee, Inc.
6. Gilmore Broadcasting Corp.
7. Idaho Independent Television, Inc.
8. The Board of Trustees of The University of Alabama.
9. CBS Corporation.
10. Tribune Broadcasting Co.

Appendix G—Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Eighth Further Notice of Proposed Rulemaking* (''*8th FNPRM*''). The Commission sought written public comment on the proposals in the *Eighth Further Notice,* including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (''FRFA'') accompanying the *Eighth Report and Order* (''*Eighth R&O*'') conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

2. This *Eighth R&O* addresses comments filed by licensees and permittees in response to the *Eighth Further Notice.* The *Eighth Further Notice* proposed modifications to the new post-transition DTV Table of Allotments and Appendix B (''DTV Table''). It provided three new full power permittees and nine existing full power licensees and permittees with channels and parameters for digital broadcast operations after the DTV transition. Changes to the new post-transition DTV Table affect full power commercial and noncommercial broadcast television stations as the new DTV Table provides post-transition channels for all eligible full power stations and changes to the Table may have interference or other implications for other broadcasters in the Table.

3. The Commission announced in the *Seventh Further Notice* that, to the extent possible, it would accommodate future new permittees in the new post-transition DTV Table, but that it would provide an opportunity for public comment before doing so. Three new construction permits were issued to permittees too late to be offered for comment in the Public Notice revising the *Seventh Further Notice,* (Public Notice, ''Revisions to Proposed New DTV Table of Allotments, Tentative Channel Designations To Be Added to the DTV Table of Allotments Proposed in the *Seventh Further Notice of Proposed Rule Making* in MB Docket No. 87–268,'' DA 07–20 (MB rel. Jan. 8, 2007), 72 FR 2485 (Jan. 19, 2007) (''*New Permittees PN*'').), but it was found that these permittees could be accommodated in the new DTV Table without causing impermissible interference. Having provided the requisite notice and comment periods, in the *Eighth R&O* we have now granted the specific facilities and parameters we proposed for these permittees, including the request for a different post-transition digital channel in a comment filed by one of the permittees. Furthermore, ten, (Initially, ten licensees or permittees

requested changes and were under consideration, however one licensee, Fox Television Stations of Philadelphia, Inc., has withdrawn its request to adjust its Appendix B parameters and therefore only nine such requests are being considered. *See* Brief Comment of Fox Television Stations of Philadelphia, Inc., filed Oct. 18, 2007.), existing licensees and permittees made late-filed requests to the *Seventh Further Notice* for modifications to the new DTV Table, and we found it appropriate to provide a full opportunity for comment with respect to these entities in the *Eighth Further Notice.* With the issuance of the instant *Eighth R&O,* we have now considered any comments filed in connection with these proposals. We grant the request of one station to modify Appendix B to reflect its authorized facilities, we grant the request of another station seeking to modify its Appendix B facilities to more closely replicate its analog Grade B contour, we grant alternative post-transition digital channel assignments to five stations, and we grant the request to modify the technical parameters of two stations whose transmission facilities were destroyed by Hurricane Katrina.

4. We believe these modifications to the new post-transition DTV Table support the goals set forth for the channel election process. By these modifications, the new permittees are provided with channels for DTV operations after the transition. Where adjustments bring the Table into line with the facilities or service areas of existing licensees or permittees, they recognize industry expectations and respect investments already made. These adjustments also move the overall post-transition DTV Table more quickly towards finality without sacrificing clarity or transparency. Finally, we believe the adjustments we have granted in the *Eighth R&O* reflect our efforts to promote overall spectrum efficiency and, in particular, ensure the best possible DTV service to the public.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. *Id.* § 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. Application of the statutory criteria of 'non-dominance in its field of operation' and 'independence' are sometimes difficult to accomplish in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive. The rules of this *Eighth R&O* will primarily affect full power television stations, as opposed to low power television stations and television translator stations. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

7. *Television Broadcasting.* The rules and policies adopted in this *Eighth R&O* apply to television broadcast licensees and permittees of television service. The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' *Id.* This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199. The Commission has estimated the number of licensed commercial television stations to be 1,376. *See* News Release, ''Broadcast Station Totals as of December 31, 2006,'' 2007 WL 221575 (dated Jan. 26, 2007) (''*Broadcast Station Totals*''); also available at *http://www.fcc.gov/mb/.* According to Commission staff review of the BIA Financial Network, MAPro Television Database (''BIA'') on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or about 72 percent) have revenues of $13.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380. *See Broadcast Station Totals, supra* note15. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations, (''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).), must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

9. *Class A TV, LPTV, and TV translator stations.* The rules and policies proposed in this *Eighth R&O* do not directly affect low power television stations, as the DTV Table to which changes are being proposed will finalize post-transition digital channels only for full power television stations. Nonetheless, as discussed in Section E, infra, low power television stations will also eventually transition from analog to digital technology and may be indirectly affected by the channel allotment decisions herein. The broadcast stations indirectly affected include licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $13.0 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-

translator or booster entities should be considered.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

10. The rules adopted in this *Eighth R&O* involve no changes to reporting, recordkeeping, or other compliance requirements beyond what is already required under the current regulations.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

12. The new post-transition DTV Table adopted in the *Seventh R&O* provides all eligible broadcast television stations—large and small alike—with channels for post-transition DTV operations. Small broadcasters, just like large ones, benefited from participating in the channel election process, and had an equal opportunity to review the proposed DTV Table and request modifications to it. Furthermore, no distinction was made between large and small licensees and permittees when determining which proposals to include in the *Eighth Further Notice* or which proposals to grant in the *Eighth R&O.* All licensees and permittees affected by the *Eighth R&O* had the opportunity to comment, and the Commission considered all comments, including those proposing alternative allotments for specific stations. The channel designations and parameters granted in the *Eighth R&O* are based almost entirely on elections by licensees and permittees. The transition procedures utilized in selecting final DTV allotments have been sufficiently transparent and flexible and were the most efficient means of minimizing the impact on small entities. The narrow scope of the Commission's authority did not permit for alternative procedures for selecting final DTV allotments, nor has the Commission ever utilized any alternative procedure for finalizing the DTV Table.

13. In addition, the new DTV Table to which the *Eighth R&O* grants modifications does not provide for channels for low power television stations. The Commission will address the digital transition for low power television (''LPTV'') stations in a separate proceeding. The statutory transition deadline established by Congress in 2006—February 17, 2009—applies only to full-power stations. *See* Digital Television and Public Safety Act of 2005, which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109–171, 120 Stat. 4 (2006) (codified at 47 U.S.C. 309(j)(14) and 337(e)). One of the Commission's goals in this proceeding is to permit full power stations to finalize their post-transition facilities by this rapidly approaching deadline. The Commission previously determined that it has discretion under *47 U.S.C. 336(f)(4)* to set the date by which analog operations of stations in the low power and translator service must cease. *Amendment of Parts 73 and 74 of the Commission's Rules To Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations,* MB Docket No. 03–185, Report and Order, *19 FCC Rcd 19331, 19336 paragraph 12 (2004)* (*LPTV DTV Report and Order*). The Commission has stated that the intent is to ensure that low power and translator stations not be required to prematurely convert to digital operation in a manner that could disrupt their analog service or, more importantly, that might cause them to cease operation. The Commission decided not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations. The Commission has recognized that low power television stations are a valuable component of the nation's television system and has stated its intention to facilitate, wherever possible, the digital transition of these stations.

F. Report to Congress

14. The Commission will send a copy of this *Eighth R&O,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Eighth R&O,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Eighth R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

[FR Doc. E8–5662 Filed 3–20–08; 8:45 am]

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Federal Register

Friday,
March 21, 2008

Part III

Department of Education

34 CFR Parts 668, 673, 674, et al.

The Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and Other Federal Student Aid Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 673, 674, 675, 676, 682, 685, 686, and 690

RIN 1840–AC93

[Docket ID ED–2008–OPE–0001]

The Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and Other Federal Student Aid Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend title 34 of the Code of Federal Regulations to establish regulations for the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program. The TEACH Grant program is a non-need-based grant program that provides up to $4,000 per year to students who are enrolled in an eligible program and who agree to teach in a high-need field, at a low-income elementary or secondary school for at least four years within eight years of completing the program for which the TEACH Grant was awarded. If the grant recipient fails to complete the required teaching service, the TEACH grant is treated as a Federal Direct Unsubsidized Stafford Loan (Federal Direct Unsubsidized Loan). The Secretary also proposes to amend the regulations related to the Student Assistance General Provisions; the General Provisions for the Federal Perkins Loan Program, the Federal Work-Study Program, the Federal Supplemental Educational Opportunity Grant Program; the Federal Perkins Loan Program; the Federal Work-Study Programs; the Federal Supplemental Educational Opportunity Grant Program; the Federal Family Education Loan (FFEL) Program; the William D. Ford Federal Direct Loan Program; and the Federal Pell Grant Program to implement the TEACH Grant Program. These proposed regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the College Cost Reduction and Access Act of 2007 (CCRAA).

DATES: We must receive your comments on or before April 21, 2008.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Michelle Belton, U.S. Department of Education, 1990 K Street, NW., room 8031, Washington, DC 20006–8502.

Privacy Note: The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing on the Federal eRulemaking Portal at *http://www.regulations.gov*. All submissions will be posted to the Federal eRulemaking Portal without change, including personal identifiers and contact information.

FOR FURTHER INFORMATION CONTACT: Michelle Belton, U.S. Department of Education, 1990 K Street, NW., room 8031, Washington, DC 20006–8502. Telephone: (202) 502–7821 or via the Internet at: *Michelle.Belton@ed.gov*.

If you use a telecommunications device for the deaf, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can 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:

Invitation To Comment

As outlined in the section of this notice entitled ''*Negotiated Rulemaking*,'' significant public participation, through three public hearings and three negotiated rulemaking sessions, has occurred in developing this notice of proposed rulemaking (NPRM). Therefore, in accordance with the requirements of the Administrative Procedure Act, the Department invites you to submit comments regarding these proposed regulations on or before April 21, 2008. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866, including its overall requirements to assess both the costs and the benefits of the intended regulation and feasible alternatives, and to make a reasoned determination that the benefits of this intended regulation justify its costs. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 8031, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Negotiated Rulemaking

Section 492 of the HEA requires the Secretary, before publishing any proposed regulations for programs authorized by Title IV of the HEA, to obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the Federal student financial assistance programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. All proposed regulations that the Department publishes on which the negotiators reached consensus must conform to final agreements resulting from that process unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreements. Further information on the negotiated rulemaking process can be found at:

http://www.ed.gov/policy/highered/reg/hearulemaking/2008/index2008.html.

On October 22, 2007, the Department published a notice in the **Federal Register** (72 FR 59494) announcing our intent to establish up to two negotiated rulemaking committees to prepare proposed regulations. One committee would focus on issues related to the new TEACH Grant program (TEACH Grant Committee). A second committee would address Federal student loans. The notice requested nominations of individuals for membership on the committees who could represent the interests of key stakeholder constituencies on each committee. The TEACH Grant Committee met to develop proposed regulations twice during the month of January, 2008 and once in early February, 2008. This NPRM proposes regulations relating to the administration of the TEACH Grant program.

The Department developed a list of proposed regulatory provisions for the TEACH Grant program from advice and recommendations submitted by individuals and organizations in testimony submitted to the Department in a series of three public hearings held on:

- November 2, 2007, at the Sheraton New Orleans, New Orleans, Louisiana.
- November 16, 2007, at the U.S. Department of Education in Washington, DC.
- November 29, 2007, at the Manchester Grand Hyatt San Diego, San Diego, California.

In addition, the Department accepted written comments on possible regulatory provisions submitted directly to the Department by interested parties and organizations. A summary of all comments received orally and in writing is posted as background material in the docket. Transcripts of the regional meetings can be accessed at *http://www.ed.gov/policy/highered/reg/hearulemaking/2008/index2008.html*.

Staff within the Department also identified issues for discussion and negotiation.

At its first meeting, the TEACH Grant Committee reached agreement on its protocols and proposed agenda. These protocols provided that the non-Federal negotiators would participate in the negotiated rulemaking process based on their experience and expertise.

The TEACH Grant Committee included the following members:

- Dr. Nell Ingram, Dallas Independent School District and Judy Corcillo (alternate), National Association for Alternative Certification.
- Donna Harris-Aikens, National Education Association and James Rice (alternate), Quinsigamond Community College.
- Dr. William H. Graves, III, Darden College of Education, Old Dominion University and Dr. J. Roberts Hendricks (alternate), College of Education, University of Arizona.
- Dr. Sandra Robinson, College of Education, University of Central Florida and Dr. Jane West (alternate), American Association of Colleges for Teacher Education.
- Joseph Pettibon, Texas A&M University and Beth Stack (alternate), University of Pittsburgh.
- Dr. Herbert Brunkhorst, California State University San Bernardino and Janis Lariviere (alternate), Teacher Development Center for Science Education, University of Kansas.
- Janet Dodson, Doane College and Bernard A. Pekala, Jr. (alternate), Boston College.
- Ellis Salim, Baker College and Maureen Budetti (alternate), National Association of Independent Colleges and Universities.
- Scott Fleming, Georgetown University and Thomas O'Neill (alternate), Association of Independent Colleges and Universities of Nebraska.
- Mary Dorrell, Career Education Corporation and Tammy Halligan (alternate), Career College Association.
- Patrick Moore, Delaware Technical and Community College.
- Jim Hermes, American Association of Community Colleges and Julia Brown (alternate), Northern Virginia Community College.
- Carmen Berkley, United States Student Association and Cedric Lawson (alternate), United Council of University of Wisconsin Students.
- Terry Hartle, American Council on Education and Cyndy Littlefield (alternate), Association of Jesuit Colleges and Universities.
- Gail McLarnon, U.S. Department of Education.

During its meetings, the TEACH Grant Committee reviewed and discussed drafts of proposed regulations. At the final meeting in February 2008, the TEACH Grant Committee reached consensus on all of the proposed regulations in this document. More information on the work of the TEACH Grant Committee can be found at: *http://www.ed.gov/policy/highered/reg/hearulemaking/2008/teach.html*.

The Secretary bases these proposed regulations for the TEACH Grant program on the regulations of the Federal Pell Grant program or the William D. Ford Federal Direct Loan (Direct Loan) program as appropriate given the similar nature of these programs. Like the Federal Pell Grant program, the TEACH Grant program provides for direct grants from the Federal government to students to assist in paying their college expenses. However, unlike the Federal Pell Grant program, the TEACH Grant program requires grant recipients to complete a service obligation consisting of four years of teaching in a high-need field at a low-income elementary or secondary school within eight years of completing the program of study for which the TEACH Grant was given. If a recipient fails to complete this service obligation, the TEACH Grant converts to a Federal Direct Unsubsidized Loan.

Under the proposed regulations, the Secretary would deliver funds using the same system as used for the Federal Pell Grant and Direct Loan programs. This will allow the coordination of administrative requirements and will assist participating institutions in administering the program, reduce the institutional administrative burden and paperwork, and simplify the application process for students. Accordingly, these proposed regulations would include the following definitions, without changes, from the Federal Pell Grant program regulations in 34 CFR 690.2:

Institutional Student Information Record (ISIR) Payment Data

Student Aid Report (SAR)

In addition, the substance of proposed §§ 686.5, 686.22(a) through (f), 686.25, 686.30, 686.33, 686.34, 686.35, 686.36 and 686.38 reflect the Pell Grant requirements in 34 CFR 690.8, 690.63(a) through (f), 690.66, 690.71, 690.76, 690.79, 690.80(a) and (b), 690.81, and 690.82. We have included these specific Pell Grant requirements in the text of the proposed TEACH Grant regulations to provide a complete description in part 686 of the program-specific requirements for the TEACH Grant program. Other sections of the proposed TEACH Grant program regulations reflect the Federal Pell Grant program requirements and the William D. Ford Federal Direct Loan program requirements to the extent practicable.

Significant Proposed Regulations

We group major issues according to subject, with appropriate sections of the proposed regulations referenced in parenthesis. We discuss substantive issues under the sections of the proposed regulations to which they pertain.

Late Disbursements (§ 668.164(g))

Statute: The HEA does not specifically address the issue of late disbursements of TEACH Grants.

Proposed Regulations: Current 34 CFR 668.164(g) allows a student who is no longer eligible to receive Title IV, HEA program funds to qualify for those funds if certain conditions are satisfied; for example, the institution receiving a SAR or an ISIR with an official expected family contribution. Current § 668.164(g) also specifies the affected programs. The proposed regulations would add the TEACH Grant program to the list in § 668.164(g) of programs for which a student becomes ineligible when the student is no longer enrolled at the institution for the award year. The proposed regulations would also describe how TEACH Grant recipients may qualify for a late disbursement.

Reason: For a student to be considered eligible for a late disbursement of Title IV aid, the institution must have received a SAR or an ISIR with an official expected family contribution (EFC) and must originate the award before the student became ineligible. For TEACH Grant purposes, ''originate'' means that the student meets the eligibility requirements of § 686.11, including signing the service agreement.

Calculating and Applying Cohort Default Rates (§ 668.183)

Statute: Section 435(m) of the HEA defines cohort default rate calculation procedures.

Proposed Regulations: We are proposing to amend current 34 CFR 668.183 to specify that for purposes of calculating an institution's cohort default rate, a TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not included.

Reason: In the case of a student whose TEACH Grant is converted to a Federal Direct Unsubsidized Loan and who defaults on that loan, the Secretary does not believe that the loan should be included in the institution's cohort default rate calculation. The TEACH Grant award is originally made to the student as a grant and converts to a loan only after the student takes (or fails to take) certain actions. This conversion may occur many years after the award is made. Including the loan in the calculation of the rate at this stage in the process would not serve the purposes of the cohort default rate. The cohort default rates are a measure of an institution's administrative capability to control defaults to the extent the rates are calculated on data reasonably related to the period of a student's attendance at an institution. The conversion of TEACH Grants to Direct Loans will generally occur at a significantly later point in time than would be reasonable to include in an institution's cohort default rate.

Overaward (§ 673.5)

Statute: Section 420M(c)(2) of the HEA provides that the TEACH Grant, in combination with Federal assistance and other student assistance, may not exceed the student's cost of attendance.

Proposed Regulations: We are proposing to amend current 34 CFR 673.5(c) to include the amount of any TEACH Grant in the types of funds that may be used to replace a student's EFC and to clarify that any amount in excess of a student's EFC is considered estimated financial assistance.

Reason: TEACH Grants are not awarded based on need and therefore are permitted to replace a student's EFC. As with other forms of aid that may replace EFC, any TEACH Grant amount in excess of the EFC is considered estimated financial assistance.

Part 686—Teacher Education Assistance for College and Higher Education (TEACH) Grant Program

Definitions (§ 686.2)

Academic Year or Its Equivalent for Elementary and Secondary Schools (Elementary or Secondary Academic Year)

Statute: Section 420N(b)(1)(A) of the HEA provides that a grant recipient must serve as a full-time teacher for a total of not less than four academic years within eight years after completing the program of study for which he or she received a TEACH grant.

Proposed Regulations: Proposed § 686.2 would provide a definition of *academic year or its equivalent for elementary and secondary schools (elementary or secondary academic year)* for purposes of the TEACH Grant program. An academic year for elementary and secondary schools would be one complete school year or two complete and consecutive half-years from different school years, excluding summer sessions, that generally fall within a 12-month period. If a school has a year-round program of instruction, the Secretary would consider a minimum of nine consecutive months to be the equivalent of an academic year.

Reasons: This proposed definition is adopted from the definition of the term ''academic year'' used for purposes of determining teacher loan forgiveness in the Federal Family Education Loan (FFEL) program regulations in 34 CFR 682.215(b). Using the same definition for the TEACH Grant program would ensure equity in that the service performed by participants in both of these programs would be calculated in the same manner. Several non-Federal negotiators suggested removing the word ''consecutive'' from the first paragraph of the definition and eliminating the exclusion of summer sessions. The Secretary believes that these suggested changes would effectively allow a grant recipient to complete the four-year service obligation in less than four years, contrary to the TEACH Grant provisions in the statute. The Secretary is further concerned that full-time teaching in a summer session is not equivalent to full-time teaching in a regular school term.

Some non-Federal negotiators requested that the term ''consecutive'' be removed from the second paragraph of the definition, which deals with a year-round program of instruction. These negotiators expressed concern that, because some year-round calendars punctuate the months of instruction with breaks of several weeks in length, year-round calendars may not technically meet the requirement for a minimum of nine consecutive months to be the equivalent of an academic year. The Department has decided not to remove the word ''consecutive'' because that would make this definition inconsistent with the one used for purposes of the teacher loan forgiveness in the FFEL program. That definition has been in use for several years without causing any difficulties. However, the Secretary would consider nine months of full-time teaching within a 12-month period in a year-round program the equivalent of an academic year for purposes of the TEACH Grant program.

Annual Award and Scheduled Award

Statute: Section 420M(a)(1) of the HEA establishes $4,000 as the amount a TEACH Grant-eligible student may receive for a year, and section 420M(c)(1) of the HEA provides that awards for part-time attendance are reduced in proportion to a student's less-than-full-time enrollment status.

Proposed Regulations: Proposed § 686.2 would define the term *Scheduled Award* as the maximum amount of a TEACH Grant that a full-time student could receive for a year and the term an *annual award* as the maximum TEACH Grant amount a student would receive for enrolling as a full-time, three-quarter-time, half-time, or less-than-half-time student and remaining in that enrollment status for a year.

Reason: These definitions, in conjunction with the provisions of subpart C of the proposed regulations (Determination of Awards) would

ensure compliance with the statutory requirements that a TEACH Grant-eligible student receive an award of $4,000 for attendance during a year and that a student's payments be adjusted based on the student's enrollment status during a payment period.

Elementary School

Statute: Section 420N(b)(1)(A) and (B) of the HEA provides that a TEACH Grant recipient must serve as a full-time teacher for a total of not less than four academic years within eight years after completing the course of study for which he or she received a TEACH Grant in an elementary or secondary school that serves low-income students.

Proposed Regulations: Proposed § 686.2 would provide a definition of *elementary school* for TEACH Grant purposes. The term *elementary school* would be defined as a nonprofit institutional day or residential school, including a public elementary charter school, which provides elementary education, as determined under State law.

Reason: This proposed definition, which would implement the statutory requirement that a TEACH Grant recipient teach in an elementary or secondary school, is from section 9101(18) of the Elementary and Secondary Education Act of 1965 (ESEA).

High-Need Field

Statute: Section 420N(b)(1)(C) of the HEA provides that a grant recipient must teach in one of the high-need fields of mathematics, science, a foreign language, bilingual education, special education, as a reading specialist or in another field documented as high-need by the Federal Government, State government, or local educational agency (LEA), and approved by the Secretary. Section 420N(a)(2)(B)(i) identifies English language acquisition as a high-need field.

Proposed Regulations: Proposed § 686.2 would define the term *high-need field* for the purposes of the TEACH Grant program. A *high-need field* would include bilingual education and English language acquisition, foreign language, mathematics, reading specialist, science, special education, and any other field documented as high-need by the Federal Government, a State government or an LEA, and approved by the Secretary and listed in the Department's annual Teacher Shortage Area Nationwide Listing (Nationwide List).

Reason: This proposed definition would implement the statutory requirement that, to meet the service obligation, a TEACH Grant recipient must teach in a high-need field.

Highly-Qualified

Statute: Section 420N(b)(1)(E) of the HEA provides that a TEACH Grant recipient must comply with the requirements for being a highly-qualified teacher, as defined in section 9101 of the ESEA.

Proposed Regulations: Proposed § 686.2 would define the term *highly-qualified* for purposes of the TEACH Grant program. The term would have the meaning set forth in section 9101(23) of the ESEA or in section 602(10) of the Individuals with Disabilities Education Act (IDEA).

Reason: This proposed definition would implement the statutory requirement that a TEACH Grant recipient serve as a highly-qualified teacher. The Secretary considers it appropriate to use the definition of highly-qualified from the ESEA for teachers in all of the high-need fields listed in the HEA with the exception of special education teachers. Special education teachers must satisfy the definition of highly-qualified in section 602(10) of the IDEA.

Numeric Equivalent

Statute: Section 420N(a)(2)(A)(ii)(I) of the HEA provides that a student may be eligible for a TEACH Grant based, in part, on a grade point average (GPA) comparable to a 3.25 average on a 4.0 scale under standards prescribed by the Secretary.

Proposed regulations: Under proposed § 686.11(a)(1)(v), a student may be eligible for a TEACH Grant based on a cumulative GPA at an institution (or, in the case of a first year student, at a secondary school) of at least 3.25 on a 4.0 scale, or the numeric equivalent. We are proposing to define the term *numeric equivalent,* for purposes of the TEACH Grant program, in a manner consistent with the definition of that term in 34 CFR 691.15(g) of the Academic Competitiveness Grant (ACG) program and National Science and Mathematics Access to Retain Talent (SMART) Grant program regulations.

As in the ACG and National SMART Grant programs, to determine a numeric equivalent, an institution that has one or more academic programs that measure academic performance using alternatives to standard numeric grading procedures would be required to develop and apply an academically defensible equivalency policy with a numeric scale for purposes of determining student eligibility. That equivalency policy would need to be in writing and available to students upon request. The policy would also need to include clear differentiations of student performance to support a determination that a student has performed, in his or her TEACH Grant-eligible program, at a level commensurate with at least a 3.25 GPA on a 4.0 scale. Generally, a grading policy that includes only ''satisfactory/unsatisfactory'', ''pass/fail'', or other similar nonnumeric assessments would not be a numeric equivalent under the proposed regulations. However, such assessments would be considered numeric equivalents if the institution could demonstrate that the ''pass'' or ''satisfactory'' standard has the numeric equivalent of at least a 3.25 GPA on a 4.0 scale, or that a student's performance for tests and assignments yielded a numeric equivalent of a 3.25 GPA on a 4.0 scale. Under the proposed definition of the term *numeric equivalent,* the institution's equivalency policies would need to be consistent with any other standards that the institution may have developed for academic and other Title IV, HEA program purposes, such as graduate school applications and scholarship eligibility, to the extent such standards distinguish among various levels of a student's academic performance.

Reason: During negotiated rulemaking, the non-Federal negotiators requested clarification of the term ''numeric equivalent'' as it is used to determine comparability to a 3.25 GPA on a 4.0 scale. We agreed to incorporate the definition of the term as it is used in the ACG and National SMART Grant programs. The ACG and National SMART Grant programs have GPA requirements that are similar to those of TEACH Grants in that students are required to maintain minimum GPAs to retain eligibility for a TEACH Grant. The Department has had a successful experience implementing the ACG/National SMART Grant programs' definition of ''numeric equivalent,'' and thus believes that this definition should be applied to GPA calculations for the TEACH Grant program. In addition, maintaining a consistent definition between programs minimizes burden for institutions and provides a consistent standard between programs.

Post-Baccalaureate Program

Statute: Section 420L(2) of the HEA defines post-baccalaureate as a program of instruction for teacher candidates who have completed a baccalaureate degree, that does not lead to a graduate degree, and that consists of courses required by a State in order for a teacher candidate to receive a professional certification or licensing credential that

is required for employment as a teacher in an elementary school or secondary school in that State, but does not include any program of instruction offered by a TEACH Grant-eligible institution that offers a baccalaureate degree in education.

Proposed Regulations: Proposed § 686.2 would define the term *post-baccalaureate program* for purposes of the TEACH Grant program using the statutory language and stating that a post-baccalaureate program would be treated as an undergraduate program for TEACH Grant purposes.

Reason: This proposed definition is necessary to implement the HEA and to clarify that the Secretary considers a post-baccalaureate program to be an undergraduate program for TEACH Grant purposes.

Retiree

Statute: Section 420N(2)(B)(i) of the HEA provides that a retiree from another occupation with expertise in a field in which there is a shortage of teachers who is pursuing a master's degree to prepare to teach would be eligible for a TEACH Grant.

Proposed Regulations: Proposed § 686.2 would define the term *retiree,* for purposes of the TEACH Grant program, as an individual who has decided to change his or her occupation for any reason and who has expertise, as determined by the institution, in a high-need field.

Reason: This proposed definition would implement the statutory provision specifying that individuals who are seeking a master's degree and are retirees from another occupation with expertise in a field in which there is a shortage of teachers may be eligible for a TEACH Grant.

School Serving Low-Income Students (Low-Income School)

Statute: Section 420N(b)(1)(B) of the HEA provides that a TEACH Grant recipient must agree to teach in a school described in section 465(a)(2)(A) of the HEA.

Proposed Regulations: Proposed § 686.2 would define a *school serving low-income students (low-income school),* for purposes of the TEACH Grant program, as an elementary or secondary school that is in the school district of an LEA that is eligible for assistance pursuant to Title I of the ESEA; that has been determined by the Secretary to be a school in which more than 30 percent of the school's total enrollment is made up of children who qualify for services provided under Title I of the ESEA; and that is listed in the Department's Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits. The Secretary would consider all elementary and secondary schools operated by the Bureau of Indian Education (BIE) or operated on Indian reservations by Indian tribal groups under contract or grant with the BIE to qualify as schools serving low-income students.

Reason: The proposed definition is drawn from section 465(a)(2)(A) of the HEA, which provides for loan cancellation for teachers in the Federal Perkins Loan Program. The non-Federal negotiators questioned whether the designation of a low-income school would be made by the school district or by the individual school. As is clearly specified in section 465(a)(2)(A) of the HEA, the designation of a low-income school is made at the level of the individual school.

Secondary School

Statute: Section 420N(b)(1)(A) and (B) of the HEA provides that a TEACH Grant recipient must serve as a full-time teacher in an elementary or secondary school that serves low-income students for a total of not less than four academic years within eight years after completing the course of study for which he or she received a TEACH Grant.

Proposed Regulations: Proposed § 686.2 would define the term *secondary school,* for TEACH Grant purposes, as a secondary school would be a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, but does not include any education beyond grade 12.

Reason: This proposed definition, which is taken from section 9101(38) of the ESEA, would implement the statutory requirement that a TEACH Grant recipient teach in an elementary or secondary school.

Service Agreement

Statute: Section 420N(b) of the HEA provides that each applicant for a TEACH Grant must sign an agreement to serve as a full-time teacher in a low-income school in a high-need field for a total of not less than four academic years within eight years after completing the course of study for which the individual received a TEACH Grant, submit evidence of such employment in the form of a certification by the chief administrative officer of the school upon completion of each year of service, and comply with the requirements for being a highly-qualified teacher.

Proposed Regulations: Proposed § 686.2 would define the term *service agreement,* for purposes of the TEACH Grant program, as an agreement under which the individual receiving a TEACH Grant commits to meet the service obligation described in § 686.12 and to comply with the notification requirements and other provisions of the agreement.

Reason: This proposed definition would implement the statutory requirement that a service agreement accompany each TEACH Grant application.

TEACH Grant-Eligible Institution

Statute: Section 420L(1) and (2) of the HEA provides that an eligible institution for purposes of the TEACH Grant program is an institution of higher education as defined in section 102 of the HEA that is financially responsible and that provides: High-quality teacher preparation and professional development services, including extensive clinical experience as part of pre-service preparation; pedagogical coursework, or assistance in the provision of such coursework; and supervision and support services to teachers, or assistance in the provision of such services, or that provides a post-baccalaureate program of instruction.

Proposed Regulations: The proposed definition of *TEACH Grant-eligible institution* in § 686.2 would implement the statutory requirement that an institution must be financially responsible by using the current standards for institutions participating in the Title IV HEA programs in 34 CFR part 668, subpart L. Under the proposed definition, an institution must meet this financial responsibility requirement and provide a high-quality teacher preparation program at the baccalaureate or master's degree level that is (1) accredited by a specialized accrediting agency recognized by the Secretary for the accreditation of professional teacher education programs; or (2) approved by a State, includes extensive pre-service clinical experience, and provides pedagogical coursework, or the assistance in the provision of such coursework. In both cases, the institution must provide supervision and support services to teachers or assist in the provision of services to teachers.

Under the proposed definition of TEACH Grant-eligible institution, an institution that is financially responsible would also be eligible to participate in the TEACH Grant program under any of the following conditions:

(A) The institution offers a post-baccalaureate program but not a

baccalaureate teacher preparation program.

(B) The institution offers a baccalaureate degree that, in combination with other training or experience, will prepare an individual to teach in a high-need field and has entered into an agreement with a TEACH Grant-eligible institution that offers a teacher preparation program or one that offers a post-baccalaureate program.

(C) The institution provides either a two-year program that is acceptable for full credit toward a high-quality baccalaureate teacher preparation program at a TEACH Grant-eligible institution, as demonstrated by the institutions, or a two-year program that is acceptable for full credit toward a baccalaureate degree in a high-need field at a TEACH Grant-eligible institution, as demonstrated by the institutions.

Reasons: For TEACH Grant purposes, section 420L of the HEA specifies that an eligible institution must be financially responsible. Unlike the current regulations that allow an institution that is not financially responsible to continue to participate in all of the other title IV, HEA programs under an alternate financial standard in § 668.175, the proposed regulations would not permit that institution to participate in the TEACH Grant program under alternate standards in § 668.175(d)(1)(ii), (f), or (g).

The proposed definition of TEACH Grant-eligible institution would make several kinds of institutions TEACH Grant-eligible. In some cases eligibility would be based on an institution's offering a teacher preparation program. In other cases, eligibility would be based on the relationships institutions establish with one another. This would provide for several pathways for students to acquire the education and knowledge needed to serve as highly-qualified teachers in high-need fields. One such pathway would be completion of a baccalaureate or master's degree teacher preparation program. The Department initially considered requiring that the teacher preparation program offered by an institution be accredited by a specialized accrediting agency recognized by the Secretary for the accreditation of teacher education programs or be approved by a State. However, because section 420L(1)(A) of the HEA stipulates that teacher preparation must include extensive clinical experience, and some States approve programs that do not include extensive clinical experience, the Department proposes instead that a teacher preparation program must either be accredited by a specialized accrediting agency or approved by a State and include extensive pre-service clinical experience and pedagogical coursework.

The proposed definition of TEACH Grant-eligible program would clarify that, in order to be eligible under this program, an institution offering a teacher preparation program must also provide supervision and support services to teachers, or assist in the provision of services to teachers. Several non-Federal negotiators noted that most institutions do not directly supervise teachers in the classroom, if the term ''supervise'' is understood in the employment sense. However, institutions do provide services in the form of providing information and resources to teachers and school districts, and direct observation and coaching, to strengthen the classroom performance of novice teachers. The definition of TEACH Grant-eligible program includes examples of the kinds of services that an institution might offer as its supervision and support services.

A second pathway for a student to prepare to teach in a high-need field would be either completion of a baccalaureate program at one institution and a master's level teacher preparation program at another institution or a post-baccalaureate program at an institution that does not offer a teacher preparation program. Under the proposed definition, in order for the first institution to be eligible, it would need to have entered into an agreement with an institution offering a teacher preparation program or a post-baccalaureate program.

Two pathways are identified for students who initially enroll in a two-year institution. The Department initially considered making such an institution eligible if it offered a program that was fully transferable to a four-year TEACH Grant-eligible institution offering a teacher preparation program or one offering a baccalaureate program in a high-need field. The non-Federal negotiators recommended using the phrase ''acceptable for full credit toward a baccalaureate degree'' in place of ''fully transferable to a four-year institution.'' We used the language recommended by the non-Federal negotiators in the proposed definition because it would mirror language from section 101 of the HEA. We would consider that an institution meets this requirement if it can demonstrate upon the request of the Secretary that its two-year program is fully-acceptable by at least one four-year institution. Examples of documents institutions might use to demonstrate that the two-year program is acceptable for full credit toward a baccalaureate program would include both formal articulation agreements with four-year institutions and actual student records demonstrating that four-year institutions fully accept transfer credits from the two-year institution.

TEACH Grant-Eligible Program

Statute: The HEA does not define the term eligible program for the TEACH Grant program.

Proposed Regulations: Proposed § 686.2 would define the term *TEACH Grant-eligible program* as an eligible program as defined in 34 CFR 668.8 that is a program of study that prepares an individual to teach in a high-need field and that leads to a baccalaureate or master's degree, or is a post-baccalaureate program of study. Under the proposed definition for the term *TEACH Grant-eligible program,* a two-year program of study that is acceptable for full credit toward a baccalaureate degree would be considered to be a program of study that leads to a baccalaureate degree.

Reasons: The proposed definition is based on provisions in section 420L of the HEA and the proposed definition of TEACH Grant-eligible institution in proposed § 686.2. While supporting the definition, some non-Federal negotiators were concerned that it would not be readily apparent to students which programs at an institution would be TEACH Grant-eligible programs because of the various pathways that a student might follow in preparing to teach as a highly-qualified teacher in a high-need field. The Department believes that each institution would need to define which of its programs would be TEACH Grant-eligible programs. A couple of the non-Federal negotiators suggested that their institutions would likely require students to develop an academic plan indicating how they would gain the education needed to begin a teaching career as a highly-qualified teacher in a high-need field. Based on that plan, they would be able to determine whether the student's program of study meets the definition requirements of a TEACH Grant-eligible program. Other non-Federal negotiators agreed and suggested that it would be helpful to include the appropriate academic departments in the review of academic plans. All members of the negotiating committee agreed that these suggestions made sense.

Teacher

Statute: The HEA does not define the term teacher.

Proposed Regulations: Proposed § 686.2 would define the term *teacher*

for purposes of the TEACH Grant program as a person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including special education teachers and reading specialists.

Reason: The proposed definition of teacher in § 686.2 is taken from the FFEL program regulations for teacher loan forgiveness in 34 CFR 682.215. The Secretary believes that it would be appropriate to use the same definition for both the TEACH Grant program and the FFEL teacher loan forgiveness program. Under the proposed definition, the term would not include counselors, administrators or other types of school personnel who may be listed in the Department's annual Teacher Shortage Area Nationwide Listing but who do not provide classroom or classroom-type teaching.

Teacher Preparation Program

Statute: Section 420L of the HEA refers to teacher preparation program in the context of an eligible institution.

Proposed Regulations: Proposed § 686.2 would define the term *teacher preparation program,* for TEACH Grant program purposes, as a State-approved course of study, the completion of which signifies that a student has met all the State's educational or training requirements for initial certification or licensure to teach in the State's elementary or secondary schools. Under this definition, a teacher preparation program could be a regular program or an alternative route to certification, as defined by the State. Under the proposed definition, the teacher preparation program must be provided by an institution of higher education.

Reason: The proposed definition of teacher preparation program would be adopted from the Reporting Reference and User Manual, the accountability system mandated under Title II (sections 207 and 208) of the HEA. The manual, which was subject to public comment, has been in use since 2000. Using the same definition in the TEACH Grant program would ensure consistency across programs that focus on enhancing teacher quality.

Duration of Student Eligibility (§ 686.3)

Statute: Section 420M(d)(1) and (2) of the HEA provides that the maximum amount an undergraduate or post-baccalaureate student may receive in TEACH Grants is $16,000 and that the maximum amount a graduate student may receive in TEACH Grants is $8,000.

Proposed Regulations: Section 686.3 of the proposed regulations would implement the statutory maximums. An undergraduate or post-baccalaureate student would be eligible to receive the equivalent of up to four Scheduled Awards during the period required for the completion of the first undergraduate TEACH Grant-eligible baccalaureate program of study and the first post-baccalaureate program of study combined. A graduate student would be eligible to receive the equivalent of up to two Scheduled Awards during the period required for the completion of a TEACH Grant-eligible master's degree program of study.

Reason: The proposed regulations would implement the statutory requirements related to the duration of student eligibility from section 420M(d)(1) and (2) of the HEA.

Institutional Participation (§ 686.4)

Statute: The HEA does not specify whether an institution is required to participate in the TEACH Grant program.

Proposed Regulations: Section 686.4 of the proposed regulations would provide that a TEACH Grant-eligible institution that offers one or more TEACH Grant-eligible programs may elect to participate in the TEACH Grant program. If an institution begins participation in the TEACH Grant program during an award year, a student enrolled at and attending that institution would be eligible to receive a TEACH grant for the payment period during which the institution begins participation and any subsequent payment period.

An institution may cease to participate in the TEACH Grant program or may become ineligible to participate in the TEACH Grant program during an award year. A student who was attending the institution and who submitted a SAR with an official EFC to the institution, or for whom the institution obtained an ISIR with an official EFC, before the date the institution became ineligible would still be eligible to receive a TEACH Grant for the award year. The student would be eligible for the payment periods that the student completed before the institution ceased participation or became ineligible to participate and the payment period in which the institution ceased participation or became ineligible to participate.

An institution that ceases to participate in the TEACH Grant program or becomes ineligible to participate in the TEACH Grant program would be required to provide to the Secretary, within 45 days after the effective date of the loss of eligibility: (1) The name and other student identifiers of each eligible student under § 686.11 who, during the award year, submitted a SAR with an official EFC to the institution or for whom it obtained an ISIR with an official EFC before it ceased to participate in the TEACH Grant program or became ineligible to participate; (2) the amount of TEACH Grant funds paid to each student during the award year; (3) the amount due each student eligible to receive a TEACH Grant through the end of the payment period during which the institution ceased to participate in the TEACH Grant program or became ineligible to participate; and (4) an accounting of the TEACH Grant program expenditures for that award year to the date of termination.

Reasons: The proposed regulations for this section would generally follow the Federal Pell Grant Program regulations in 34 CFR 690.7. Using these established procedures and processes that are already understood by institutions would simplify delivery for institutions and reduce institutional burden.

Enrollment Status for Students Taking Regular and Correspondence Courses (§ 686.5)

Statute: The HEA does not specifically address enrollment status for regular and correspondence courses.

Proposed Regulations: Section 686.5 of the proposed regulations would specify how an institution would treat correspondence courses for purposes of the TEACH Grant program. In determining a student's enrollment status, an institution could include correspondence courses a student takes from either his or her own institution or from another institution having an arrangement for this purpose with the student's institution.

Except as specified in proposed § 686.5(c), the correspondence work that could be included in determining a student's enrollment status would be that amount of work that: (a) Applies toward a student's degree or post-baccalaureate program of study or is remedial work taken by the student to help in his or her TEACH Grant-eligible program; (b) is completed within the period of time required for regular coursework; and (c) does not exceed the amount of a student's regular coursework for the payment period for which enrollment status is being calculated.

Under proposed § 686.5(c), a student who would be a half-time student based solely on his or her correspondence work would be considered a half-time student unless the calculation in the preceding paragraph produces an enrollment status greater than half-time. A student who would be a less-than-half-time student based solely on his or

her correspondence work or a combination of correspondence work and regular coursework would be considered a less-than-half-time student.

Reason: As is the case with the Federal Pell Grant Program, a student's award for a TEACH Grant is considered to be awarded based on the student's enrollment status. Accordingly, we believe it is appropriate for proposed § 686.5 to follow the corresponding Federal Pell Grant Program regulations in 34 CFR 690.8 for determining enrollment status for students taking correspondence courses.

Payment From More Than One Institution (§ 686.6)

Statute: The HEA does not address the issue of receipt of TEACH Grants from more than one institution.

Proposed Regulations: Proposed § 686.6 would stipulate that a student may not receive TEACH Grant payments concurrently from more than one institution.

Reason: Under the Federal Pell Grant program and the ACG and National SMART Grant programs, a student cannot receive payments from more than one institution at the same time. To ensure coordination with the Federal Pell Grant program and the ACG and National SMART Grant programs programs, proposed § 686.6 would provide that a student can only receive a TEACH Grant from one institution for the same payment period.

Application (§ 686.10)

Statute: Section 420N(a) of the HEA contains the student eligibility requirements for the TEACH Grant program. Section 420N(a)(1) requires that to receive a TEACH Grant, a student must apply. Section 420N(a)(2) provides for additional information that a student may need to submit as part of the application process. Section 420N(b) provides that a service agreement must accompany the application. In addition, the TEACH Grant program, along with the other Title IV, HEA programs, is subject to the provisions of section 483 of the HEA, which establishes a common financial aid form for these programs.

Proposed Regulations: Section 686.10 of the proposed regulations would specify the procedures that a student must follow when applying for a TEACH Grant, and in particular, would require that a student must submit a Free Application for Federal Student Aid (FAFSA); complete and sign a service agreement and promise to repay; and provide any additional information requested by the Secretary.

Reasons: Under section 483(a) of the HEA, the FAFSA is the standard form used by all students applying for Title IV, HEA program aid. Although the TEACH Grant program is not need-based, using the FAFSA and procedures that are similar to those used in the Federal Pell Grant program would enable institutions to make a determination of student eligibility for the TEACH Grant program until a streamlined application can be developed. Completion of a service agreement and promise to repay are considered to be part of the application process. Further requirements regarding the service agreement would be set forth in proposed § 686.12. The promise to repay describes the terms and conditions of the Federal Direct Unsubsidized Loan to which the TEACH Grant is converted if the grant recipient fails to meet the service obligation. Finally, the regulations provide for the collection of additional information, such as test scores, to ensure that students are eligible.

Eligibility to Receive a Grant (§ 686.11)

Undergraduate, Post-Baccalaureate, and Graduate Students

Statute: Section 420N(a) of the HEA provides student eligibility requirements for the TEACH Grant program.

Proposed Regulations: Section 686.11(a)(1)(i) through (iv) of these proposed regulations would set forth the TEACH Grant student eligibility requirements common to all students who are enrolled in undergraduate, post-baccalaureate, and graduate programs. All students would have to meet the student eligibility requirements under 34 CFR part 668, subpart C; have submitted a completed application along with a signed service agreement; and be enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program. All students would also be required to be completing coursework and other requirements necessary to begin a career in teaching or plan to do so before graduating.

Reason: An otherwise eligible student remains eligible for a TEACH Grant as long as that student is still completing coursework and other requirements necessary to begin a career in teaching or plans to complete such coursework and requirements prior to graduating. However, simply graduating from a program does not necessarily mean the same as completing all of the coursework necessary to begin a career in teaching. For example, a student may graduate with an undergraduate degree, but must complete a post-baccalaureate program or other coursework before the student can begin a career in teaching. Thus, where the proposed regulations refer to completion of coursework and other requirements before graduating, the Secretary would interpret the term ''graduating'' to mean the point at which the student has completed all the coursework and other requirements necessary to prepare that student to begin a career in teaching.

Statute: Section 420N(a) of the HEA provides student eligibility requirements for the TEACH Grant program. Section 420N(a)(2)(A)(ii) of the HEA contains requirements related to academic achievement that enrolled students receiving TEACH Grants must meet.

Proposed Regulations: Section 686.11(a)(1)(v) of the proposed regulations would set forth additional TEACH Grant student eligibility requirements. Proposed § 686.11(a)(1)(v)(E) would stipulate that all students, regardless of postsecondary level, may qualify for a TEACH Grant by scoring above the 75th percentile of scores on at least one of the batteries from a nationally-normed standardized undergraduate, graduate, or post-baccalaureate admissions test. The student's test score would be compared to the test score achieved by all students taking the same test during the same period the student took the test. Students who do not meet this requirement must meet the GPA requirements under proposed § 686.11(a)(1)(v)(A) through (D) to either initially qualify for or maintain eligibility for a TEACH Grant.

Reason: Proposed § 686.11(a)(1)(v)(E) would implement the statutory requirement under section 420N(a)(2)(A)(ii)(II) of the HEA that a student may qualify for a TEACH Grant by displaying high academic aptitude as demonstrated by scoring above the 75th percentile on at least one battery on a standardized admissions test. Thus, for example, a student who scored above the 75th percentile on the math section of the SAT Reasoning Test (SAT), but who scored below the 75th percentile on the other sections of the SAT, could qualify for a TEACH Grant, if otherwise eligible, because the student displayed high academic aptitude by scoring above the 75th percentile on one of the SAT batteries.

The proposed regulations would not restrict the applicability of qualifying test scores by educational level. A qualifying test score from an undergraduate admissions test could qualify an otherwise eligible student for a TEACH Grant regardless of whether the student would be an undergraduate

or graduate student. The proposed regulations would also not place a limit on the period of time that has elapsed since the student earned the qualifying test score. The qualifying test score is intended to demonstrate high academic aptitude and the negotiators believed that there is no reason to suppose that there would be a time limitation on such demonstration of academic aptitude or that one should be set. An otherwise eligible student who qualified with a test score would not need to meet additional GPA requirements to retain eligibility for a TEACH Grant. However, tests used exclusively as placement tests by the institution could not be used to qualify a student for a TEACH Grant.

Proposed § 686.11(a)(1)(v)(A)(1) would implement the statutory provision that a student in the first year of a program of undergraduate education can qualify for a TEACH Grant with a cumulative secondary school GPA of 3.25 on a 4.0 scale, or the numeric equivalent. A student qualifying with such a GPA for the first year would need to meet additional GPA requirements to retain eligibility for a TEACH Grant once that student is beyond the first year of his or her undergraduate program.

Proposed § 686.11(a)(1)(v)(A)(*2*), (B), (C), and (D) would implement the statutory requirement that a student who did not achieve the requisite test score under proposed § 686.11(a)(1)(v)(E) must maintain a 3.25 GPA on a 4.0 scale, or the numeric equivalent, in order to maintain eligibility for a TEACH Grant. Under proposed § 686.11(a)(1)(v)(A)(*2*), students in the first year of a program of undergraduate education, as determined by the institution, who did not qualify under proposed § 686.11(a)(1)(v)(A)(*1*), would need to achieve an undergraduate GPA of 3.25 on a 4.0 scale, or the numeric equivalent, through the most recently completed payment period, to be eligible for a TEACH Grant. Similarly, under proposed § 686.11(a)(1)(v)(B), a student beyond the first year of a program of undergraduate education (including a post-baccalaureate program), as determined by the institution, would need to maintain an undergraduate GPA of 3.25 on a 4.0 scale, or the numeric equivalent, through the most-recently completed payment period, to continue to be eligible.

For graduate students, proposed § 686.11(a)(1)(v)(C) would provide that the student may qualify for a TEACH Grant in the first payment period of graduate study based on a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent. Under proposed § 686.11(a)(1)(v)(D), graduate students beyond the first payment period would need to achieve a cumulative graduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most-recently completed payment period.

Current or Former Teachers or Retirees (§ 686.11(b))

Statute: Section 420N(a) of the HEA provides student eligibility requirements for the TEACH Grant program. Section 420N(a)(2)(B) provides student eligibility requirements for students who are current or former teachers or retirees.

Proposed Regulations: Proposed § 686.11(b) would set forth the TEACH Grant student eligibility requirements for current or former teachers and retirees. A current or former teacher or retiree would need to meet the student eligibility requirements under 34 CFR part 668, subpart C and have submitted a completed application along with a signed service agreement, and be applying for a TEACH Grant to obtain a master's degree. The applicant would need to be a teacher or retiree or be a current or former teacher pursuing certification through a high-quality alternative certification route. The applicant also would need to be enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program during the time period required for completion of a master's degree.

Reason: Proposed § 686.11(b) would implement the statutory requirements related to student eligibility for current and former teachers and retirees in 420N(a)(2)(B) of the HEA.

Transfer Student GPA (§ 686.11(c))

Statute: Section 420N(a)(2)(A)(ii)(I) of the HEA provides that an undergraduate, post-baccalaureate or graduate student's eligibility for a TEACH Grant may be based on the student maintaining a cumulative GPA of at least 3.25 on a 4.0 scale.

Proposed Regulations: Proposed § 686.11(c) would be based on the transfer student GPA requirements in the National SMART Grant program for institutions that do or do not incorporate transfer grades from coursework accepted by the new institution, except that for purposes of the TEACH Grant program, the GPA would be calculated based on the coursework accepted by the institution on transfer without determination of whether the transferred coursework will actually be considered part of the TEACH Grant-eligible program.

Reasons: The proposed regulations would ensure that a transfer student could meet the GPA requirement to receive a TEACH Grant for his or her first payment period at the institution to which the student has transferred by calculating the student's transfer GPA using a methodology similar to that already used by the institution to determine a transfer student's GPA for the National SMART Grant program. The Secretary believes that allowing the new institution to use grades assigned to coursework accepted by the new institution for initial GPA calculation purposes for that transfer student instead of using grades assigned only to coursework accepted into the TEACH Grant-eligible program would decrease the burden on institutions and students because institutions will not have to take the extra step of determining which of the transferred courses will actually apply to the TEACH Grant-eligible program at the time of the student's admission.

Service Agreement (§ 686.12)

Statute: Section 420N(b) requires that each application for a TEACH Grant contain or be accompanied by a service agreement. In accordance with section 420N(b)(1)(A) through (C) and (E) of the HEA, the service agreement must state that the TEACH Grant recipient will serve as a full-time teacher for a total of not less than four academic years within eight years of completing the course of study for which the applicant received a TEACH Grant in a low-income school as a highly-qualified teacher in a high-need field. Under section 420N(b)(1)(D) of the HEA, the service agreement must require the grant recipient to submit evidence of his or her service, upon completion of each year of such service, in the form of a certification by the chief administrative officer of the school in which the recipient is teaching. Lastly, section 420N(c) of the HEA provides that if the recipient fails or refuses to carry out the service obligation, any TEACH Grants received shall be treated as a Federal Direct Unsubsidized Loan under part D of Title IV of the HEA, with interest accruing from the date that each TEACH Grant was disbursed.

Proposed Regulations: Section 686.12(a) of the proposed regulations would provide that an applicant may receive a TEACH Grant only after signing a service agreement and receiving counseling in accordance with proposed § 686.32.

Section 686.12(b) of the proposed regulations would describe the requirements a grant recipient must satisfy in order to fulfill the service obligation. The grant recipient must—

• Serve as a full-time teacher for a total of not less than four elementary or secondary academic years within eight calendar years after completing the program for which the recipient received the TEACH Grant or otherwise ceased enrollment;
• Teach in a low-income school;
• Be a highly-qualified teacher;
• Teach in a high-need field in the majority of classes taught during each elementary or secondary academic year;
• Submit documentation of such service each year certified by the chief administrative officer of the school in which the grant recipient teaches; and
• Comply with the terms, conditions, and other requirements of the proposed regulations in §§ 686.40–686.43.

Section 686.12(c) of the proposed regulations would (1) require the completion of a service obligation for each program of study for which the recipient received a TEACH Grant; (2) stipulate that such service obligation begins following the completion or other cessation of enrollment in a TEACH Grant-eligible program; and (3) provide that creditable teaching service may apply to more than one service obligation. Proposed § 686.12(c) would provide that a grant recipient may request a suspension of the eight-year time period during which the service obligation must be completed in accordance with proposed § 686.41.

Lastly, proposed § 686.12(d) would provide that a grant recipient who completes a TEACH Grant-eligible program in a high-need field listed in the Nationwide List cannot satisfy his or her service obligation to teach in that high-need field unless the field is listed in the Nationwide List for the State in which the grant recipient begins to teach at the time the recipient begins teaching.

Reasons: The purpose of proposed § 686.12 would be to implement the statutory requirements regarding the content of the service agreement and to serve as a source of information about the service obligations associated with the TEACH Grant program. The service agreement is a legally-binding document, the terms of which must be met for a TEACH Grant recipient to satisfy the service obligation. The service agreement contains information on the terms, conditions and other requirements in proposed §§ 686.40 through 686.43 with which the grant recipient must comply, such as: how to document the service obligation; under what conditions a suspension of the eight-year period for completion of the service obligation may be granted; under what conditions a service agreement can be discharged; and under what conditions a TEACH Grant is converted to a Federal Direct Unsubsidized Loan.

In recognition of a recent trend to restructure elementary schools on a Kindergarten-Eighth Grade model and to promote the math and science skills of elementary school teachers, one of the non-Federal negotiators proposed that the Department consider allowing a teacher to fulfill the requirement to teach in a high-need field if the majority of classes taught by the grant recipient were in a high-need field. This non-Federal negotiator believed that adopting such a policy would allow more elementary school teachers to benefit from the TEACH Grant program. The Department agreed. We reflect this suggestion in proposed § 686.12(b)(1)(iii) and also in the proposed regulations on documenting the service obligation in § 686.40(c)(1)(i) and (ii).

Section 686.12(c)(1) of the proposed regulations would provide that creditable teaching service performed by a TEACH Grant recipient may apply to more than one service obligation. At the request of the non-Federal negotiators, we are including in this discussion several examples that illustrate when the application of creditable teaching service would apply to more than one service obligation. For instance, if a grant recipient completes a TEACH Grant-eligible program at a TEACH Grant-eligible institution and immediately enrolls in another TEACH Grant-eligible program at a TEACH Grant-eligible institution before beginning a career in teaching, the recipient may request a suspension of the eight-year time period under proposed § 686.41(a)(1) for the period of enrollment in the subsequent program and upon completion of the subsequent program, apply all qualified teaching service to both service obligations.

Another example would be when a grant recipient completes a TEACH Grant-eligible program at a TEACH Grant-eligible institution and begins qualified teaching service to meet the service obligation before enrolling in a subsequent TEACH Grant-eligible program. In this case, the recipient may request a suspension of the eight-year time period associated with the first service obligation under proposed § 686.41(a)(1) for the period of enrollment in a subsequent program and, upon completion of the subsequent program, apply qualified teaching service performed after the completion of the subsequent program to both service obligations. The qualified teaching service performed before the suspension would count only toward fulfillment of the first service obligation.

It is important to note that a TEACH grant recipient who fully satisfies the service obligation associated with the program for which TEACH Grants were received and subsequently enrolls in another TEACH Grant-eligible program cannot apply to the second service obligation any of the qualified service completed prior to enrolling in the subsequent program.

Finally, a grant recipient who has completed a TEACH Grant-eligible program and who begins qualified full-time teaching service toward the service obligation associated with that program, and then concurrently enrolls in another TEACH Grant-eligible program may, upon completing the subsequent TEACH Grant-eligible program, apply only qualified teaching service performed after the completion of the subsequent TEACH Grant-eligible program to both service obligations.

Because of the importance of the service agreement and because it is a source of information for the TEACH Grant recipient, several non-Federal negotiators believed that the agreement was the appropriate place to include language describing the risk a TEACH Grant recipient takes when majoring in a high-need field listed in the Nationwide List with the intent to teach in the high-need field upon completion of his or her program of study. The Department agreed. Therefore, we are proposing regulations in § 686.12(d) (Service agreement) stating that a grant recipient who completes a TEACH Grant-eligible program in a high-need field listed in the Nationwide List *cannot* satisfy his or her service obligation to teach in that high-need field unless the high-need field in which he or she has prepared to teach continues to be listed for the State in which the grant recipient begins teaching in fulfillment of his or her service obligation.

Submission Process and Deadline for a SAR or ISIR (§ 686.20)

Statute: Section 420M provides that the Secretary shall pay a grant to each TEACH Grant-eligible student who files an application and a service agreement for attendance in a TEACH Grant-eligible program.

Proposed Regulations: Proposed § 686.20 would provide that, as in the Federal Pell Grant program, a student must submit a SAR, or the institution must receive an ISIR, within established deadlines. The Federal Pell Grant Program requires that the student's SAR or ISIR be a valid SAR or valid ISIR with an EFC based on accurate application information. Unlike the Federal Pell Grant program, proposed § 686.20

would provide that the SAR or ISIR need only be a record with an official EFC, *i.e.*, an EFC computed by the Central Processing System (CPS) of the Department that may or may not be based on verified application information. Further, the proposed regulations, unlike the Federal Pell Grant program regulations, would not reference the deadlines for completing verification of application information under 34 CFR 668.60.

Reason: Unlike the Federal Pell Grant program, the TEACH Grant program is not need-based. It would, therefore, not be necessary that an institution receive a valid SAR or valid ISIR, nor would it be necessary to subject the TEACH Grant program to the verification requirements under 34 CFR part 688, subpart E. However, to determine the amount of a student's TEACH Grant in accordance with § 686.21(c), an institution would need an EFC based on accurate information even though the EFC is not computed by the CPS.

Calculation of a Grant (§ 686.21)

Maximum and Annual Award Amounts

Statute: Section 420M(a)(1) of the HEA establishes $4,000 as the amount a TEACH Grant-eligible student may receive for a year, and section 420M(c)(1) of the HEA provides that awards for part-time attendance shall be reduced in proportion to a student's less-than-full-time enrollment status.

Proposed Regulations: Proposed § 686.21 would provide for a Scheduled Award of $4,000, the maximum amount a student may receive in a year, and annual awards of $4,000 for full-time enrollment status, $3,000 for three-quarter-time enrollment status, $2,000 for half-time enrollment status, and $1,000 for less-than-half-time enrollment status.

Reason: The Secretary proposes to establish the TEACH Grant Scheduled Award and annual award amounts to implement the statutory requirements regarding maximum awards and awards for part-time attendance.

Treatment in Relation to Other Aid Received (§ 686.21)

Statute: Section 420M(c)(2) of the HEA provides that the amount of a student's TEACH Grant, in combination with Federal and other student financial assistance the student may receive, may not exceed the student's cost of attendance.

Proposed Regulations: Section 686.21(c) of the proposed regulations would provide that a student's TEACH Grant, when combined with the student's Federal Pell Grant eligibility and other estimated financial assistance as defined in 34 CFR 673.5(c), may not exceed the student's cost of attendance under section 472 of the HEA. Further, proposed § 686.21(d) would provide that a student's TEACH Grant may replace the student's EFC. Any amount in excess of the EFC would be considered estimated financial assistance as defined in 34 CFR 673.5(c).

Reason: TEACH Grants are not awarded based on need and, therefore, are permitted to replace a student's EFC toward a student's postsecondary expenses. As with other forms of aid that may replace EFC, any TEACH Grant amount in excess of the EFC is considered estimated financial assistance.

Calculation of a Grant for a Payment Period (§§ 686.22 and 686.25)

Statute: Section 420M(a)(1) of the HEA establishes the amount a TEACH Grant-eligible student may receive for a year, and section 420M(c)(1) of the HEA provides that awards for part-time attendance shall be reduced in proportion to a student's less-than-full-time enrollment status.

Proposed Regulations: Proposed §§ 686.22 and 686.25 would detail how an institution would calculate a TEACH Grant payment for a payment period for an eligible student depending on the academic calendar of the eligible program, the student's enrollment status, and the amount of the student's annual award.

Reasons: As is the case with the Federal Pell Grant Program, a student's award for a TEACH Grant would be based on the student's enrollment status, a status that is based on attendance over a portion of an academic year. Proposed §§ 686.22 and 686.25 would generally correspond to the Federal Pell Grant Program regulations in 34 CFR 690.63 and 690.66, including amendments to these sections published in the **Federal Register** on November 1, 2007 (72 FR 62014–62034), for calculating payments for payment periods to distribute a student's award based on the student's enrollment status.

As in 34 CFR 690.63(a)(1) and (2) of the Federal Pell Grant Program regulations, § 686.22(a)(1) and (2) of the proposed regulations would establish the criteria for programs eligible to use the payment calculations under proposed § 686.22(b) and (c). For an undergraduate program including a post-baccalaureate program, § 686.22(a)(1)(i)(C)(*1*) and (2)(i)(C)(*1*) of the proposed regulations would provide that all terms in the award year must have a minimum full-time enrollment standard of 12 credit hours. In addition, proposed § 686.22(a)(1)(i)(C)(*2*) and (2)(i)(C)(*2*) would provide that, for a graduate program, all terms in the award year must have the same minimum full-time enrollment status as determined by the institution for a semester, trimester, or quarter in that program. The provision for graduate programs would assure equivalency among all terms in the award year for purposes of calculating payments for payment periods.

Minimum Payment

Statute: The statute does not establish a minimum TEACH Grant payment.

Proposed Regulations: Section 686.22(g) of the proposed regulations would provide that the minimum payment for a payment period would be $25.

Reason: Because awards must be adjusted not to exceed cost of attendance, a payment for a payment period may be reduced to a minimal amount. Setting a small minimum payment for a payment period would not adversely affect a student's eligibility for an award, and a smaller payment for a payment period would not be cost effective.

Definition of an Academic Year

Statute: Section 420M(a)(1) of the HEA establishes the amount a TEACH Grant-eligible student may receive for a year, and section 420M(c)(1) of the HEA provides that awards for part-time attendance shall be reduced in proportion to a student's less-than-full-time enrollment status. In addition, section 481(a)(2) of the HEA defines the term academic year.

Proposed Regulations: Section 686.22(h) of the proposed regulations would require an institution to define the term *academic year* for purposes of calculating payments for payment periods under proposed §§ 686.22 and 686.25. For an undergraduate TEACH Grant-eligible program, including post-baccalaureate programs, the institution would define the program's Title IV, HEA academic year in terms of credit or clock hours and weeks of instructional time in accordance with 34 CFR 668.3. For a TEACH Grant-eligible master's degree program, the institution would need to define the program's Title IV, HEA academic year in accordance with 34 CFR 668.3, i.e., in terms of weeks of instructional time, and, for purposes of determining payments for TEACH Grant awards, in terms of the minimum number of credit or clock hours a full-time student would be expected to complete in the weeks of instructional

time of the program's Title IV, HEA academic year.

Reasons: Under the proposed regulations, a TEACH Grant-eligible program's Title IV, HEA academic year based on both weeks of instructional time and credit or clock hours is integral to determining the payment formula applicable to the program as well as the calculation of payments under the appropriate payment formula based on a student's enrollment status. While a Title IV, HEA academic year for an undergraduate TEACH Grant-eligible program, including a post-baccalaureate program, would be defined based on both weeks of instructional time and credit or clock hours under 34 CFR 668.3, a Title IV, HEA academic year for a graduate TEACH Grant-eligible program, such as a master's degree program, would be defined under 34 CFR 668.3 based only on weeks of instructional time. Proposed § 686.22(h)(2) would, therefore, add a credit or clock hour measure to the Title IV, HEA academic year of a master's degree program for purposes of calculating a payment for a payment period under proposed §§ 686.22 or 686.25, as applicable, to implement the provisions of these sections for a TEACH Grant-eligible master's degree program.

Calculation of a Grant for a Payment Period From Two Scheduled Awards (§ 686.22(i))

Statute: The HEA does not address payments from two Scheduled Awards.

Proposed Regulations: Under § 686.22(i) of the proposed regulations, if a student is completing the remaining portion of a Scheduled Award in a payment period, the student's payment would be calculated using the annual award for his or her enrollment status for the payment period. The student's payment would be the remaining amount of the Scheduled Award being completed plus an amount from the next Scheduled Award, if available, up to the total amount of the payment for the payment period.

Reason: In certain circumstances, a student may, within the same payment period, be completing his or her eligibility for the remaining balance of a Scheduled Award while also having eligibility to receive another Scheduled Award. This provision would provide guidance to institutions in calculating a student's payment for the payment period in this circumstance and would ensure that eligible students receive their awards.

Calculation of a Grant for a Payment Period That Occurs in Two Award Years (§ 686.23)

Statute: The HEA does not address a payment period that occurs in two award years.

Proposed Regulations: This section would address how an institution calculates a TEACH Grant payment for an eligible student's payment period when the student is enrolled in a payment period that overlaps two award years. These proposed regulations would generally be the same as the Federal Pell Grant program regulations. As is required in the Federal Pell Grant, ACG, and National SMART Grant programs, an institution is required to assign, at its option, a ''cross-over'' payment period to one of the two award years. However, it must place a payment period with more than six months scheduled in an award year within that award year.

Reason: A Federal Pell Grant Scheduled Award is available only for a specific award year. A student's TEACH Grant Scheduled Award would remain available without respect to award years until the student uses all of the Scheduled Award, and an eligible student would be able to receive more than one TEACH Grant in an award year.

Transfer Student: Attendance at More Than One Institution During an Award Year (§ 686.24)

Statute: The HEA does not address the issue of attendance at more than one institution during an award year.

Proposed Regulations: Proposed § 686.24 would specify how an institution calculates a payment for an eligible student who transfers from another postsecondary institution within the same award year. The proposed regulations would be generally similar to the corresponding provisions in 34 CFR 690.65 under the Federal Pell Grant program regulations with one exception. Proposed § 686.24(d) would provide that a student would only receive the remaining balance of the student's last Scheduled Award if the balance would be less than the amount of the payment for the payment period calculated under proposed §§ 686.22 or 686.25.

Reason: To ensure that a student who attends more than one institution in an award year does not receive an overaward, we are providing the procedures for an institution to determine the TEACH Grant payment for a payment period for a transfer student.

Determination of Eligibility for Payment (§ 686.31)

Statute: Section 420M of the HEA provides that the Secretary shall pay a grant to each TEACH Grant-eligible student who files an application and a service agreement for attendance in a TEACH Grant-eligible program and who demonstrates TEACH Grant eligibility under section 420N of the HEA.

Proposed regulations: Proposed § 686.31 would provide that, similar to the Federal Pell Grant, ACG, and National SMART Grant program regulations, an institution may pay a student a TEACH Grant only after determining that the student is an eligible student, is enrolled in a TEACH Grant-eligible program, and has completed the payment period for which he or she has received a TEACH Grant if enrolled in a credit-hour program without terms or a clock-hour program. In addition, the proposed regulations would require an institution to ensure that the student has signed a service agreement described in proposed § 686.12 and has completed relevant counseling requirements prior to paying a student.

The proposed regulations would mirror similar requirements in the Federal Pell Grant, ACG, and National SMART Grant program regulations concerning determinations that a student is not maintaining satisfactory academic progress or the necessary GPA for a TEACH Grant or is not pursuing a career in teaching. In addition, similar to the ACG and National SMART Grant program regulations, the proposed regulations would allow an institution to make one disbursement for a payment period to an otherwise eligible student if the student's final high school GPA is not yet available or if the student's cumulative GPA through the prior payment period is not yet available and the institution assumes the liability for any overpayment if the student fails to meet the required GPA to receive that disbursement.

Reasons: The Secretary believes that it is important to ensure that the student has completed the relevant counseling requirements and has signed the service agreement prior to receiving a TEACH Grant. In addition, as with the case of the Federal Pell Grant, ACG, and National SMART Grant programs, the proposed regulations would specify how to handle situations in which the student is not maintaining satisfactory progress or the required GPA or is not pursuing a career in teaching and allow institutions flexibility to make one disbursement for a payment period when the relevant GPA for a student is

not yet available. The proposed regulations for this section would follow the corresponding Federal Pell Grant, ACG, and National SMART Grant program regulations in 34 CFR 690.75 and 691.75.

Counseling Requirements (§ 686.32)

Statute: The HEA does not address student counseling issues related to the TEACH Grant program.

Proposed Regulations: Proposed § 686.32 would require institutions to ensure that each TEACH Grant recipient receives counseling prior to each grant disbursement as well as prior to leaving the institution. Counseling requirements are broken into three sections: Initial counseling, Subsequent counseling, and Exit counseling.

Institutions would be required to provide initial counseling in person, by audiovisual presentation, or by interactive electronic means, prior to the first disbursement of a TEACH Grant. Additionally, schools would be required to ensure that an individual with expertise in Title IV, HEA programs is available to students shortly after the initial counseling session to answer questions. Initial counseling would include information about: The terms and conditions of a TEACH Grant service agreement; how to access information about low-income schools and documented high-need fields; the opportunity to request a service obligation suspension; conditions that could preclude the student from completing the service obligation attached to a TEACH Grant; conversion of a grant to a Federal Direct Unsubsidized Loan; and the rights and responsibilities that apply to any grant recipient whose TEACH Grant converts to a loan. Initial counseling would also notify students that in order to receive credit for teaching service the field in which they teach must be a high-need field at that time and in the State where the recipient begins teaching that subject.

If a student receives more than one TEACH Grant, he or she would be required to complete subsequent counseling prior to any additional grant disbursements. Similar to initial counseling, institutions would be able to provide counseling for subsequent disbursements in person, by audiovisual presentation, or by interactive electronic means and would be required to have an expert in Title IV, HEA programs available to answer questions shortly after counseling occurs. Subsequent counseling would coincide with the student's renewal of the annual service agreement. The information that would be provided by subsequent counseling would not be as comprehensive as the information required in initial counseling. Students would be reminded of: The terms and conditions of a TEACH Grant service agreement; the consequences of not completing the service obligation; and the responsibility to repay any grant amount, plus interest, that is converted to a loan.

Institutions would also be required to ensure that TEACH Grant recipients receive exit counseling prior to leaving the institution. Counseling would be required to be provided in person, by audiovisual presentation, or by interactive electronic means and institutions would need to ensure that an expert in Title IV, HEA programs is available shortly after the exit counseling to answer any questions. If a student withdraws from the institution without an institution's knowledge or is no longer enrolled in a TEACH Grant-eligible program and fails to complete exit counseling, the institution is required to provide exit counseling within 30 days after the date that the institution learned that the student withdrew or that the student is no longer enrolled in a TEACH Grant-eligible program.

The information provided to students during exit counseling would be similar to the information that students receive during initial and subsequent counseling. However, exit counseling would also remind students that they must teach as a highly-qualified teacher in a high-need field at a low-income school in order to fulfill the service obligation of the TEACH Grant. In addition, students would be reminded that they are required to submit written documentation to the Secretary on an annual basis showing that they are fulfilling their service obligation by teaching in a high-need field at a low-income school or that they intend to complete the service obligation within eight years of completing their TEACH Grant program. Furthermore exit counseling would provide TEACH Grant recipients with information about available repayment options for grants that convert to a loan as well as information about loan deferments, discharges, default, how to view student aid information in the National Student Loan Data System (NSLDS), and how to contact the Secretary.

Reasons: Sharing information with students about the TEACH Grant program and the obligations that acceptance of a TEACH Grant entails is essential. The non-Federal negotiators stressed the need to disclose as much information as possible to students in a clear and concise manner on an on-going basis. In addition to sending quarterly interest statements to students and requiring that recipients complete an annual service agreement to re-affirm their consent, the Department proposed annual in-person counseling sessions prior to grant disbursements. The non-Federal negotiators agreed that counseling students is important; however, some negotiators argued that requiring institutions to perform in-person counseling with each TEACH Grant recipient prior to each grant disbursement would not only be burdensome, but could also delay disbursements. Additionally, many non-Federal negotiators argued that there is little proof that in-person counseling is more effective than interactive electronic counseling and cited several personal accounts where students who participated in in-person, group counseling sessions did not pay attention to the presenter. In response to these concerns, the Department proposed revised language that would allow institutions to provide counseling in-person, by audiovisual presentation, or by interactive electronic means with the stipulation that institutions must ensure that an expert on Title IV, HEA programs is available shortly after the counseling session to answer any questions.

The non-Federal negotiators raised another concern about the amount of counseling that the TEACH Grant program requires. Some argued that requiring counseling annually is too much and goes above and beyond what is necessary. Others noted that annual counseling is acceptable, but only if the counseling could be completed electronically. In response to these concerns, the Department clarified the proposed regulations and added language to indicate that subsequent counseling could be provided in an interactive electronic format or as an audiovisual presentation.

Additionally, one negotiator recommended that the Department consider creating an online interactive counseling program that would be completed when the student completes the annual service agreement. The Department intends to create an interactive electronic counseling program that will be connected to the annual renewal of the service agreement, though this program will not be available in the first year of the TEACH Grant program. Institutions would be required to provide counseling until the Department notifies schools that an interactive online program has been included as part of the renewal of the service agreement.

The non-Federal negotiators were also concerned about the information that would be required in each counseling session. Several non-Federal negotiators asked the Department to add a requirement that institutions convey specific information to students to notify them of the various conditions that could preclude them from completing the service obligation. Some non-Federal negotiators also asked the Department to require institutions to provide information to students about how to find low-income schools and high-need fields in initial counseling as well as in exit counseling. In addition, non-Federal negotiators asked the Department to clarify that if a student chooses to study a field that is removed from the high-need field list before the grant recipient begins teaching, that subject area is no longer a high-need field and thus the recipient may not be able to use this teaching in this field to fulfill the service obligation. The Department added specific language to the initial and exit counseling sections to address these concerns and reminded the non-Federal negotiators that institutions will be able to direct students to the Nationwide List that is published annually and available on the Department's Web site. Also, § 686.32(b) of the proposed regulations would delineate the particular requirements for subsequent counseling sessions, which are less comprehensive than the initial and exit counseling session.

The counseling requirement is an institutional responsibility. As such, the Department encourages institutions to establish collaborative working relationships between their financial aid office and the entity that would be most knowledgeable about teaching requirements for TEACH Grant recipients. For instance, several non-Federal negotiators recommended that an institution's college of education or teacher preparation program work closely with the financial aid office to ensure that students receive the best information available about financial aid as well as about academic requirements, teaching opportunities, and teacher certification.

Frequency of Payment (§ 686.33)

Statute: The HEA does not address this issue.

Proposed regulations: Proposed § 686.33 would provide that, similar to the Federal Pell Grant, ACG, and National SMART Grant program regulations, an institution may pay a student a TEACH Grant at such times and in such installments that best meet the student's needs. In addition, under this proposed section, the institution could pay the student in a lump sum for all prior payment periods for which the student was eligible and would have to determine the amount of the payment based on the student's enrollment status according to the work completed by the student for the payment period. To be eligible to receive a lump sum payment for prior payment periods, the student would have had to meet the eligibility criteria in proposed § 686.11 for the prior payment period with the exception that the student would not have needed to sign the service agreement during that payment period. However, the student would need to sign a service agreement prior to receiving a disbursement as described in proposed § 686.31.

Reason: As is the case with the Federal Pell Grant, ACG, and National SMART Grant programs, an institution should have the flexibility to determine the timing and the amounts of any installments of a student's TEACH Grant to best meet the needs of the student. Also, consistent with the Federal Pell Grant, ACG, and National SMART Grant programs, the institution should have the discretion to pay a student in a lump sum for all prior payment periods for which the student was eligible based on the coursework the student completed for the payment period.

Institutional Reporting Requirements (§ 686.37)

Statute: The HEA does not address the issue of institutional reporting requirements in the TEACH Grant program.

Proposed Regulations: Proposed § 686.37 would require institutions to provide the Secretary with information pertaining to a student's eligibility to receive a TEACH Grant, the student's TEACH grant amounts, and the actual disbursement dates and amounts of the grants. This proposed section would also establish a submission timeline for institutions.

Reasons: The proposed regulations would require institutions to submit eligibility and disbursement data to the Secretary because the Department intends to contact TEACH Grant recipients on a quarterly basis by sending interest statements and to collect annual service agreements. To make this process work, the Department would need eligibility and disbursement information.

Documenting the Service Obligation (§ 686.40)

Statute: Section 420N(b)(1)(D) of the HEA requires that a TEACH Grant recipient must, upon completion of each of the four required elementary or secondary academic years of teaching service, provide evidence of that teaching service in the form of a certification by the chief administrative officer of the school in which the grant recipient is teaching.

Proposed Regulations: Proposed regulations in § 686.40(a) would provide that a TEACH Grant recipient must confirm to the Secretary in writing that he or she has either begun employment as a full-time teacher in accordance with the terms and conditions of the service agreement, or that he or she is not yet employed as a full-time teacher, but intends to meet the terms and conditions of the service agreement.

Proposed regulations in § 686.40(b) would require that, if a grant recipient has begun full-time teaching service in accordance with the service agreement, he or she must provide documentation of that service to the Secretary on an approved form certified by the chief administrative officer of the school in which the grant recipient is teaching. The documentation required under this proposed section would need to show that the grant recipient is teaching in a high-need field in the majority of classes taught during each elementary or secondary academic year in a low-income school as a highly-qualified teacher.

In addition to addressing documentation requirements for creditable service performed by the grant recipient, proposed § 686.40(b) would provide that if the school at which the grant recipient is employed meets the requirements of a low-income school in the first year of the grant recipient's four academic years of teaching but fails to meet those requirements in subsequent years, the subsequent years of teaching would count toward fulfillment of the service agreement. Similarly, proposed § 686.40(c)(2) would provide that if a grant recipient begins teaching in a high-need field listed in the Nationwide List and in subsequent years the high-need field is no longer designated as such, the subsequent years of teaching in that field would count toward the service agreement.

Proposed § 686.40(e) would provide that if a grant recipient is able to complete only one-half of an elementary or secondary academic year because of a condition covered under the Family and Medical Leave Act of 1993 (FMLA) for a qualifying serious health condition or exigency, or because of a call to military service, either as a reserve of the Armed Forces or a member of the National Guard, that half year is counted as a complete year for purposes of completing the service agreement as

long as the grant recipient's school employer considers the grant recipient to have fulfilled his or her contract requirements.

Lastly, proposed § 686.40(f) would provide that a grant recipient may teach in more than one low-income school during an elementary or secondary academic year as long as the combined teaching service is the equivalent of full-time teaching.

Reasons: The purpose of proposed § 686.40 would be to implement the statutory requirements regarding the evidence a grant recipient must submit to show compliance with the terms of his or her service agreement. Proposed § 686.40(b), (c)(2), (e), and (f) would be consistent with regulations in the Title IV, HEA loan programs related to teacher loan forgiveness so that TEACH Grant recipients who may be performing teaching service to meet both their service agreement and the requirements to receive loan forgiveness have only one set of requirements.

Several of the non-Federal negotiators voiced concern that the Nationwide List that TEACH Grant recipients will use to document their teaching service may not reflect high-need field shortages at the local level. One of the non-Federal negotiators suggested that the Department specify in proposed § 686.40(c)(ii) a process whereby States would be required to consult with LEAs so that high-need field shortages at the local level are reflected. The Department declined to regulate in this area because the process currently in place under 34 CFR 682.210(q) provides for the designation of high-need fields by an LEA and because mandating such a process would be a Federal intrusion on an inherently State function.

During the negotiations, the Department suggested specifying in proposed § 686.40(e)(1) the conditions under which a grant recipient may count an academic year of teaching service if that year is interrupted by a condition that is covered under the FMLA. The non-Federal negotiators agreed. For that reason, proposed § 686.40(e)(1) would list the FMLA conditions as follows:

- The birth and subsequent care of a son or daughter.
- The adoption of a child or provision of foster care by a grant recipient.
- Caring for a spouse, child or parent of the grant recipient who has a serious health condition.
- A serious health condition that renders the grant recipient unable to meet the requirements of the service agreement.

The Department became aware after negotiations concluded that the U.S. Department of Labor had developed new proposed regulations for the FMLA that are currently out for public comment. To ensure that the TEACH Grant regulations reflect all of the conditions covered by the FLMA, we will consult with the Department of Labor when we develop final regulations.

Periods of Suspension (§ 686.41)

Statute: The statute does not address periods of suspension of the eight-year period for completion of the TEACH Grant service obligation.

Proposed Regulations: Proposed § 686.41 would provide that a TEACH Grant recipient who has completed or otherwise ceased enrollment in a TEACH Grant-eligible program may request a suspension of the eight-year time period for completion of his or her service obligation. Proposed § 686.41(a)(1)(i) and (ii) would require that a suspension be based on enrollment in a TEACH Grant-eligible program of study or a State-approved teacher certification program, or a condition under the FMLA, respectively. Proposed § 686.41(a)(2)(i) would require that suspensions granted under these two conditions could not exceed a combined total of three years. Proposed § 686.41(a)(1)(iii) would allow a suspension to be based on a call to active duty status for members of the Armed Forces reserve or the National Guard. Proposed § 686.41(a)(2) would provide that suspensions granted because of a military call-up would be granted in one-year increments and would end upon the completion of the grant recipient's military service. Proposed § 686.41(b) would require a grant recipient to request a suspension on an approved form within six months after completing or terminating enrollment in a TEACH Grant-eligible program or within six months after the date he or she stops teaching. Lastly, proposed § 686.41(c) would require grant recipients to provide the Secretary with documentation supporting the suspension.

Reasons: Although the HEA does not explicitly provide for a suspension of the eight-year period for completion of a TEACH Grant service obligation, the Secretary is proposing regulations in § 686.41 that would provide TEACH Grant recipients with some flexibility in limited circumstances with respect to the eight-year period for completion. These limited circumstances would include enrollment in a program of study for which the recipient would be eligible for a TEACH Grant or enrollment in a program of study to obtain a certificate or license to begin teaching. This flexibility would prevent TEACH Grant recipients who, because of State requirements, must complete an undergraduate degree and subsequently obtain the credential that actually allows them to begin teaching, from being penalized with regard to completion of their first service obligation. These limited circumstances also would include conditions covered under the FMLA and a call to military service as part of the Armed Forces reserve or the National Guard, because the Secretary believes that TEACH Grant recipients should not be placed at a disadvantage in completing their service obligations as a result of a significant family illness or situation or while defending their country in the event of a call to active service in connection with a war, military operation, or a national emergency.

The non-Federal negotiators believed that the proposed regulations in § 686.41 would not adequately address situations that could affect a TEACH Grant recipient's ability to meet the terms of his or her service obligation within eight years after completing a TEACH Grant-eligible program. Some non-Federal negotiators suggested that the Secretary should allow a TEACH Grant recipient to suspend his or her service obligation in the event of extenuating circumstances that preclude the TEACH Grant recipient from completing his or her service obligation in the required eight-year timeframe. The Secretary declined to expand the circumstances for suspension. The Secretary believes such an expansion would contradict the intent of the TEACH Grant program by delaying the entry of highly-qualified teachers into high-need fields in low-income schools where they are badly needed. The negotiating committee agreed to the language in proposed § 686.41.

As noted elsewhere in this preamble, the portion of the language related to the conditions covered by the FMLA will need to be consistent with the Department of Labor regulations.

While these regulations reflect FMLA regulations with regard to the conditions under which a TEACH Grant recipient may request a suspension, we would not require a TEACH Grant recipient to go through the certification process specified in the FMLA regulations.

Discharge of Service Agreement (§ 686.42)

Statute: The statute does not address the discharge of a service obligation if a TEACH Grant recipient dies or becomes totally and permanently disabled.

Proposed Regulations: In the case of a TEACH Grant recipient who dies, proposed § 686.42(a) would require the discharge of the grant recipient's service obligation upon receipt of an original or certified copy of the TEACH Grant recipient's death certificate, an accurate and complete photocopy of the original or certified copy of the grant recipient's death certificate, or, on a case-by-case basis, reliable information acceptable to the Secretary.

In the case of a TEACH Grant recipient who becomes totally and permanently disabled as that term is defined in 34 CFR 682.200(b), proposed § 686.42(b) would provide for a discharge of the service obligation if the TEACH Grant recipient applies for and satisfies the same eligibility requirements for a total and permanent disability discharge of a Direct Loan in 34 CFR 685.213.

Proposed § 686.42(b)(2) would provide that the eight-year time period in which the grant recipient must complete the service obligation remain in effect during the conditional discharge period described in 34 CFR 685.213(c)(2) unless the grant recipient is eligible for a suspension based on the conditions covered by the FMLA. Proposed § 686.42(b)(3) would provide that interest continues to accrue on each TEACH Grant disbursement received unless and until the grant recipient's service agreement is discharged by the Secretary. Lastly, proposed § 686.42(b)(4) and (5) would provide that if the grant recipient meets the eligibility requirements throughout the three-year conditional discharge period, the service obligation is discharged; if not, the grant recipient is once again subject to the terms of the service agreement.

Reasons: The Secretary believes that it would be appropriate to provide a discharge of a TEACH Grant recipient's service obligation in cases when the grant recipient cannot comply with his or her service agreement because of death or total and permanent disability. Although grant aid does not have to be repaid, the service agreement signed by a TEACH Grant recipient is a binding, legal document requiring the repayment of each TEACH Grant, along with interest accrued from the date of disbursement, as a Federal Direct Unsubsidized Loan if the service obligation is not met. A discharge of the service obligation for death and total and permanent disability relieves the grant recipient of a potential repayment obligation and is also consistent with the treatment of Title IV, HEA loans.

Proposed § 686.42(b) would adopt the definition of *totally and permanently disabled* already used in the Federal Direct Loan program regulations. The definition of totally and permanently disabled (in 34 CFR 682.200(b)) is ''the condition of an individual who is unable to work and earn money because of an injury or illness that is expected to continue indefinitely or result in death.'' A TEACH Grant recipient who meets this definition of *totally and permanently disabled* cannot comply with the service agreement because he or she cannot work and earn money. The Department considered proposing regulations that would have required a TEACH Grant recipient who became totally and permanently disabled to request a conversion of his or her TEACH Grants to a Federal Direct Unsubsidized Loan so that the existing process under which the Secretary grants a total and permanent disability discharge in the Direct Loan program would be available to the TEACH Grant recipient. However, non-Federal negotiators persuaded the Department to adopt a total and permanent disability discharge process that would preserve the grant status of the TEACH Grant rather than mandate the conversion of the TEACH Grant to a loan. The non-Federal negotiators felt that a TEACH Grant recipient should have the opportunity to fulfill his or her service obligation, if time remained in the eight-year period, if the TEACH Grant recipient does not receive a final total and permanent disability discharge. The non-Federal negotiators also noted that if the eight-year time period elapsed while the grant recipient was in a conditional discharge status, the TEACH Grant would convert to a loan anyway.

Obligation To Repay the Grant (§ 686.43)

Statute: Section 420N(c) of the HEA provides that if a TEACH Grant recipient fails or refuses to comply with the service obligation, the sum of the amounts of any TEACH Grants received by the recipient shall, upon a determination of such failure or refusal in such service obligation, be treated as a Federal Direct Unsubsidized Loan under part D of Title IV of the HEA, and shall be subject to repayment, together with interest thereon accruing from the date of the grant award.

Proposed Regulations: Proposed § 686.43 would require that TEACH Grant amounts be converted into a Federal Direct Unsubsidized Loan, with interest accruing from the date of each grant disbursement if—

- The grant recipient, regardless of enrollment status, requests the conversion for any reason;
- Within 120 days of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has failed to notify the Secretary in accordance with proposed § 686.40(a);
- Within one year of ceasing enrollment in the institution prior to completing a TEACH Grant-eligible program, the grant recipient has not been determined eligible for a suspension of the eight-year completion period, has not re-enrolled in a TEACH Grant-eligible program, or has not begun creditable teaching service to meet his or her service agreement;
- The grant recipient completes the course of study for which a TEACH Grant was received and does not actively confirm to the Secretary, at least annually, his or her intention to satisfy the service agreement; or
- The grant recipient completed a TEACH Grant-eligible program but failed to begin or maintain teaching service in accordance with the Service Agreement within the timeframe that would allow that individual to complete the service obligation within the eight-year completion period.

Under proposed § 686.43(b), a TEACH Grant that converts to a Federal Direct Unsubsidized Loan would not be counted against the grant recipient's annual or aggregate Stafford Loan limits.

Under proposed § 686.43(c), a grant recipient whose TEACH Grant has been converted to a Federal Direct Unsubsidized Loan would enter repayment immediately, would be eligible for all of the benefits of the Direct Loan Program, and would not be eligible for any grace period.

Finally, proposed § 686.43(d) would provide that once a TEACH Grant is converted to a loan, it cannot be reconverted to a grant.

Reasons: The purpose of proposed § 686.43 would be to implement the statutory directive that a TEACH Grant converts to a Federal Direct Unsubsidized Loan if the grant recipient fails or refuses to carry out the terms of his or her service agreement. Because the conversion of a TEACH Grant to a loan has the potential to subject a grant recipient to a heavy debt burden, the Secretary believes that it is essential to specify in the proposed regulations the circumstances under which a TEACH Grant would convert to a loan so that a grant recipient is aware of this essential information.

The Secretary believes that TEACH Grants that are converted to loans should not count against the grant recipient's annual or any aggregate Stafford Loan limit because, in some cases, the conversion of loans would

immediately render the grant recipient ineligible for further financial aid should annual or aggregate loan limits be exceeded as a result of the conversion of TEACH Grants. The Secretary believes such an outcome would be unfair to a grant recipient, who for reasons beyond his or her control, may be unable to comply with the service obligation. The negotiating committee agreed to the language in proposed § 686.43.

Finally, the Secretary notes that the conversion of a TEACH Grant to a loan creates a new legally-binding agreement with the TEACH grant recipient requiring repayment of the grant amounts as a Federal Direct Unsubsidized Loan. This legally-binding agreement would reflect the terms and conditions of the repayment of the loan under part D of Title IV of the HEA. There are no provisions in the promise to repay signed by the grant recipient under part D of Title IV of the HEA that would allow for the discharge and reconversion of the loan debt to a grant.

The non-Federal negotiators expressed concern that the proposed regulations would not provide for an appeal process should the grant recipient's TEACH Grants be converted to a Federal Direct Unsubsidized Loan by mistake or through some omission or error on the part of either the Secretary or the grant recipient. The Secretary did not agree that an appeals process was necessary and instead agreed to provide a reference in the counseling requirements in proposed § 686.32 to the Student Loan Ombudsman as an alternative resource should the conversion be contested by the grant recipient.

Conforming Amendments (34 CFR Parts 668, 673, 674, 675, 676, 682, 685, and 690)

Statute: The HEA, as amended by the CCRAA, does not specifically address the need for conforming amendments to the Department's regulations to reflect the implementation of the TEACH Grant program.

Proposed Regulations: The Department would propose conforming amendments to the regulations in 34 CFR parts 668, 673, 674, 675, 676, 682, 685, and 690 to consistently reference and implement the new proposed TEACH Grant program.

Reasons: These proposed conforming amendments to 34 CFR parts 668, 673, 674, 675, 676, 682, 685, and 690 are needed to consistently reference and implement the TEACH Grant program in all applicable regulations of the Department. These conforming amendments were discussed with and received consensus from the negotiating committee.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement 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.

Pursuant to the terms of the Executive order, it has been determined that this regulatory action will have an annual effect on the economy of more than $100 million. Therefore, this action is ''economically significant'' and subject to OMB review under section 3(f)(1) of Executive Order 12866. Accordingly, the Secretary has assessed potential costs and benefits of this regulatory action and has determined the benefits justify the costs.

Need for Federal Regulatory Action

These proposed regulations are needed to implement provisions of the HEA, as amended by the CCRAA, that established the TEACH Grant program. The Secretary has limited discretion in implementing the new TEACH Grant program; these proposed regulations also modify the Department's existing regulations to reflect statutory changes made by the CCRAA.

The Secretary has exercised limited discretion in implementing the CCRAA provisions in the following areas:

- *Definition of elementary and secondary academic year:* The CCRAA provides that a grant recipient must serve as a full-time teacher for a total of not less than four academic years within eight years after completing the program of study for which he or she received a TEACH Grant.
- *TEACH Grant-eligible institution:* The CCRAA provides that an eligible institution for purposes of the TEACH Grant program must be an institution of higher education as defined in section 102 of the HEA that is financially responsible and that provides: high-quality teacher preparation and professional development services, including extensive clinical experience as part of pre-service preparation; pedagogical coursework, or assistance in the provision of such coursework; and supervision and support services to teachers, or assistance in the provision of such services, or that provides a post-baccalaureate program of instruction.
- *Calculation of Grade-Point Average for Transfer Students:* The CCRAA requires students to have a grade-point average of 3.25 on a 4.0 scale to be eligible to receive a TEACH Grant; and
- *Counseling:* The CCRAA requires schools to provide counseling at a number of points to provide participating students with information on the program and, in particular, to underscore the student's responsibilities in the event the program's service requirements are not fulfilled.
- *Discharge of Service Agreement:* The CCRAA does not address the discharge of a service obligation if a TEACH Grant recipient dies or becomes totally and permanently disabled.

The following section addresses the alternatives that the Secretary considered in implementing these discretionary portions of the CCRAA provisions. These alternatives are also discussed in the *Reasons* sections of this preamble related to the specific regulatory provisions.

Regulatory Alternatives Considered

Definition of elementary and secondary academic year: The Department chose to define an academic year for elementary and secondary schools as one complete school year or two complete and consecutive half-years from different school years, excluding summer sessions, that generally fall within a 12-month period. If a school has a year-round program of instruction, the Secretary would consider a minimum of nine consecutive months to be the equivalent of an academic year.

As discussed in more detail in the *Reasons* section for this provision, several non-Federal negotiators suggested removing the word ''consecutive'' from the definition and eliminating the exclusion of summer sessions. The Secretary considered these alternatives but decided against making the changes to maintain consistency with other similar definitions under the

HEA and avoid allowing recipients to complete the four-year service obligation in less than four years, which would be contrary to the TEACH Grant provisions in the statute. None of these alternatives were estimated to affect Federal cost or burden estimates.

TEACH Grant-eligible institution: In developing regulations related to the statutory institutional eligibility requirements established in the CCRAA, the Department and the non-Federal negotiators established a number of pathways for students to acquire the education and knowledge needed to serve as highly-qualified teachers in high-need fields. As discussed in more detail in the *Reasons* section for this provision, these pathways include completion of a baccalaureate or master's degree teacher preparation program; completion of a baccalaureate program at one institution and a master's level teacher preparation program at another institution or a post-baccalaureate program at an institution that does not offer a teacher preparation program; and completion of a baccalaureate program at one institution after transferring from a two-year institution offering a program acceptable for full credit toward a baccalaureate degree.

These pathways are consistent with the purpose of the TEACH Grant program and with program cost estimates developed by the Administration at the time of the passage of the CCRAA.

Calculation of Grade-Point Average for Transfer Students: Section 420N(a)(2)(A)(ii)(I) of the HEA provides that an undergraduate, post-baccalaureate or graduate student's eligibility for a TEACH Grant may be based on the student maintaining a cumulative GPA of at least 3.25 on a 4.0 scale.

The Department initially considered proposed regulations under which a transfer student could meet the GPA requirement to receive a TEACH Grant for his or her first payment period at the institution to which the student has transferred by calculating the student's transfer GPA using the methodology already in use by institutions to determine a transfer student's GPA for the National SMART Grant program. Under the National SMART Grant program, institutions incorporate transfer grades from coursework accepted by the new institution for the SMART Grant-eligible program.

Upon consideration and discussion with negotiators, the Secretary believes allowing the new institution to use grades assigned to coursework accepted by the new institution for initial GPA calculation purposes for that transfer student instead of using grades assigned only to coursework accepted into the TEACH Grant-eligible program would decrease the burden on institutions and students because institutions will not have to take the extra step of determining which of the transferred courses will actually apply to the TEACH Grant-eligible program at the time of the student's admission. The proposed regulations have been revised accordingly to reflect this approach. While the Department and non-Federal negotiators agreed on the efficacy of this approach based on anecdotal information, the Department lacks the detailed data to quantify the reduced burden associated with this policy choice. Accordingly, we are particularly interested in receiving comments and accompanying data that would facilitate the development of a more definitive assessment.

Counseling: The Department and negotiators strongly agreed on the need for students to be fully informed about the TEACH Grant program and the obligations acceptance of a TEACH Grant entails. In considering the most effective approach to provide students with clear, concise information on a regular basis, the Department initially proposed annual in-person counseling sessions prior to grant disbursements.

When this issue was discussed during negotiated rule-making sessions, non-Federal negotiators pointed out that the Department's proposed approach imposed significant burdens on both the student and institution—including possibly delaying grant disbursements—while there is no evidence that in-person counseling is more effective than interactive electronic counseling. After consideration and further discussion, the group developed a consensus position under which institutions must provide initial, subsequent, and exit counseling, but have the option of providing in-person, audiovisual, or interactive electronic counseling, with the stipulation that institutions must ensure an expert on Title IV, HEA programs is available shortly after the counseling session to answer any questions. This is consistent with the requirements in the FFEL and Direct Student Loan programs.

The Department and non-Federal negotiators agreed on the efficacy of this approach based on anecdotal information, as the Department lacks the detailed data in this area. Accordingly, we are particularly interested in receiving comments and accompanying data that would facilitate the development of a more definitive assessment of reduced burden associated with this policy choice.

Discharge of a Service Agreement: Although the HEA is silent on this issue, as discussed in the *Reasons* section for this provision, the Department chose to provide a discharge of a TEACH Grant recipient's service obligation in cases when the grant recipient cannot comply with his or her service agreement because of death or total and permanent disability. Providing such discharge is consistent with the treatment of Title IV, HEA loans, so there is no additional Federal cost associated with this provision.

Other Areas: In addition to these specific issues, there were a number of areas, such as institutional participation, payment from more than one institution, correspondence courses, calculation of a grant, where the Department chose to base TEACH Grant requirements on existing regulations and processes for the Pell Grant program or other Federal student aid programs. (See appropriate *Reasons* sections for a more detailed discussion.) While other approaches were considered in some of these areas, this approach ensures consistency, facilitates program implementation, and avoids burden associated with the development of new requirements, systems, or processes. It was widely supported by both Federal and non-Federal negotiators and quickly adopted.

Amount of TEACH Grants Awarded

The Department estimates that the TEACH Grant program will provide $86 million in aid to 31,000 students in 2008, its first year of operation, with an average award of $2,800. (The average award reflects expected reductions in the $4,000 maximum award due to part-time attendance and cost of attendance restrictions.) Amounts awarded and recipients are expected to increase over time, rising to $143 million and 51,000 respectively by 2011. Total aid awarded over 2008–2012 is estimated at $615 million.

Demand for TEACH Grants was estimated based on the number of students teaching in one of the eligible fields within 10 years of college graduation who had a Grade Point Average of 3.25 or higher and who borrowed a Federal loan. This figure was adjusted upward to reflect similar students who did not complete their degree. Each student was estimated to receive two TEACH Grant awards prior to leaving school. Stafford loan borrowers take out a median of three loans prior to graduation but this number was lowered because we anticipate TEACH Grant recipients

delaying their award decision until their career plans are further developed. The above estimates were then adjusted downward for school years 2008–09 through 2010–11 to reflect lower demand for the program in the first years of implementation. Steady state is expected to be reached by the 2011–12 school year.

As these estimates show, the TEACH Grant program implemented by these proposed regulations would offer an extremely significant incentive to help address longstanding national and regional elementary and secondary school staffing problems. Many studies (Boe, Bobbitt, & Cook, 1997; Grissmer & Kirby, 1992; Murnane *et al.*, 1991; Rumberger, 1987 and extensive research prepared for the National Commission on Mathematics and Science Teaching) have found math, science, and special education to be fields with especially high turnover and those predicted most likely to suffer shortages. More broadly, research indicates that rural and urban high-poverty schools face a particular challenge in recruiting and retaining highly-qualified teachers, especially in high-need subjects. There is little definitive data indicating the efficacy of other Federal initiatives, such as student loan forgiveness, intended to address this issue. This may be because the benefit is greatly deferred (loans are generally not forgiven until after up to five years of qualifying service) or because the benefit itself is not sufficient to outweigh other factors such as job dissatisfaction or better-paying opportunities in other fields or areas. Unlike these other programs, however, TEACH Grants offer both a large upfront incentive—up to $16,000 in grant aid—to encourage teaching in these subjects and schools and a significant disincentive—the requirement to repay these grants, with interest, if the service obligations are not fulfilled. Accordingly, the program should offer a powerful incentive for recruitment and retention, especially given the additional eligibility requirement that recipients teach for four years to maintain the benefit.

In general, the Department believes the benefits provided under these proposed regulations through increased student aid and additional incentives to address teacher shortages would outweigh the relatively small additional burdens discussed in the following section. This belief is strongly supported by the fact that the negotiated rulemaking committee reached consensus on the proposed regulations. Nonetheless, the Department is interested in comments on possible administrative burdens related to the proposed regulations.

Net Budget Impacts

The TEACH Grant program is estimated to have a net budget impact of $7 million in 2008 and $74 million over FY 2008–2012. For budget, financial management, and cost estimation purposes, TEACH Grants will be operated as a loan program with 100 percent forgiveness of outstanding principal and interest upon completion of a student's service requirement. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for this program reflect the estimated net present value of all future non-administrative Federal costs associated with awards made in a given fiscal year.

These estimates were developed using the Office of Management and Budget's Credit Subsidy Calculator. (This calculator will also be used for re-estimates of prior-year costs, which will be performed each year beginning in FY 2009). The OMB calculator takes projected future cash flows from the Department's student loan cost estimation model and produces discounted subsidy rates reflecting the net present value of all future Federal costs associated with awards made in a given fiscal year. Values are calculated using a ''basket of zeros'' methodology under which each cash flow is discounted using the interest rate of a zero-coupon Treasury bond with the same maturity as that cash flow. To ensure comparability across programs, this methodology is incorporated into the calculator and used government-wide to develop estimates of the Federal cost of credit programs. Accordingly, the Department believes it is the appropriate methodology to pursue in developing estimates for this regulations. That said, however, in developing the Accounting Statement included below, the Department consulted with OMB on how to integrate our discounting methodology with the discounting methodology traditionally used in developing regulatory impact analyses.

Absent evidence on the impact of TEACH Grants on student behavior, budget cost estimates were based on behavior as reflected in various longitudinal surveys listed under Assumptions, Limitations, and Data Sources. As discussed elsewhere in this preamble, program cost estimates reflect data on recent college graduates entering eligible teaching fields, adjusted for the percentage of students who graduate, maintain a 3.25 grade-point-average and take out a Federal loan. (In the absence of any need-based eligibility criteria, Federal borrowing was used as a proxy for unmet financial need.) Data from longitudinal studies were used to estimate the percentage of recipients who graduated from college, were highly qualified, and taught in high poverty schools for four out of the eight years following graduation. Based on this data, the Department assumed 80 percent of recipients will eventually fail to fulfill their service requirements and have their grants converted into Federal Direct Unsubsidized Stafford Loans.

Program cost estimates were generated by running projected grant disbursements through the Department's student loan cost estimation model with no repayments for the 20 percent of recipients expected to fulfill their service requirement. For those recipients expected not to fulfill their service requirements, repayment was assumed to be similar to Federal Direct Unsubsidized Stafford Loans with two exceptions: the distribution of awards across risk category and the time before a loan enters repayment.

Student loan cost estimates are normally developed across five risk categories: proprietary schools, two-year schools, freshmen/sophomores at four-year schools, juniors/seniors at four-year schools, and graduate students. Risk categories have separate assumptions based on the historical pattern of behavior—for example, the likelihood of default or the likelihood to use statutory deferment or discharge benefits—of borrowers in each category. In estimating TEACH Grant costs, disbursements were limited to three risk groups, with 20 percent of volume estimated to be for four-year freshman and sophomores, 60 percent for four-year juniors and seniors, and 20 percent for graduate students.

In addition, the time to enter repayment was significantly lengthened for TEACH Grants converting to loans. This reflects the fact that many grants will not become loans until at least five years after college graduation, when it becomes clear that the service requirement will not be met.

Because entities that would be affected by these proposed regulations already participate in the Title IV, HEA programs, participating schools would have already established systems and procedures in place to meet program eligibility requirements. To the extent possible, existing processes, procedures, and systems for other Federal student aid programs have been used as the basis for the TEACH Grant program. These proposed regulations generally would require a relatively small number

of discrete changes in specific parameters associated with existing guidance—such as changes in entrance and exit counseling, or the need to track student grade-point average—rather than wholly new requirements. Accordingly, institutions wishing to continue to participate in the student aid programs have already absorbed most of the administrative costs related to implementing these regulations. Marginal costs over this baseline are primarily related to one-time changes in areas such as counseling materials; the Department has no data to indicate such changes would impose significant additional costs. There was little indication by negotiators that these requirements were seen as excessively burdensome. The Department is particularly interested, however, in comments on possible administrative burdens related to this or other proposed regulatory requirements.

Assumptions, Limitations, and Data Sources

Because these proposed regulations would largely restate statutory requirements that would be self-implementing in the absence of regulatory action, impact estimates provided in the preceding section reflect a pre-statutory baseline in which the CCRAA and other statutory changes implemented in these proposed regulations do not exist. Costs have been quantified for five years.

In developing these estimates, a wide range of data sources were used, including the National Student Loan Data System, operational and financial data from Department of Education systems, and data from a range of surveys conducted by the National Center for Education Statistics such as the Baccalaureate and Beyond, Schools and Staffing, and the 1996 Beginning Postsecondary Student surveys.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section we identify and explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995*.

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf*), in Table 2 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of these proposed regulations. Expenditures are classified as transfers to postsecondary students.

TABLE 2.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Annualized Monetized Transfers	$17
From Whom to Whom?	Federal Government to Postsecondary Students.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 686.32.)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect institutions of higher education and individual students and loan borrowers. The U.S. Small Business Administration Size Standards define these institutions as ''small entities'' if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Individuals are also not defined as ''small entities'' under the Regulatory Flexibility Act.

A significant percentage of the schools participating in the Federal student loan programs meet the definition of ''small entities.'' In general, the Department believes the benefits provided under these proposed regulations through increased Federal student aid and additional incentives to address teacher shortages would outweigh the relatively small additional burdens, including economic burdens, particularly given that institutions finding the program's requirements onerous have the option of not participating. This belief is strongly supported by the fact that the negotiated rulemaking committee reached consensus on the proposed regulations.

The Secretary invites comments from small institutions as to whether they believe the proposed regulations would have a significant economic impact on them and, if so, requests evidence to support that belief.

Paperwork Reduction Act of 1995

Proposed 686.4, 686.10, 686.11, 686.12, 686.20, 686.32, 686.34, 686.36, 686.37, 686.38, 686.40, 686.41, 686.42 and 686.43 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 686.4—Institutional Participation

The proposed regulations would require an institution that ceases to participate in the TEACH Grant program or becomes ineligible to participate during an award year, to report to the Department of Education within 45 days after the effective date of the loss of eligibility. The contents of the report would include the name of each TEACH Grant eligible student; the amount of the TEACH Grant funds paid to each student for that award year; and the amount of TEACH Grant funds due each eligible student through the end of the payment period. Also, the institution would be required to provide an accounting of all TEACH Grant expenditures for that award year to the date of termination. We estimate that proposed § 686.4 would increase burden for institutions by 81 hours in OMB 1845–XXXX.

Section 686.10—Application

Under the proposed regulations, a potential grant recipient would be required to complete and submit an approved application form, as designated by the Secretary prior to the published deadline. Currently, the Free Application for Federal Student Aid (FAFSA) is the designated application form for Title IV, HEA program assistance. Because all undergraduate applicants for Title IV, HEA program assistance must complete and submit the FAFSA and most graduate students also apply for Title IV, HEA program assistance, there would be no additional burden associated with indicating one's interest in the TEACH Grant program on the designated form. Therefore, there would not be any new burden associated with this provision in the proposed regulations.

Section 686.11—Eligibility To Receive a Grant

The proposed regulations would establish that in order to receive a TEACH Grant, an applicant would, in addition to meeting the student eligibility requirements, need to submit the designated application, sign a TEACH Grant service agreement, and enroll in a TEACH Grant-eligible institution. Under the proposed regulations, grant recipients would need to maintain a grade point average of 3.25 on a 4.0 scale during each payment period, score above the 75th percentile on at least one of a battery of nationally-normed standardized tests, or qualify as a current or retired teacher obtaining a master's degree in a TEACH Grant-eligible program. There would be several categories of grant recipients where the cumulative grade point average of 3.25 must be maintained each payment period. Those categories are:

I. During the initial payment period:

The final cumulative high school GPA for a first term undergraduate recipient—

The TEACH Grant-eligible institution would need to document the student's secondary school GPA from an LEA, an SEA or other State agency; a public or private high school; or in the case of a home schooled student, obtain documentation of the secondary school GPA from the parent or guardian.

The undergraduate cumulative GPA for either the post-baccalaureate or graduate student recipient—

The TEACH Grant-eligible institution would need to document the student's undergraduate school cumulative GPA.

The transfer student cumulative GPA, as determined by the current TEACH Grant-eligible institution—

The TEACH eligible institution would need to document the student's cumulative GPA based upon the method established by the institution to accept coursework completed from any prior postsecondary institution that it accepts.

II. During payment periods:

The cumulative GPA would be based on courses taken at the TEACH Grant-eligible institution through the most-recently completed payment period, or

III. Alternatives to the cumulative GPA:

Scoring above the 75th percentile of at least one of the battery of tests from a nationally-normed standardized test, or

The grant recipient is currently a teacher or retiree who is applying for a TEACH Grant to obtain a master's degree in a TEACH Grant-eligible program. We estimate that the proposed regulation would increase burden for individuals and institutions by 77,263 hours in OMB 1845–XXXX.

Section 686.12—Service Agreement

Under the proposed regulations, a student would be required to sign a service agreement before receiving a TEACH Grant. The service agreement would require the student to fulfill a service obligation for each program for which the student received a TEACH Grant. The service agreement would explain the terms of the service obligation and would provide that if a TEACH Grant recipient does not fulfill the service obligation or otherwise does not meet the requirements of 34 CFR part 686, any TEACH Grant the student received will be converted to a Federal Direct Unsubsidized Loan that the student must repay in full to the Secretary, with interest.

The burden associated with the service agreement would be reported under a new collection. A separate 60-day **Federal Register** notice will be published to solicit comment on the service agreement once it is developed.

Section 686.20—Submission Process and Deadline for a SAR or ISIR

The proposed regulations would require participating institutions who disburse TEACH Grant funds to students to electronically transmit data as required by the Secretary. The burden associated with the collection and transmission of the required data would be assessed and attributed in 34 CFR 686.37. Therefore, there would be no burden associated with proposed § 686.20.

Section 686.32—Counseling Requirements

The proposed regulations would require an institution to provide initial, subsequent, and exit counseling to each TEACH Grant recipient. The initial counseling would be required prior to making the first disbursement of the grant. Initial counseling would need to include, but not be limited to explaining the terms and conditions of the TEACH Grant service agreement; providing information on how to identify low-income schools and documented high need fields; informing grant recipients of the possibility of a suspension of the eight-year period for completion of the service agreement; and describing the conditions under which a suspension may be granted. Subsequent counseling, which would be required to occur prior to the first disbursement of a TEACH Grant in a subsequent award year, would need to include, but not be limited to reviewing the terms and conditions of the service agreement; and an emphasis on the fact that if the student fails or refuses to complete the service agreement, the TEACH Grant will convert into a Federal Direct Unsubsidized Loan. Under the proposed regulations, institutions would be required to provide exit counseling before the recipient ceases to attend the institution. Written exit counseling materials could be provided within 30 days after completing a study abroad program or after a student withdraws without notifying the institution. We estimate that the proposed regulations would increase burden for individuals and institutions by 390,068 hours in OMB 1845–XXXX.

Section 686.34—Liability for and Recovery of TEACH Grant Overpayments

The proposed regulations would require the institution to promptly provide written notification to a student requesting repayment of any overpayment that the institution does not have responsibility to repay. These proposed regulations also would require that the institution refer the student to the Department if the student does not take positive action to promptly resolve the TEACH Grant overpayment. We estimate that proposed § 686.34 would increase burden for individuals and institutions by 855 hours in OMB 1845–XXXX.

Section 686.36—Fiscal Control and Accounting Procedures

The proposed regulations would provide that participating institutions must account for the receipt and expenditure of Title IV, HEA program funds in accordance with generally accepted accounting principles. Further, participating institutions would be required to disburse TEACH Grant

funds consistent with the cash management regulations in 34 CFR 668.164. Participating institutions already are required to comply with these requirements for other Title IV, HEA programs and, therefore, there would be no additional burden placed upon institutions participating in the TEACH Grant program.

Section 686.37—Institutional Reporting Requirements

Under the proposed regulations, a participating institution would be required to provide the Secretary information about each TEACH Grant recipient that includes, but is not limited to, the student's eligibility for a TEACH Grant; the amounts of the TEACH Grant disbursed; the anticipated and actual disbursement dates; and the disbursement amounts of the TEACH Grants provided. The initial disbursement information would need to be submitted to the Department no later than 30 days following the initial disbursement of TEACH Grant funds. Subsequent disbursements, cancellations, and adjustments would need to be submitted to the Department within 30 days after the transaction. Participating institutions already are required to comply with these requirements for other Title IV, HEA programs and, therefore, there would be no additional burden placed upon institutions participating in the TEACH Grant program.

Section 686.38—Maintenance and Retention of Records

The proposed regulations would require participating institutions to maintain the fiscal records for the TEACH Grant program for three years after the end of the award year for which the TEACH Grant was awarded. Participating institutions already are required to comply with these requirements for other Title IV, HEA programs and, therefore, there would be no additional burden placed upon institutions participating in the TEACH Grant program.

Section 686.40—Documenting the Service Obligation

The proposed regulations would require, except as provided in proposed § 686.40 and § 686.42, a student to confirm to the Secretary in writing, within 120-days of completing or otherwise ceasing enrollment in a program for which the student received a TEACH Grant, that he or she is employed as a full-time teacher in accordance with the TEACH Grant service agreement, or is not yet employed, but intends to meet the terms and conditions of the service agreement.

The burden associated with this notification requirement would be covered under a new collection. A separate 60-day **Federal Register** notice will be published to solicit comment on a notification form once it is developed.

Section 686.41—Periods of Suspension

The proposed regulations would provide that a TEACH Grant recipient may request a suspension of the eight-year period for completion of the TEACH Grant service agreement based on one of the conditions described in proposed § 668.41. The grant recipient would be required to apply for a suspension on a form approved by the Secretary.

The burden associated with this notification requirement would be covered under a new collection. A separate 60-day **Federal Register** notice will be published to solicit comment on a suspension request form once it is developed.

Section 686.42—Discharge of Service Agreement

Under the proposed regulations, a TEACH Grant recipient's service obligation would be discharged if the recipient dies, or if the recipient becomes totally and permanently disabled and meets the eligibility requirements for a total and permanent disability discharge in 34 CFR 685.213.

The burden associated with the discharge of a TEACH Grant service obligation based on the grant recipient's death would be covered under OMB 1845–0021. The burden associated with the discharge of a TEACH Grant service obligation based on the grant recipient's total and permanent disability would be covered under OMB 1845–0065.

Section 686.43—Obligation To Repay the Grant

The proposed regulations would specify the conditions under which a TEACH Grant would be converted to a Federal Direct Unsubsidized Loan that the grant recipient must repay. One of these conditions is when a TEACH Grant recipient who has completed a program for which he or she received a TEACH Grant does not notify the Secretary at least annually of his or her intent to satisfy the TEACH Grant service agreement.

The burden associated with the notification requirement in proposed § 686.43 would be covered under the same new collection associated with the notification requirement in proposed § 686.40.

Consistent with the discussion in this section, the following chart describes the sections of the proposed regulations that involve information collections, the information that would be collected, and the collections the Department would submit to the Office of Management and Budget for approval and public comment under the Paperwork Reduction Act.

Regulatory section	Information collection	Collection
686.4	Institutions that cease participation in the TEACH Grant program or otherwise lose eligibility would be required to report program data to the Department within 45 days of the change in eligibility.	OMB 1845–XXXX. This would be a new collection.
686.11	A TEACH Grant recipient would be required to (a) score above the 75th percentile on a battery of a standardized nationally-normed test, (b) maintain a 3.25 cumulative GPA, or (c) currently be a teacher or retiree obtaining a master's degree in a TEACH Grant-eligible program.	OMB 1845–XXXX. This would be a new collection.

Regulatory section	Information collection	Collection
686.12	Before receiving a TEACH Grant, a student would be required to sign a service agreement. The service agreement would provide that a student must fulfill a service obligation for each program for which the student received a TEACH Grant. The service agreement would explain the terms of the service obligation and provide that if a TEACH Grant recipient does not fulfill the service obligation or otherwise does not meet the requirements of 34 CFR part 686, any TEACH Grant the student received will be converted to a Federal Direct Unsubsidized Loan that the student must repay in full to the Secretary, with interest.	OMB 1845–XXXX. This would be a new collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on this form once it is developed.
686.32	A participating institution would be required to provide initial, subsequent, and exit counseling for all TEACH Grant recipients.	OMB 1845–XXXX. This would be a new collection.
686.34	A participating institution would be required to provide written notice to any TEACH Grant recipient when he or she owes a TEACH Grant overpayment. Moreover, if the recipient does not take positive action to resolve the overpayment within the deadline, the institution would be required to report the overpayment to the Department.	OMB 1845–XXXX. This would be a new collection.
686.40	Except as provided in proposed §§ 686.40 and 686.42, within 120-days of completing or otherwise ceasing enrollment in a program for which the student received a TEACH Grant, the student would be required to confirm to the Secretary in writing that he or she is employed as a full-time teacher in accordance with the TEACH Grant service agreement, or is not yet employed, but intends to meet the terms and conditions of the service agreement.	OMB 1845–XXXX. This would be a new collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on this form once it is developed.
686.41	A TEACH Grant recipient may request a suspension of the eight-year period for completion of the TEACH Grant service agreement based on one of the conditions described in proposed § 668.41. The grant recipient would be required to apply for a suspension on a form approved by the Secretary.	OMB 1845–XXXX. This would be a new collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on this form once it is developed.
686.42	A TEACH Grant recipient's service obligation would be discharged if the recipient dies, or if the recipient becomes totally and permanently disabled and meets the eligibility requirements for a total and permanent disability discharge in 34 CFR 685.213.	Discharge of a TEACH Grant service obligation based on the grant recipient's death would be covered under OMB 1845–0021. Discharge of a TEACH Grant service obligation based on the grant recipient's total and permanent disability would be covered under OMB 1845–0065.
686.43	One of the conditions under which a TEACH Grant would be converted to a Federal Direct Unsubsidized Loan is if a grant recipient who has completed a program for which he or she received a TEACH Grant does not notify the Secretary at least annually of his or her intent to satisfy the TEACH Grant service agreement.	This would be covered by the same new collection as described for 686.40.

If you want to comment on the proposed information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. You may also send a copy of these comments to the Department contact named in the **ADDRESSES** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the proposed regulations.

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(*Catalog of Federal Domestic Assistance Numbers:* 84.007 Supplemental Educational Opportunity Grants; 84.032 Federal Family Education Loan Program; 84.033 Federal Work Study; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grants; 84.069 Leveraging Educational Assistance Partnerships; 84.268 William D. Ford Federal Direct Loan Program; 84.379 TEACH Grant Program)

List of Subjects

34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 673, 675 and 676

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Employment, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Parts 674, 682 and 685

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 686

Administrative practice and procedure, Colleges and universities, Education, Elementary and secondary education, Grant programs-education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 690

Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: March 11, 2008.

Margaret Spellings,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend 34 CFR chapter VI as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 is revised to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

2. Section 668.1 is amended by:

A. Removing the word ''and'' that appears after the punctuation '';'' in paragraph (c)(10).

B. Removing the punctuation ''.'' at the end of the paragraph (c)(11) and adding, in its place, the words ''; and''.

C. Adding a new paragraph (c)(12) to read as follows:

§ 668.1 Scope.

* * * * *

(c) * * *

(12) The Teacher Education Assistance for College and Higher Education (TEACH) Grant program.

* * * * *

3. Section 668.2(b), as amended November 1, 2007 (72 FR 62024), is further amended by:

A. Adding, in alphabetical order, the definitions for ''Teacher Education Assistance for College and Higher Education (TEACH) Grant program'' and ''TEACH Grant''.

B. Amending paragraph (2) of the definition of ''Undergraduate student'' by:

i. Removing the word ''and'' following ''(ACG) Program''.

ii. Adding '', and TEACH Grant Program'' after ''(SMART) Grant Program''.

iii. Adding ''and 686.3(a)'' after ''690.6(c)(5)''.

C. Revising the authority citation for the definition of ''undergraduate student.''

The additions and revision read as follows:

§ 668.2 General definitions.

* * * * *

(b) * * *

Teacher Education Assistance for College and Higher Education (TEACH) Grant Program: A grant program authorized by title IV of the HEA under which grants are awarded by an institution to students who are completing, or intend to complete, coursework to begin a career in teaching and who agree to serve for not less than four years as a full-time, highly-qualified, high-need field teacher in a low-income school. If the recipient of a TEACH Grant does not complete four years of qualified teaching service within eight years of completing the course of study for which the TEACH Grant was received or otherwise fails to meet the requirements of 34 CFR 686.12, the amount of the TEACH Grant converts into a Federal Direct Unsubsidized Loan.

(Authority: 20 U.S.C. 1070g)

TEACH Grant: A grant authorized under Title IV–A–9 of the HEA and awarded to students in exchange for prospective teaching service.

(Authority: 20 U.S.C. 1070g)

* * * * *

Undergraduate student:

* * * * *

(Authority: 20 U.S.C. 1070g)

* * * * *

§ 668.4 [Amended]

4. Section 668.4(b)(1), as amended November 1, 2007 (72 FR 62025), is further amended by removing the word ''and'' that appears after ''FSEOG,'' and adding '', and TEACH Grant'' after ''Perkins Loan''.

5. Section 668.8 is amended by:

A. Adding ''TEACH Grant,'' after ''National SMART Grant,'' in the heading of paragraph (h) introductory text.

B. Removing the word ''and'' that appears after the punctuation '';'' in paragraph (h)(1).

C. Removing the punctuation ''.'' At the end of paragraph (h)(2) and adding, in its place, the words ''; and''.

D. Adding a new paragraph (h)(3).

E. Revising the authority citation.

The addition and revision read as follows:

§ 668.8 Eligible programs.

* * * * *

(h) * * *

(3) An educational program qualifies as an eligible program for purposes of the TEACH Grant program only if the program is—

(i) A teacher preparation program or a program in a high-need field in accordance with 34 CFR 686.2(d); and

(ii) Offered by a TEACH Grant-eligible institution as defined in 34 CFR 686.2(d).

* * * * *

(Authority: 20 U.S.C. 1070a, 1070a–1, 1070b, 1070c–1, 1070c–2, 1070g, 1085, 1087aa–1087hh, 1088, 1091; 42 U.S.C. 2753)

6. Section 668.19 is amended by:

A. Removing the word ''or'' the first two times this word appears after the acronym ''ACG,'' and in each instance, adding the words '', or a TEACH Grant'' after ''National SMART Grant'' in paragraph (a)(3).

B. Removing the word ''or'' the third time this word appears after the acronym ''ACG,'' and adding the words

''**,** or TEACH Grant'' after the third appearance of ''National SMART Grant'' in paragraph (a)(3).

C. Revising the authority citation to read as follows:

§ 668.19 Financial aid history.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091, 1094)

7. Section 668.21, as amended November 1, 2007 (72 FR 62027), is further amended by:

A. Adding the words ''TEACH Grant,'' immediately after the word ''FSEOG,'' in paragraph (a)(1).

B. Revising the authority citation to read as follows:

§ 668.21 Treatment of title IV grant and loan funds if the recipient does not begin attendance at the institution.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094)

8. Section 668.22 is amended by:

A. Adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,'' in paragraph (a)(2).

B. Adding a new paragraph (i)(2)(v).

C. Revising the authority citation.

The addition and revision read as follows:

§ 668.22 Treatment of title IV funds when a student withdraws.

* * * * *

(i) * * *

(2) * * *

(v) TEACH Grants.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091b)

9. Section 668.24 is amended by:

A. Removing the word ''or'' which appears after ''ACG'' and adding the words ''**,** or TEACH Grant'' immediately in front of the word ''Program'' in the introductory text of paragraph (e)(1).

B. Revising the authority citation to read as follows:

§ 668.24 Record retention and examinations.

* * * * *

(Authority: 20 U.S.C. 1070a, 1070a–1, 1070b, 1070g, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087, 1087a *et seq.*, 1087cc, 1087hh, 1088, 1094, 1099c, 1141, 1232f; 42 U.S.C. 2753; section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

10. Section 668.26 is amended by:

A. Removing the word ''or'' the first time it appears and adding the words ''**,** or TEACH Grant'' immediately after the words ''National SMART Grant'' in paragraph (d)(1).

B. Removing the word ''and'' the first time it appears and adding the words ''**,** and TEACH Grant'' immediately after the words ''National SMART Grant'' in paragraph (e)(1).

C. Revising the authority citation to read as follows:

§ 668.26 End of an institution's participation in the Title IV, HEA programs.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094, 1099a–3)

11. Section 668.32 is amended by:

A. Removing the word ''and'' in paragraph (c)(2)(ii).

B. Adding the word ''and'' after the punctuation ''**;**'' in paragraph (c)(3).

C. Adding a new paragraph (c)(4).

D. Adding a new paragraph (k)(9).

E. Revising the authority citation.

The additions and revision read as follows:

§ 668.32 Student eligibility—general.

* * * * *

(c) * * *

(4) For the purposes of the TEACH Grant program—

(i) For an undergraduate student other than a student enrolled in a post-baccalaureate program, has not completed the requirements for a first baccalaureate degree; or

(ii) For the purposes of a student in a first post-baccalaureate program, has not completed the requirements for a post-baccalaureate program as described in 34 CFR 686.2(d);

* * * * *

(k) * * *

(9) 34 CFR 686.11 for the TEACH Grant program; and

* * * * *

(Authority: 20 U.S.C. 1070g, 1091; 28 U.S.C. 3201(e))

12. Section 668.35 is amended by:

A. Redesignating paragraph (g)(4) as paragraph (g)(5).

B. Adding a new paragraph (g)(4).

C. Revising the authority citation.

The addition and revision read as follows:

§ 668.35 Student debts under the HEA and to the U.S.

* * * * *

(g) * * *

(4) A student is not liable for a TEACH Grant overpayment received in an award year if—

(i) The institution can eliminate that overpayment by adjusting subsequent title IV, HEA program (other than Federal Pell Grant, ACG, National SMART Grant, or TEACH Grant) payments in that same award year; or

(ii) The institution cannot eliminate the overpayment under paragraph (g)(4)(i) of this section but can eliminate that overpayment by adjusting subsequent TEACH Grant payments in that same award year.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091; 11 U.S.C. 523, 525)

13. Section 668.138 is amended by:

A. Removing the word ''or'' the first time it appears and adding the words ''**,** or TEACH Grant'' immediately after the words ''National SMART Grant'' in paragraph (a).

B. Revising the authority citation to read as follows:

§ 668.138 Liability.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091, 1094)

14. Section 668.139 is amended by:

A. Adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,'' in paragraph (c).

B. Revising the authority citation to read as follows:

§ 668.139 Recovery of payments and loan disbursements to ineligible students.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091, 1094)

15. Section 668.161 is amended by:

A. Adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,'' in paragraph (a)(3)(i).

B. Revising the authority citation to read as follows:

§ 668.161 Scope and purpose.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094)

16. Section 668.162 is amended by:

A. Adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,'' in paragraph (d)(1).

B. Revising the authority citation to read as follows:

§ 668.162 Requesting funds.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094)

17. Section 668.163 is amended by:

A. Adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,'' in paragraph (c)(2).

B. Adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,'' in paragraph (c)(3) introductory text.

C. Adding the words ''TEACH Grant,'' immediately after the words ''National SMART Grant,'' in paragraph (c)(4).

D. Revising the authority citation to read as follows:

§ 668.163 Maintaining and accounting for funds.

* * * * *

(Authority: 20 U.S.C. 1070g, 1091, 1094)

18. Section 668.164, as amended November 1, 2007 (72 FR 62029), is further amended by:

A. Removing the word ''and'' after ''FSEOG,'' and adding the words ''**,** and

TEACH Grant,'' immediately after the words ''Federal Perkins Loan,'' in paragraph (g)(1)(ii) introductory text.

B. Removing the word ''or'' that appears after the punctuation ''\;'' in paragraph (g)(1)(ii)(A).

C. Removing the ''.'' after the words ''to the student'' and adding in its place ''; or'' in paragraph (g)(1)(ii)(B).

D. Adding a new paragraph (g)(2)(ii)(C).

E. Revising the authority citation.

The addition and revision read as follows:

§ 668.164 Disbursing funds.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(C) For an award under the TEACH Grant program, the institution originates the award to the student.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094)

19. Section 668.183 is amended by:

A. Removing the word ''Your'' the first time it appears and adding, in its place, the words ''Except as provided in paragraph (b)(3) of this section, your'' in paragraph (b)(1).

B. Adding a new paragraph (b)(3).

C. Revising the authority citation.

The addition and revision read as follows:

§ 668.183 Calculating and applying cohort default rates.

* * * * *

(b) * * *

(3) A TEACH Grant that has been converted to a Direct Unsubsidized loan is not considered for the purpose of calculating and applying cohort default rates.

* * * * *

(Authority: 20 U.S.C. 1070g, 1082, 1085, 1094, 1099c)

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

20. The authority citation for part 673 is revised to read as follows:

Authority: 20 U.S.C. 421–429, 1070b–1070b–3, 1070g, 1087aa–1087ii; 42 U.S.C. 2751–2756b, unless otherwise noted.

21. Section 673.5 is amended by:

A. Adding the words ''TEACH Grants,'' immediately after the words ''the amounts of any'' and by removing the word ''loan'' which appears after the words ''if the sum of the'' in paragraph (c)(2)(iii).

B. Revising the authority citation to read as follows:

§ 673.5 Overaward.

* * * * *

(Authority: 20 U.S.C. 1070b–1, 1070g, 1087dd, 1087hh; 42 U.S.C. 2753)

PART 674—FEDERAL PERKINS LOAN PROGRAM

22. The authority citation for part 674 is revised to read as follows:

Authority: 20 U.S.C. 421–429, 1070g, 1087aa–1087hh, unless otherwise noted.

23. Section 674.2 is amended by:

A. Adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant'' in paragraph (a).

B. Revising the authority citation to read as follows:

§ 674.2 Definitions.

* * * * *

(Authority: 20 U.S.C. 1070g, 1094)

24. Section 674.61 is amended by:

A. Adding the words ''a new TEACH Grant or'' immediately after the words ''does not receive'' in paragraph (b)(2)(ii).

B. Revising the authority citation to read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(Authority: 20 U.S.C. 425, 1070g, 1087dd; sec. 130(g)(2) of the Education Amendments of 1976, Pub. L. 94–482)

PART 675—FEDERAL WORK-STUDY PROGRAMS

25. The authority citation for part 675 is revised to read as follows:

Authority: 20 U.S.C. 1070g; 42 U.S.C. 2751–2756b; unless otherwise noted.

26. Section 675.2 is amended by:

A. Adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant'' in paragraph (a).

B. Revising the authority citation to read as follows:

§ 675.2 Definitions.

* * * * *

(Authority: 20 U.S.C. 1070g, 1087aa–1087ii)

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

27. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, 1070g, unless otherwise noted.

28. Section 676.2 is amended by:

A. Adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant'' in paragraph (a).

B. Revising the authority citation to read as follows:

§ 676.2 Definitions.

* * * * *

(Authority: 20 U.S.C. 1070g, 1087aa–1087ii)

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

29. The authority citation for part 682 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1071 to 1087–2, unless otherwise noted.

30. Section 682.200 is amended by:

A. Adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant'' in paragraph (a)(1).

B. Adding the words ''TEACH Grant,'' after the words ''the amounts of any'' and removing the word ''loan'' immediately following the words ''if the sum of the'' in paragraph (b) in paragraph (2)(i) of the definition of ''Estimated financial assistance''.

31. Section 682.204 is amended by:

A. Adding paragraph (m).

B. Adding an authority citation to read as follows:

§ 682.204 Maximum loan amounts.

* * * * *

(m) Any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against annual or any aggregate loan limits under paragraghs (c), (d), (e), and (f) of this section.

(Authority: 20 U.S.C. 1070g, 1078, 1078–2, 1078–3, 1078–8)

32. Section 682.402 is amended by:

A. Adding the words ''a new TEACH Grant or'' immediately after the words ''does not receive'' in paragraph (c)(1)(ii)(B).

B. Revising the authority citation to read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(Authority: 20 U.S.C. 1070g, 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

33. The authority citation for part 685 is revised to read as follows:

Authority: 20 U.S.C. 1070g, 1087a *et seq.*, unless otherwise noted.

34. Section 685.102 is amended by:

A. Adding, in alphabetical order, the terms ''Teacher Education Assistance

for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant'' in paragraph (a)(1).

B. Adding the words ''TEACH Grant,'' after the words ''the amounts of any'' and removing the word ''loan'' immediately following the words ''if the sum of the'' In paragraph (b), in paragraph (2)(i) of the definition of ''Estimated financial assistance''.

C. Revising the authority citation to read as follows:

§ 685.102 Definitions.

* * * * *

(Authority: 20 U.S.C. 1070g, 1087a *et seq.*)

35. Section 685.203 is amended by:

A. Adding before the ''.'' the words '', except that any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against annual or any aggregate loan limits under this section'' in paragraph (b).

B. Revising the authority citation to read as follows:

§ 685.203 Loan limits.

* * * * *

(Authority: 20 U.S.C. 1070g, 1087a *et seq.*)

36. Section 685.213 is amended by:

A. Adding the words ''a new TEACH Grant or'' immediately after the words ''does not receive'' in paragraph (c)(2).

B. Revising the authority citation to read as follows:

§ 685.213 Total and permanent disability discharge.

* * * * *

(Authority: 20 U.S.C. 1070g, 1087a *et seq.*)

37. A new part 686 is added to read as follows:

Subpart A—Scope, Purpose, and General Definitions

Sec.

686.1 Scope and purpose.
686.2 Definitions.
686.3 Duration of student eligibility.
686.4 Institutional participation.
686.5 Enrollment status for students taking regular and correspondence courses.
686.6 Payment from more than one institution.

Subpart B—Application Procedures

686.10 Application.
686.11 Eligibility to receive a grant.
686.12 Service agreement.

Subpart C—Determination of Awards

686.20 Submission process and deadline for a SAR or ISIR.
686.21 Calculation of a grant.
686.22 Calculation of a grant for a payment period.
686.23 Calculation of a grant for a payment period that occurs in two award years.
686.24 Transfer student: attendance at more than one institution during an award year.
686.25 Correspondence study.

Subpart D—Administration of Grant Payments

686.30 Scope.
686.31 Determination of eligibility for payment.
686.32 Counseling requirements.
686.33 Frequency of payment.
686.34 Liability for and recovery of TEACH Grant overpayments.
686.35 Re-determination of eligibility for TEACH Grant award.
686.36 Fiscal control and fund accounting procedures.
686.37 Institutional reporting requirements.
686.38 Maintenance and retention of records.

Subpart E—Service and Repayment Obligations

686.40 Documenting the service obligation.
686.41 Periods of suspension.
686.42 Discharge of service agreement.
686.43 Obligation to repay the grant.

Authority: 20 U.S.C. 1070g *et seq.*, unless otherwise noted.

Subpart A—Scope, Purpose, and General Definitions

§ 686.1 Scope and purpose.

The TEACH Grant program awards grants to students, who intend to teach, to help meet the cost of their postsecondary education. In exchange for the grant, the student must agree to serve as a full-time teacher in a high-need field, in a school serving low-income students for at least four academic years within eight years of completing the program of study for which the student received the grant. If the student does not satisfy the service obligation, the amounts of the TEACH Grants received are treated as a Federal Direct Unsubsidized Stafford Loan (Federal Direct Unsubsidized Loan) and must be repaid with interest.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.2 Definitions.

(a) Definitions for the following terms used in this part are in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, (HEA) 34 CFR part 600:

Award year
Clock hour
Correspondence course
Eligible institution
Institution of higher education (institution)
Regular student
Secretary
State
Title IV, HEA program

(b) Definitions for the following terms used in this part are in subpart A of the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Enrolled
Expected family contribution (EFC)
Full-time student
Graduate or professional student
Half-time student
HEA
Payment period
Three-quarter-time student
Undergraduate student
William D. Ford Federal Direct Loan (Direct Loan) Program

(c) Definitions for the following terms used in this part are in 34 CFR part 77:

Local educational agency (LEA)
State educational agency (SEA)

(d) Other terms used in this part are defined as follows:

Academic year or its equivalent for elementary and secondary schools (elementary or secondary academic year):

(1) One complete school year, or two complete and consecutive half-years from different school years, excluding summer sessions, that generally fall within a 12-month period.

(2) If a school has a year-round program of instruction, the Secretary considers a minimum of nine consecutive months to be the equivalent of an academic year.

Annual award: The maximum TEACH Grant amount a student would receive for enrolling as a full-time, three-quarter-time, half-time, or less-than-half-time student and remaining in that enrollment status for a year.

Elementary school: A nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.

Full-time teacher: A teacher who meets the standard used by a State in defining full-time employment as a teacher. For an individual teaching in more than one school, the determination of full-time is based on the combination of all qualifying employment.

High-need field: Includes the following:

(1) Bilingual education and English language acquisition.

(2) Foreign language.

(3) Mathematics.

(4) Reading specialist.

(5) Science.

(6) Special education.

(7) Another field documented as high-need by the Federal Government, a State government or an LEA, and approved by the Secretary and listed in the Department's annual Teacher Shortage Area Nationwide Listing (Nationwide List) in accordance with 34 CFR 682.210(q).

Highly-qualified: Has the meaning set forth in section 9101(23) of the Elementary and Secondary Education Act of 1965 (ESEA) or in section 602(10) of the Individuals With Disabilities Education Act.

Institutional Student Information Record (ISIR): An electronic record that the Secretary transmits to an institution that includes an applicant's—

(1) Personal identification information;

(2) Application data used to calculate the applicant's EFC; and

(3) EFC.

Numeric equivalent: (1) If an otherwise eligible program measures academic performance using an alternative to standard numeric grading procedures, the institution must develop and apply an equivalency policy with a numeric scale for purposes of establishing TEACH Grant eligibility. That institution's equivalency policy must be in writing and available to students upon request and must include clear differentiations of student performance to support a determination that a student has performed at a level commensurate with at least a 3.25 GPA on a 4.0 scale in that program.

(2) A grading policy that includes only ''satisfactory/unsatisfactory'', ''pass/fail'', or other similar nonnumeric assessments qualifies as a numeric equivalent only if—

(i) The institution demonstrates that the ''pass'' or ''satisfactory'' standard has the numeric equivalent of at least a 3.25 GPA on a 4.0 scale awarded in that program, or that a student's performance for tests and assignments yielded a numeric equivalent of a 3.25 GPA on a 4.0 scale; and

(ii) For an eligible institution, the institution's equivalency policy is consistent with any other standards the institution may have developed for academic and other title IV, HEA program purposes, such as graduate school applications, scholarship eligibility, and insurance certifications, to the extent such standards distinguish among various levels of a student's academic performance.

Payment data: An electronic record that is provided to the Secretary by an institution showing student disbursement information.

Post-baccalaureate program: A program of instruction for individuals who have completed a baccalaureate degree, that—

(1) Does not lead to a graduate degree;

(2) Consists of courses required by a State in order for a student to receive a professional certification or licensing credential that is required for employment as a teacher in an elementary school or secondary school in that State, except that it does not include any program of instruction offered by a TEACH Grant-eligible institution that offers a baccalaureate degree in education; and

(3) Is treated as an undergraduate program of study for the purposes of title IV of the HEA.

Retiree: An individual who has decided to change his or her occupation for any reason and who has expertise, as determined by the institution, in a high-need field.

Scheduled Award: The maximum amount of a TEACH Grant that a full-time student could receive for a year.

School serving low-income students (low-income school): An elementary or secondary school that—

(1) Is in the school district of an LEA that is eligible for assistance pursuant to title I of the ESEA;

(2) Has been determined by the Secretary to be a school in which more than 30 percent of the school's total enrollment is made up of children who qualify for services provided under title I of the ESEA; and

(3) Is listed in the Department's Annual Directory of Designated Low-Income Schools for Teacher Cancellation Benefits. The Secretary considers all elementary and secondary schools operated by the Bureau of Indian Education (BIE) in the Department of the Interior or operated on Indian reservations by Indian tribal groups under contract or grant with the BIE to qualify as schools serving low-income students.

Secondary school: A nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

Service agreement: An agreement under which the individual receiving a TEACH Grant commits to meet the service obligation described in § 686.12 and to comply with notification and other provisions of the agreement.

Student Aid Report (SAR): A report provided to an applicant by the Secretary showing the amount of his or her expected family contribution.

TEACH Grant-eligible institution: An eligible institution as defined in 34 CFR part 600 that, for purposes of the TEACH Grant program, is one that meets financial responsibility standards established in 34 CFR 668, subpart L and—

(1) Provides a high-quality teacher preparation program at the baccalaureate or master's degree level that—

(i)(A) Is accredited by a specialized accrediting agency recognized by the Secretary for the accreditation of professional teacher education programs; or

(B) Is approved by a State and includes extensive pre-service clinical experience, and provides either pedagogical coursework or assistance in the provision of such coursework; and

(ii) Provides supervision and support services to teachers, or assists in the provision of services to teachers, such as—

(A) Identifying and making available information on effective teaching skills or strategies;

(B) Identifying and making available information on effective practices in the supervision and coaching of novice teachers; and

(C) Mentoring focused on developing effective teaching skills and strategies;

(2) Provides a two-year program that—

(i) Is acceptable for full credit in a baccalaureate teacher preparation program of study offered by an institution described in paragraph (1) of this definition, as demonstrated by the institutions; or

(ii) Is acceptable for full credit in a baccalaureate degree program in a high-need field at an institution described in paragraph (3) of this definition, as demonstrated by the institutions;

(3) Offers a baccalaureate degree that, in combination with other training or experience, will prepare an individual to teach in a high-need field as defined in this part and has entered into an agreement with an institution described in paragraphs (1) or (4) of this definition to provide courses necessary for its students to begin a career in teaching; or

(4) Provides a post-baccalaureate program of study.

TEACH Grant-eligible program: An eligible program as defined in 34 CFR 668.8 that is a program of study that prepares an individual to teach in a high-need field and that leads to a baccalaureate or master's degree, or is a post-baccalaureate program of study. A two-year program of study that is acceptable for full credit toward a baccalaureate degree is considered to be a program of study that leads to a baccalaureate degree.

Teacher: A person who provides direct classroom teaching or classroom-type teaching in a non-classroom setting, including special education teachers and reading specialists.

Teacher preparation program: A State-approved course of study, the completion of which signifies that an

enrollee has met all the State's educational or training requirements for initial certification or licensure to teach in the State's elementary or secondary schools. A teacher preparation program may be a regular program or an alternative route to certification, as defined by the State. For purposes of a TEACH Grant, the program must be provided by an institution of higher education.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.3 Duration of student eligibility.

(a) An undergraduate or post-baccalaureate student may receive the equivalent of up to four Scheduled Awards during the period required for the completion of the first undergraduate TEACH Grant-eligible baccalaureate program of study and first post-baccalaureate program of study combined.

(b) A graduate student is eligible to receive the equivalent of up to two Scheduled Awards during the period required for the completion of a TEACH Grant-eligible master's degree program of study.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.4 Institutional participation.

(a) A TEACH Grant-eligible institution that offers one or more TEACH Grant-eligible programs may elect to participate in the TEACH Grant program.

(b) If an institution begins participation in the TEACH Grant program during an award year, a student enrolled at and attending that institution is eligible to receive a grant under this part for the payment period during which the institution begins participation and any subsequent payment period.

(c) If an institution ceases to participate in the TEACH Grant program or becomes ineligible to participate in the TEACH Grant program during an award year, a student who was attending the institution and who submitted a SAR with an official EFC to the institution, or for whom the institution obtained an ISIR with an official EFC, before the date the institution became ineligible will receive a TEACH Grant for that award year for—

(1) The payment periods that the student completed before the institution ceased participation or became ineligible to participate; and

(2) The payment period in which the institution ceased participation or became ineligible to participate.

(d) An institution that ceases to participate in the TEACH Grant program or becomes ineligible to participate in the TEACH Grant program must, within 45 days after the effective date of the loss of eligibility, provide to the Secretary—

(1) The name and other student identifiers as required by the Secretary of each eligible student under § 686.11 who, during the award year, submitted a SAR with an official EFC to the institution or for whom it obtained an ISIR with an official EFC before it ceased to participate in the TEACH Grant program or became ineligible to participate;

(2) The amount of funds paid to each student for that award year;

(3) The amount due each student eligible to receive a grant through the end of the payment period during which the institution ceased to participate in the TEACH Grant program or became ineligible to participate; and

(4) An accounting of the TEACH Grant program expenditures for that award year to the date of termination.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.5 Enrollment status for students taking regular and correspondence courses.

(a) If, in addition to regular coursework, a student takes correspondence courses from either his or her own institution or another institution having an arrangement for this purpose with the student's institution, the correspondence work may be included in determining the student's enrollment status to the extent permitted under paragraph (b) of this section.

(b) Except as noted in paragraph (c) of this section, the correspondence work that may be included in determining a student's enrollment status is that amount of work that—

(1) Applies toward a student's degree or post-baccalaureate program of study or is remedial work taken by the student to help in his or her TEACH Grant-eligible program;

(2) Is completed within the period of time required for regular coursework; and

(3) Does not exceed the amount of a student's regular coursework for the payment period for which enrollment status is being calculated.

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or a combination of correspondence work and regular coursework is considered a less-than-half-time student.

(d) The following chart provides examples of the application of the regulations set forth in this section. It assumes that the institution defines full-time enrollment as 12 credits per term, making half-time enrollment equal to six credits per term.

Under § 686.5	No. of credit hours regular work	No. of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c)*				Less-than-half-time.

* Any combination of regular and correspondence work that is greater than zero, but less than six hours.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.6 Payment from more than one institution.

A student may not receive grant payments under this part concurrently from more than one institution.

(Authority: 20 U.S.C. 1070g *et seq.*)

Subpart B—Application Procedures

§ 686.10 Application.

(a) To receive a grant under this part, a student must—

(1) Complete and submit an approved signed application, as designated by the Secretary. A copy of this application is not acceptable;

(2) Complete and sign a service agreement and promise to repay; and

(3) Provide any additional information and assurances requested by the Secretary.

(b) The student must submit an application to the Secretary by—

(1) Sending the completed application to the Secretary; or

(2) Providing the application, signed by all appropriate family members, to the institution which the student attends or plans to attend so that the institution can transmit the application information to the Secretary electronically.

(c) The student must provide the address of his or her residence.

(d) For each award year, the Secretary, through publication in the **Federal Register**, establishes deadline dates for submitting to the Department the application and additional information and for making corrections to the information provided.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.11 Eligibility to receive a grant.

(a) *Undergraduate, post-baccalaureate, and graduate students.* (1) Except as provided in paragraph (b) of this section, a student who meets the requirements of 34 CFR part 668, subpart C, is eligible to receive a TEACH Grant if the student—

(i) Has submitted a completed application;

(ii) Has signed a service agreement as required under § 686.12;

(iii) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program;

(iv) Is completing coursework and other requirements necessary to begin a career in teaching or plans to complete such coursework and requirements prior to graduating; and

(v) Has obtained—

(A) If the student is in the first year of a program of undergraduate education as determined by the institution—

(*1*) A final cumulative secondary school grade point average (GPA) upon graduation of at least 3.25 on a 4.0 scale, or the numeric equivalent; or

(*2*) A cumulative GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, based on courses taken at the institution through the most-recently completed payment period;

(B) If the student is beyond the first year of a program of undergraduate education as determined by the institution, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most-recently completed payment period;

(C) If the student is a graduate student during the first payment period, a cumulative undergraduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent;

(D) If the student is a graduate student beyond the first payment period, a cumulative graduate GPA of at least 3.25 on a 4.0 scale, or the numeric equivalent, through the most-recently completed payment period; or

(E) A score above the 75th percentile of scores achieved by all students taking the test during the period the student took the test on at least one of the batteries from a nationally-normed standardized undergraduate, graduate, or post-baccalaureate admissions test, except that such test may not include a placement test.

(2)(i) An institution must document the student's secondary school GPA under § 686.11(a)(1)(v)(A) using—

(A) Documentation provided directly to the institution by the cognizant authority; or

(B) Documentation from the cognizant authority provided by the student.

(ii) A cognizant authority includes, but is not limited to—

(A) An LEA;

(B) An SEA or other State agency; or

(C) A public or private secondary school.

(iii) A home-schooled student's parent or guardian is the cognizant authority for purposes of providing the documentation of a home-schooled student's secondary school GPA.

(iv) If an institution has reason to believe the documentation provided by a student under paragraph (a)(2)(i)(B) of this section is inaccurate or incomplete, the institution must confirm the student's grades by using documentation provided directly to the institution by the cognizant authority.

(b) *Current or former teachers or retirees.* A student who has submitted a completed application and meets the requirements of 34 CFR part 668, subpart C, is eligible to receive a TEACH Grant if the student—

(1) Has signed a service agreement as required under § 686.12;

(2) Is a current teacher or retiree who is applying for a grant to obtain a master's degree or is or was a teacher who is pursuing certification through a high-quality alternative certification route; and

(3) Is enrolled in a TEACH Grant-eligible institution in a TEACH Grant-eligible program during the period required for the completion of a master's degree.

(c) *Transfer students.* If a student transfers from one institution to the current institution and does not qualify under § 686.11(a)(1)(v)(E), the current institution must determine that student's eligibility for a TEACH Grant for the first payment period using either the method described in paragraph (c)(1) of this section or the method described in paragraph (c)(2) of this section, whichever method coincides with the current institution's academic policy. For an eligible student who transfers to an institution that—

(1) Does not incorporate grades from coursework that it accepts on transfer into the student's GPA at the current institution, the current institution, for the courses accepted upon transfer—

(i) Must calculate the student's GPA for the first payment period of enrollment using the grades earned by the student in the coursework from any prior postsecondary institution that it accepts; and

(ii) Must, for all subsequent payment periods, apply its academic policy and not incorporate the grades from the coursework that it accepts on transfer into the GPA at the current institution; or

(2) Incorporates grades from the coursework that it accepts on transfer into the student's GPA at the current institution, the current institution must use the grades assigned to the coursework accepted by the current institution as the student's cumulative GPA to determine eligibility for the first payment period of enrollment and all subsequent payment periods in accordance with its academic policy.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.12 Service agreement.

(a) *General.* A student who meets the eligibility requirements in § 686.11 may receive a TEACH Grant only after he or she signs a service agreement provided by the Secretary and receives counseling in accordance with § 686.32.

(b) *Contents of the service agreement.* The service agreement provides that, for each TEACH Grant-eligible program for

which the student received TEACH Grant funds, the grant recipient must fulfill a service obligation by performing creditable teaching service by—

(1) Serving as a full-time teacher for a total of not less than four elementary or secondary academic years within eight calendar years after completing the program or otherwise ceasing to be enrolled in the program for which the recipient received the TEACH Grant—

(i) In a low-income school;

(ii) As a highly-qualified teacher; and

(iii) In a high-need field in the majority of classes taught during each elementary and secondary academic year.

(2) Submitting, upon completion of each year of service, documentation of the service in the form of a certification by a chief administrative officer of the school; and

(3) Complying with the terms, conditions, and other requirements consistent with §§ 686.40–686.43 that the Secretary determines to be necessary.

(c) *Completion of more than one service obligation.*

(1) A grant recipient must complete a service obligation for each program of study for which he or she received TEACH Grants. Each service obligation begins following the completion or other cessation of enrollment by the student in the TEACH Grant-eligible program for which the student received TEACH grant funds. However, creditable teaching service may apply to more than one service obligation.

(2) A grant recipient may request a suspension, in accordance with § 686.41, of the eight-year time period in paragraph (b)(1) of this section.

(d) *Majoring and serving in a high-need field.* A grant recipient who completes a TEACH Grant-eligible program in a field that is listed in the Nationwide List cannot satisfy his or her service obligation to teach in that high-need field unless the high-need field in which he or she has prepared to teach is listed in the Nationwide List for the State in which the grant recipient begins teaching at the time the recipient begins teaching in that field.

(e) *Repayment for failure to complete service obligation.* If a grant recipient fails or refuses to carry out the required service obligation described in paragraph (b) of this section, the TEACH Grants received by the recipient must be repaid and will be treated as a Federal Direct Unsubsidized Loan, with interest accruing from the date of each TEACH Grant disbursement, in accordance with applicable sections of subpart B of 34 CFR part 685.

(Authority: 20 U.S.C. 1070g *et seq.*)

Subpart C—Determination of Awards

§ 686.20 Submission process and deadline for a SAR or ISIR.

(a) *Submission process.* (1) Except as provided in paragraph (a)(2) of this section, an institution must disburse a TEACH Grant to a student who is eligible under § 686.11 and is otherwise qualified to receive that disbursement and electronically transmit disbursement data to the Secretary for that student if—

(i) The student submits a SAR with an official EFC to the institution; or

(ii) The institution obtains an ISIR with an official EFC for the student.

(2) In determining a student's eligibility to receive a grant under this part, an institution is entitled to assume that the SAR information or ISIR information is accurate and complete except under the conditions set forth in 34 CFR 668.16(f).

(b) *SAR or ISIR deadline.* Except as provided in 34 CFR 668.164(g), for a student to receive a grant under this part in an award year, the student must submit the relevant parts of the SAR with an official EFC to his or her institution or the institution must obtain an ISIR with an official EFC by the earlier of—

(1) The last date that the student is still enrolled and eligible for payment at that institution; or

(2) By the deadline date established by the Secretary through publication of a notice in the **Federal Register.**

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.21 Calculation of a grant.

(a)(1)(i) The Scheduled Award for a TEACH Grant for an eligible student is $4,000.

(ii) Each Scheduled Award remains available to an eligible student until the $4,000 is disbursed.

(2)(i) The aggregate amount that a student may receive in TEACH Grants for undergraduate and post-baccalaureate study may not exceed $16,000.

(ii) The aggregate amount that a student may receive in TEACH grants for a master's degree may not exceed $8,000.

(b) The annual award for—

(1) A full-time student is $4,000;

(2) A three-quarter-time student is $3,000;

(3) A half-time student is $2,000; and

(4) A less-than-half-time student is $1,000.

(c) Except as provided in paragraph (d) of this section, the amount of a student's grant under this part, in combination with the other student financial assistance available to the student, including the amount of a Federal Pell Grant for which the student is eligible, may not exceed the student's cost of attendance at a TEACH Grant-eligible institution. Other student financial assistance is estimated financial assistance as defined in 34 CFR 673.5(c).

(d) A TEACH Grant may replace a student's EFC, but the amount of the grant that exceeds the student's EFC is considered estimated financial assistance as defined in 34 CFR 673.5(c).

(e) In determining a student's payment for a payment period, an institution must include—

(1) In accordance with 34 CFR 668.20, any noncredit or reduced credit courses that an institution determines are necessary—

(i) To help a student be prepared for the pursuit of a first undergraduate baccalaureate or post-baccalaureate degree or certificate; or

(ii) In the case of English language instruction, to enable the student to utilize already existing knowledge, training, or skills; and

(2) In accordance with 34 CFR 668.5, a student's participation in a program of study abroad if it is approved for credit by the home institution at which the student is enrolled.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.22 Calculation of a grant for a payment period.

(a) *Eligibility for payment formula.* (1) *Programs using standard terms with at least 30 weeks of instructional time.* A student's grant for a payment period is calculated under paragraphs (b) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters; and

(C)(*1*) For an undergraduate student, requires the student to enroll for at least 12 credit hours in each term in the award year to qualify as a full-time student; or

(*2*) For a graduate student, each term in the award year meets the minimum full-time enrollment status established by the institution for a semester, trimester, or quarter; and

(ii) The program uses an academic calendar that provides at least 30 weeks of instructional time in—

(A) Two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring, none of which overlaps any other term (including a summer term) in the program; or

(B) Any two semesters or trimesters, or any three quarters where—

(*1*) The institution starts its terms for different cohorts of students on a periodic basis (*e.g.*, monthly);

(*2*) The program is offered exclusively in semesters, trimesters, or quarters; and

(*3*) Students are not allowed to be enrolled simultaneously in overlapping terms and must stay with the cohort in which they start unless they withdraw from a term (or skip a term) and reenroll in a subsequent term.

(2) *Programs using standard terms with less than 30 weeks of instructional time.* A student's payment for a payment period is calculated under paragraph (c) or (d) of this section if—

(i) The student is enrolled in an eligible program that—

(A) Measures progress in credit hours;

(B) Is offered in semesters, trimesters, or quarters;

(C)(*1*) For an undergraduate student, requires the student to enroll in at least 12 credit hours in each term in the award year to qualify as a full-time student; or

(*2*) For a graduate student, each term in the award year meets the minimum full-time enrollment status established by the institution for a semester, trimester, or quarter; and

(D) Is not offered with overlapping terms; and

(ii) The institution offering the program—

(A) Provides the program using an academic calendar that includes two semesters or trimesters in the fall through the following spring, or three quarters in the fall, winter, and spring; and

(B) Does not provide at least 30 weeks of instructional time in the terms specified in paragraph (a)(2)(ii)(A) of this section.

(3) *Other programs using terms and credit hours.* A student's payment for a payment period is calculated under paragraph (d) of this section if the student is enrolled in an eligible program that—

(i) Measures progress in credit hours; and

(ii) Is offered in academic terms other than those described in paragraphs (a)(1) and (a)(2) of this section.

(4) *Programs not using terms or using clock hours.* A student's payment for any payment period is calculated under paragraph (e) of this section if the student is enrolled in an eligible program that—

(i) Is offered in credit hours but is not offered in academic terms; or

(ii) Is offered in clock hours.

(5) *Programs for which an exception to the academic year definition has been granted under 34 CFR 668.3.* If an institution receives a waiver from the Secretary of the 30 weeks of instructional time requirement under 34 CFR 668.3, an institution may calculate a student's payment for a payment period using the following methodologies:

(i) If the program is offered in terms and credit hours, the institution uses the methodology in—

(A) Paragraph (b) of this section provided that the program meets all the criteria in paragraph (a)(1) of this section, except that in lieu of meeting the requirements in paragraph (a)(1)(ii)(B) of this section, the program provides at least the same number of weeks of instructional time in the terms specified in paragraph (a)(1)(ii)(A) of this section as are in the program's academic year; or

(B) Paragraph (d) of this section.

(ii) The institution uses the methodology described in paragraph (e) of this section if the program is offered in credit hours without terms.

(b) *Programs using standard terms with at least 30 weeks of instructional time.* The payment for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with at least 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(1)(ii) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award; and

(3) Dividing the amount described in paragraph (b)(2) of this section by—

(i) Two at institutions using semesters or trimesters or three at institutions using quarters; or

(ii) The number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (b)(2) of this section over more than two terms at institutions using semesters or trimesters or more than three quarters at institutions using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year.

(c) *Programs using standard terms with less than 30 weeks of instructional time.* The payment for a payment period, *i.e.*, an academic term, for a student in a program using standard terms with less than 30 weeks of instructional time in two semesters or trimesters or in three quarters as described in paragraph (a)(2)(ii)(A) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award;

(3) Multiplying his or her annual award determined under paragraph (c)(2) of this section by the following fraction as applicable:

(i) In a program using semesters or trimesters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall and spring semesters or trimesters}}{\text{The number of weeks in the program's academic year}}$$

(ii) In a program using quarters—

$$\frac{\text{The number of weeks of instructional time offered in the program in the fall, winter, and spring quarters}}{\text{The number of weeks in the program's academic year}}$$

; and

(4)(i) Dividing the amount determined under paragraph (c)(3) of this section by two for programs using semesters or trimesters or three for programs using quarters; or

(ii) Dividing the student's annual award determined under paragraph (c)(2) of this section by the number of terms over which the institution chooses to distribute the student's annual award if—

(A) An institution chooses to distribute all of the student's annual award determined under paragraph (c)(2) of this section over more than two terms for programs using semesters or trimesters or more than three quarters for programs using quarters; and

(B) The number of weeks of instructional time in the terms, including the additional term or terms, equals the weeks of instructional time in the program's academic year definition.

(d) *Other programs using terms and credit hours.* The payment for a payment period, *i.e.*, an academic term, for a student in a program using terms and credit hours, other than those described in paragraphs (a)(1) or (2) of this section, is calculated by—

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her annual award; and

(3) Multiplying his or her annual award determined under paragraph (d)(2) of this section by the following fraction:

$$\frac{\text{The number of weeks of instructional time in the term}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(e) *Programs using credit hours without terms or clock hours.* The payment for a payment period for a student in a program using credit hours without terms or using clock hours is calculated by multiplying the Scheduled Award by the lesser of—

(1)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}}$$

; or

(2)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

* * * * *

(f) *Maximum disbursement.* A single disbursement may not exceed 50 percent of an award determined under paragraph (d) or (e) of this section. If a payment for a payment period calculated under paragraphs (d) or (e) of this section would require the disbursement of more than 50 percent of a student's annual award in that payment period, the institution must make at least two disbursements to the student in that payment period. The institution may not disburse an amount that exceeds 50 percent of the student's annual award until the student has completed the period of time in the payment period that equals, in terms of weeks of instructional time, 50 percent of the weeks of instructional time in the program's academic year.

(g) *Minimum payment.* No payment for a payment period as determined under this section or § 686.25 may be less than $25.

(h) *Definition of academic year.* For purposes of this section and § 686.25, an institution must define an academic year—

(1) For each of its TEACH Grant-eligible undergraduate programs of study, including post-baccalaureate programs of study, in terms of the number of credit or clock hours and weeks of instructional time in accordance with the requirements of 34 CFR 668.3; and

(2) For each of its TEACH Grant-eligible master's degree programs of study in terms of the number of weeks of instructional time in accordance with the requirements of 34 CFR 668.3 and the minimum number of credit or clock hours a full-time student would be expected to complete in the weeks of instructional time of the program's academic year.

(i) *Payment period completing a Scheduled Award.* In a payment period, if a student is completing a Scheduled Award, the student's payment for the payment period—

(1) Is calculated based on the total credit or clock hours and weeks of instructional time in the payment period; and

(2) Is the remaining amount of the Scheduled Award being completed plus an amount from the next Scheduled Award, if available, up to the payment for the payment period.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.23 Calculation of a grant for a payment period that occurs in two award years.

If a student enrolls in a payment period that is scheduled to occur in two award years—

(a) The entire payment period must be considered to occur within one award year;

(b) The institution must determine for each TEACH Grant recipient the award year in which the payment period will be placed subject to the restriction set forth in paragraph (c) of this section;

(c) The institution must place a payment period with more than six months scheduled to occur within one award year in that award year;

(d) If the institution places the payment period in the first award year, it must pay a student with funds from the first award year; and

(e) If the institution places the payment period in the second award year, it must pay a student with funds from the second award year.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.24 Transfer student: attendance at more than one institution during an award year.

(a) If a student who receives a TEACH Grant at one institution subsequently enrolls at a second institution, the

student may receive a grant at the second institution only if—

(1) The student submits a SAR with an official EFC to the second institution; or

(2) The second institution obtains an ISIR with an official EFC.

(b) The second institution must calculate the student's award in accordance with § 686.22 or § 686.25.

(c) The second institution may pay a TEACH Grant only for that period in which a student is enrolled in a TEACH Grant-eligible program at that institution.

(d) The student's TEACH Grant for each payment period is calculated according to the procedures in §§ 686.22 or 686.25 unless the remaining balance of the Scheduled Award at the second institution is the balance of the student's last Scheduled Award and is less than the amount the student would normally receive for that payment period.

(e) A transfer student must repay any amount received in an award year that exceeds the amount which he or she was eligible to receive.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.25 Correspondence study.

(a) An institution calculates a TEACH Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

(1) Using the half-time annual award; and

(2) Multiplying the half-time annual award by the lesser of—

(i)

$$\frac{\text{The number of credit or clock hours in the payment period}}{\text{The number of credit or clock hours in the program's academic year}}$$

; or

(ii)

$$\frac{\text{The number of weeks of instructional time in the payment period}}{\text{The number of weeks of instructional time in the program's academic year}}$$

(b) For purposes of paragraph (a) of this section—

(1) An academic year as measured in credit or clock hours must consist of two payment periods—

(i) The first payment period must be the period of time in which the student completes the lesser of the first half of his or her academic year or program; and

(ii) The second payment period must be the period of time in which the student completes the lesser of the second half of the academic year or program; and

(2)(i) The institution must make the first payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(ii) The institution must make the second payment to a student for an academic year, as calculated under (a) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least six credit hours that commence and are completed in that term, the half-time annual award is used; or

(ii) If the student is enrolled in less than six credit hours that commence and are completed in that term the less-than-half-time annual award is used;

(3) A payment for a payment period is calculated using the formula in § 686.22(d) except that paragraphs (c)(1) and (2) of this section are used in lieu of paragraphs § 686.22(d)(1) and (2), respectively; and

(4) The institution must make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training must be calculated under § 686.22(d) if the residential training is offered using terms and credit hours or under § 686.22(e) if the residential training is offered using credit hours without terms or clock hours.

(Authority: 20 U.S.C. 1070g *et seq.*)

Subpart D—Administration of Grant Payments

§ 686.30 Scope.

This subpart deals with TEACH Grant Program administration by a TEACH Grant-eligible institution.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.31 Determination of eligibility for payment.

(a) For each payment period, an institution may pay a grant under this part to an eligible student only after it determines that the student—

(1) Is eligible under § 686.11;

(2) Has completed the relevant counseling required in § 686.32;

(3) Has signed a service agreement as described in § 686.12;

(4) Is enrolled in a TEACH Grant-eligible program; and

(5) If enrolled in a credit-hour program without terms or a clock-hour program, has completed the payment period as defined in 34 CFR 668.4 for which he or she has been paid a grant.

(b)(1) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress, but changes that determination before the end of the payment period, the institution may pay a TEACH Grant to the student for the entire payment period.

(2) If an institution determines at the beginning of a payment period that a student enrolled in a TEACH Grant-eligible program is not maintaining the required GPA for a TEACH Grant under § 686.11 or is not pursuing a career in teaching, but changes that determination before the end of the payment period, the institution may pay a TEACH Grant to the student for the entire payment period.

(c) If an institution determines at the beginning of a payment period that a student is not maintaining satisfactory progress or the necessary GPA for a TEACH Grant under § 686.11 or is not pursuing a career in teaching, but changes that determination after the end of the payment period, the institution may not pay the student a TEACH Grant for that payment period or make adjustments in subsequent payments to compensate for the loss of aid for that period.

(d) An institution may make one disbursement for a payment period to an otherwise eligible student if—

(1)(i) The student's final high school GPA is not yet available; or

(ii) The student's cumulative GPA through the prior payment period under § 686.11 is not yet available; and

(2) The institution assumes liability for any overpayment if the student fails to meet the required GPA to qualify for the disbursement.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.32 Counseling requirements.

(a) *Initial counseling.* (1) An institution must ensure that initial counseling is conducted with each TEACH Grant recipient prior to making the first disbursement of the grant.

(2) The initial counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the student's questions. As an alternative, in the case of a student enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the student may be provided with written counseling materials before the grant is disbursed.

(3) The initial counseling must—

(i) Explain the terms and conditions of the TEACH Grant service agreement as described in § 686.12;

(ii) Provide the student with information about how to identify low-income schools and documented high-need fields;

(iii) Inform the grant recipient that, in order for the teaching to count towards the service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in § 686.2; or

(B) A high-need field listed in the Nationwide List at the time and for the State in which the grant recipient begins teaching in that field.

(iv) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the service agreement and the conditions under which a suspension may be granted in accordance with § 686.41;

(v) Explain to the student that conditions, such as conviction of a felony, could preclude the student from completing the service obligation;

(vi) Emphasize to the student that if the student fails or refuses to complete the service obligation contained in the service agreement or any other condition of the service agreement—

(A) The TEACH Grant must be repaid as a Federal Direct Unsubsidized Loan; and

(B) The TEACH Grant recipient will be obligated to repay the full amount of each grant and the accrued interest from each disbursement date;

(vii) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan;

(viii) Emphasize that, once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan, it cannot be reconverted to a grant;

(ix) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office;

(x) Describe the likely consequences of loan default, including adverse credit reports, garnishment of wages, Federal offset, and litigation; and

(xi) Inform the student of sample monthly repayment amounts based on a range of student loan indebtedness.

(b) *Subsequent counseling.* (1) If a student receives more than one TEACH Grant, the institution must ensure that the student receives additional counseling prior to the first disbursement of each subsequent TEACH Grant award.

(2) Subsequent counseling may be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the student's questions. As an alternative, in the case of a student enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the student may be provided with written counseling materials before the grant is disbursed.

(3) Subsequent counseling must—

(i) Review the terms and conditions of the TEACH Grant service agreement as described in § 686.12;

(ii) Emphasize to the student that if the student fails or refuses to complete the service obligation contained in the service agreement or any other condition of the service agreement—

(A) The TEACH Grant must be repaid as a Federal Direct Unsubsidized Loan; and

(B) The TEACH Grant recipient will be obligated to repay the full amount of the grant and the accrued interest from the disbursement date;

(iii) Explain the circumstances, as described in § 686.34, under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan;

(iv) Emphasize that, once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan, it cannot be reconverted to a grant; and

(v) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office.

(c) *Exit counseling.* (1) An institution must ensure that exit counseling is conducted with each grant recipient before he or she ceases to attend the institution at a time determined by the institution.

(2) The exit counseling must be in person, by audiovisual presentation, or by interactive electronic means. In each case, the institution must ensure that an individual with expertise in title IV, HEA programs is reasonably available shortly after the counseling to answer the grant recipient's questions. As an alternative, in the case of a grant recipient enrolled in a correspondence program of study or a study-abroad program of study approved for credit at the home institution, the grant recipient may be provided with written counseling materials within 30 days after he or she completes the program.

(3) Within 30 days of learning that a grant recipient has withdrawn from the institution without the institution's knowledge, or from a TEACH Grant-eligible program, or failed to complete exit counseling as required, exit counseling must be provided either in-person, through interactive electronic means, or by mailing written counseling materials to the grant recipient's last known address.

(4) The exit counseling must—

(i) Inform the grant recipient of the four-year service obligation that must be completed within the first eight calendar years after completing a TEACH Grant-eligible program in accordance with § 686.12;

(ii) Inform the grant recipient of the opportunity to request a suspension of the eight-year period for completion of the service agreement and the conditions under which a suspension may be granted in accordance with § 686.41;

(iii) Provide the grant recipient with information about how to identify low-income schools and documented high-need fields;

(iv) Inform the grant recipient that, in order for the teaching to count towards the service obligation, the high-need field in which he or she has prepared to teach must be—

(A) One of the six high-need fields listed in § 686.2; or

(B) A high-need field listed in the Nationwide List at the time and for the State in which the grant recipient begins teaching in that field.

(v) Explain that the grant recipient will be required to submit to the Secretary each year written documentation of his or her status as a highly-qualified teacher in a high-need field at a low-income school or of his or her intent to complete the four-year service requirement until the date that the service requirement has been met or the date that the grant becomes a loan, whichever occurs first;

(vi) Explain the circumstances, as described in § 686.43, under which a TEACH Grant will be converted to a Federal Direct Unsubsidized Loan;

(vii) Emphasize that once a TEACH Grant is converted to a Federal Direct Unsubsidized Loan it cannot be reconverted to a grant;

(viii) Inform the grant recipient of the average anticipated monthly repayment amount based on a range of student loan indebtedness if the TEACH grants convert to a Federal Direct Unsubsidized Loan;

(ix) Review for the grant recipient available repayment options if the TEACH Grant converts to a Federal Direct Unsubsidized Loan including the standard repayment, extended repayment, graduated repayment, income-contingent and income-based repayment plans, and loan consolidation;

(x) Suggest debt-management strategies to the grant recipient that would facilitate repayment if the TEACH Grant converts to a Federal Direct Unsubsidized Loan;

(xi) Explain to the grant recipient how to contact the Secretary;

(xii) Describe the likely consequences of loan default, including adverse credit reports, garnishment of wages, Federal offset, and litigation;

(xiii) Review for the grant recipient the conditions under which he or she may defer or forbear repayment, obtain a full or partial discharge, or receive teacher loan forgiveness if the TEACH Grant converts to a Federal Direct Unsubsidized Loan;

(xiv) Review for the grant recipient information on the availability of the Department's Student Loan Ombudsman's office; and

(xv) Inform the grant recipient of the availability of title IV loan information in the National Student Loan Data System (NSLDS).

(5) If exit counseling is conducted through interactive electronic means, an institution must take reasonable steps to ensure that each grant recipient receives the counseling materials and participates in and completes the exit counseling.

(d) *Compliance.* The institution must maintain documentation substantiating the institution's compliance with this section for each TEACH Grant recipient.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.33 Frequency of payment.

(a) In each payment period, an institution may pay a student at such times and in such installments as it determines will best meet the student's needs.

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was eligible under § 686.11 within the award year as long as the student has signed the service agreement prior to disbursement of the TEACH Grant. The student's enrollment status must be determined according to work already completed.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.34 Liability for and recovery of TEACH Grant overpayments.

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, a student is liable for any TEACH Grant overpayment made to him or her.

(2) The institution is liable for a TEACH Grant overpayment if the overpayment occurred because the institution failed to follow the procedures set forth in this part or in 34 CFR part 668. The institution must restore an amount equal to the overpayment to its TEACH Grant account.

(3) A student is not liable for, and the institution is not required to attempt recovery of or refer to the Secretary, a TEACH Grant overpayment if the amount of the overpayment is less than $25 and is not a remaining balance.

(b)(1) Except as provided in paragraph (a)(3) of this section, if an institution makes a TEACH Grant overpayment for which it is not liable, it must promptly send a written notice to the student requesting repayment of the overpayment amount. The notice must state that failure to make that repayment, or to make arrangements satisfactory to the holder of the overpayment debt to repay the overpayment, makes the student ineligible for further title IV, HEA program funds until final resolution of the TEACH Grant overpayment.

(2) If a student objects to the institution's TEACH Grant overpayment determination, the institution must consider any information provided by the student and determine whether the objection is warranted.

(c) Except as provided in paragraph (a)(3) of this section, if the student fails to repay a TEACH Grant overpayment or make arrangements satisfactory to the holder of the overpayment debt to repay the TEACH Grant overpayment, after the institution has taken the action required by paragraph (b) of this section, the institution must refer the overpayment to the Secretary for collection in accordance with procedures required by the Secretary. After referring the TEACH Grant overpayment to the Secretary under this section, the institution need make no further efforts to recover the overpayment.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.35 Re-determination of eligibility for TEACH Grant award.

(a) *Change in enrollment status.* (1) If the student's enrollment status changes from one academic term to another academic term within the same award year, the institution must recalculate the TEACH Grant award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. Any such recalculations must take into account any changes in the cost of attendance. In the case of an undergraduate or post-baccalaureate program of study, if such a policy is established, it must be the same policy that the institution established under § 690.80(b) for the Federal Pell Grant Program and it must apply to all students in the TEACH Grant-eligible program.

(ii) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution must recalculate the student's enrollment status to reflect only those classes for which he or she actually began attendance.

(b) *Change in cost of attendance.* If the student's cost of attendance changes at any time during the award year and his or her enrollment status remains the

same, the institution may, but is not required to, establish a policy under which the student's award for the payment period is recalculated. If such a policy is established, it must apply to all students in the TEACH Grant-eligible program.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.36 Fiscal control and fund accounting procedures.

(a) An institution must follow the provisions for maintaining general fiscal records in this section and in 34 CFR 668.24(b).

(b) An institution must maintain funds received under this section in accordance with the requirements in 34 CFR 668.164.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.37 Institutional reporting requirements.

(a) An institution must provide to the Secretary information about each TEACH Grant recipient that includes but is not limited to—

(1) The student's eligibility for a grant, as determined in accordance with §§ 686.11 and 686.19;

(2) The student's TEACH Grant amounts; and

(3) The anticipated and actual disbursement date or dates and disbursement amounts of the TEACH Grant funds.

(b) An institution must submit the initial disbursement record for a TEACH Grant to the Secretary no later than 30 days following the date of the initial disbursement. The institution must submit subsequent disbursement records, including adjustment and cancellation records, to the Secretary no later than 30 days following the date the disbursement, adjustment, or cancellation is made.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.38 Maintenance and retention of records.

(a) An institution must follow the record retention and examination provisions in this section and in 34 CFR 668.24.

(b) For any disputed expenditures in any award year for which the institution cannot provide records, the Secretary determines the final authorized level of expenditures.

(Authority: 20 U.S.C. 1070g *et seq.*)

Subpart E—Service and Repayment Obligations

§ 686.40 Documenting the service obligation.

(a) Except as provided in §§ 686.41 and 686.42, within 120 days of completing or otherwise ceasing enrollment in a program of study for which a TEACH Grant was received, the grant recipient must confirm to the Secretary in writing that—

(1) He or she is employed as a full-time teacher in accordance with the terms and conditions of the service agreement described in § 686.12; or

(2) He or she is not yet employed as a full-time teacher but intends to meet the terms and conditions of the service agreement described in § 686.12.

(b) If a grant recipient is performing full-time teaching service in accordance with the service agreement, or service agreements if more than one agreement exists, the grant recipient must, upon completion of each of the four required elementary or secondary academic years of teaching service, provide to the Secretary documentation of that teaching service on a form approved by the Secretary and certified by the chief administrative officer of the school in which the grant recipient is teaching. The documentation must show that the grant recipient is teaching in a low-income school. If the school at which the grant recipient is employed meets the requirements of a low-income school in the first year of the grant recipient's four elementary or secondary academic years of teaching and the school fails to meet those requirements in subsequent years, those subsequent years of teaching qualify for purposes of this section for that recipient.

(c)(1) In addition to the documentation requirements in paragraph (b) of this section, the documentation must show that the grant recipient—

(i) Taught a majority of classes during the period being certified in any of the high-need fields of mathematics, science, a foreign language, bilingual education, English language acquisition, special education, or as a reading specialist; or

(ii) Taught a majority of classes during the period being certified in a State in another high-need field designated by that State and listed in the Nationwide List, except that teaching service does not satisfy the requirements of the service agreement if that teaching service is in a geographic region of a State or in a specific grade level not associated with a high-need field of a State designated in the Nationwide List as having a shortage of elementary or secondary school teachers.

(2) If a grant recipient begins qualified full-time teaching service in a State in a high-need field designated by that State and listed in the Nationwide List and in subsequent years that high-need field is no longer designated by the State in the Nationwide List, the grant recipient will be considered to continue to perform qualified full-time teaching service in a high-need field of that State and to continue to fulfill the service obligation.

(d) Documentation must also provide evidence that the grant recipient is a highly-qualified teacher.

(e) For purposes of completing the service requirement, the elementary or secondary academic year may be counted as one of the grant recipient's four complete elementary or secondary academic years if the grant recipient completes at least one-half of the elementary or secondary academic year and the grant recipient's school employer considers the grant recipient to have fulfilled his or her contract requirements for the elementary or secondary academic year for the purposes of salary increases, tenure, and retirement if the grant recipient is unable to complete an elementary or secondary academic year due to—

(1) A condition that is covered under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601 *et seq.*) that is limited to—

(i) The birth of a son or daughter of the grant recipient and in order to care for the son or daughter;

(ii) The placement of a son or daughter with the grant recipient for adoption or foster care;

(iii) Caring for the spouse, or a son, daughter, or parent, of the grant recipient, if the spouse, son, daughter, or parent has a serious health condition; or

(iv) A serious health condition that makes the grant recipient unable to perform the functions of the position as a teacher; or

(2) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5), under a call to active service in connection with a war, military operation, or a national emergency.

(f) A grant recipient who taught in more than one qualifying school during an elementary or secondary academic year and demonstrates that the combined teaching service was the equivalent of full-time, as supported by the certification of one or more of the chief administrative officers of the schools involved, is considered to have completed one elementary or secondary academic year of qualifying teaching.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.41 Periods of suspension.

(a)(1) The grant recipient who has completed or who has otherwise ceased enrollment in a TEACH Grant-eligible program for which he or she received TEACH grant funds may request a suspension from the Secretary of the eight-year period for completion of the service obligation based on—

(i) Enrollment in a program of study for which the recipient would be eligible for a TEACH Grant or in a program of study that has been determined by a State to satisfy the requirements for certification or licensure to teach in the State's elementary or secondary schools;

(ii) A condition that is covered under FMLA which is limited to—

(A) The birth of a son or daughter of the grant recipient and in order to care for the son or daughter;

(B) The placement of a son or daughter with the grant recipient for adoption or foster care;

(C) Caring for the spouse, or a son, daughter, or parent, of the grant recipient, if the spouse, son, daughter, or parent has a serious health condition; or

(D) A serious health condition that makes the grant recipient unable to perform the functions of the position as a teacher; or

(iii) A call or order to active duty status for more than 30 days as a member of a reserve component of the Armed Forces named in 10 U.S.C. 10101 or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5) under a call to active service in connection with a war, military operation, or a national emergency.

(2) A grant recipient may receive a suspension described in paragraph (a)(1)(i) and (ii) of this section in one-year increments that—

(i) Does not exceed a combined total of three years under both paragraphs (a)(1)(i) and (ii) of this section; or

(ii) Ends upon the completion of the military service in paragraph (a)(1)(iii) of this section.

(b) The grant recipient must apply for a suspension in writing on a form approved by the Secretary within six months of completing or otherwise ceasing enrollment in a TEACH Grant-eligible program, or if the grant recipient has already begun teaching service in fulfillment of the service obligation, within six months of the date he or she stops teaching.

(c) The grant recipient must provide the Secretary with documentation supporting the suspension request as well as current contact information including home address and telephone number.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.42 Discharge of service agreement.

(a) *Death.* If a grant recipient dies, the Secretary discharges the obligation to complete the service agreement based on an original or certified copy of the grant recipient's death certificate, an accurate and complete photocopy of the original or certified copy of the grant recipient's death certificate, or, on a case-by-case basis, reliable documentation acceptable to the Secretary.

(b) *Total and permanent disability.* (1) A grant recipient's service agreement is discharged if the recipient becomes totally and permanently disabled, as defined in 34 CFR 682.200(b), and the grant recipient applies for and satisfies the eligibility requirements for a total and permanent disability discharge in accordance with 34 CFR 685.213.

(2) The eight-year time period in which the grant recipient must complete the service obligation remains in effect during the conditional discharge period described in 34 CFR 685.213(c)(2) unless the grant recipient is eligible for a suspension based on the FMLA in accordance with § 686.41(a)(1)(ii)(D).

(3) Interest continues to accrue on each TEACH Grant disbursement unless and until the TEACH Grant recipient's service agreement is discharged.

(4) If the grant recipient satisfies the criteria for a total and permanent disability discharge during and at the end of the three-year conditional discharge period, the Secretary discharges the grant recipient's service obligation.

(5) If, at any time during or at the end of the three-year conditional discharge period, the Secretary determines that the grant recipient does not meet the eligibility criteria for a total and permanent disability discharge, the Secretary ends the conditional discharge period and the grant recipient is once again subject to the terms of the service agreement.

(Authority: 20 U.S.C. 1070g *et seq.*)

§ 686.43 Obligation to repay the grant.

(a) The TEACH Grant amounts disbursed to the recipient will be converted into a Federal Direct Unsubsidized Loan, with interest accruing from the date that each grant disbursement was made and be collected by the Secretary in accordance with the relevant provisions of subpart A of 34 CFR part 685 if—

(1) The grant recipient, regardless of enrollment status, requests that the TEACH Grant be converted into a Federal Direct Unsubsidized Loan because he or she has decided not to teach in a qualified school or field or for any other reason;

(2) Within 120 days of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has failed to notify the Secretary in accordance with § 686.40(a);

(3) Within one year of ceasing enrollment in the institution prior to completing the TEACH Grant-eligible program, the grant recipient has not—

(i) Been determined eligible for a suspension of the eight-year period for completion of the service obligation as provided in § 686.41;

(ii) Re-enrolled in a TEACH Grant-eligible program; or

(iii) Begun creditable teaching service as described in § 686.12(b);

(4) The grant recipient completes the course of study for which a TEACH Grant was received and does not actively confirm to the Secretary, at least annually, his or her intention to satisfy the service agreement; or

(5) The grant recipient has completed the TEACH Grant-eligible program but has failed to begin or maintain qualified employment within the timeframe that would allow that individual to complete the service obligation within the number of years required under § 686.12.

(b) A TEACH Grant that converts to a loan, and is treated as a Federal Direct Unsubsidized Loan, is not counted against the grant recipient's annual or any aggregate Stafford Loan limits.

(c) A grant recipient whose TEACH Grant has been converted to a Federal Direct Unsubsidized Loan—

(1) Enters repayment immediately;

(2) Is eligible for all of the benefits of the Direct Loan Program; and

(3) Is not eligible for any grace period.

(d) A TEACH Grant that is converted to a Federal Direct Unsubsidized Loan cannot be reconverted to a grant.

(Authority: 20 U.S.C. 1070g *et seq.*)

PART 690—FEDERAL PELL GRANT PROGRAM

38. The authority citation for part 690 is revised to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

39. Section 690.2 is amended by:

A. Adding, in alphabetical order, the terms ''Teacher Education Assistance for College and Higher Education (TEACH) Grant Program'' and ''TEACH Grant'' in paragraph (b).

B. Revising the authority citation to read as follows:

§ 690.2 Definitions.

* * * * *

(Authority: 20 U.S.C. 1070a, 1070g)

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March 21, 2008

Part IV

Securities and Exchange Commission

17 CFR Part 240
Naked Short Selling Anti-Fraud Rule; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–57511; File No. S7–08–08]

RIN 3235–AK06

''Naked'' Short Selling Anti-Fraud Rule

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing an anti-fraud rule under the Securities Exchange Act of 1934 (''Exchange Act'') to address fails to deliver securities that have been associated with ''naked'' short selling. The proposed rule is intended to highlight the liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate source or ownership of shares and that fail to deliver securities by settlement date.

DATES: Comments should be received on or before May 20, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–08–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–08–08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: James A. Brigagliano, Associate Director, Josephine J. Tao, Assistant Director, Victoria L. Crane, Branch Chief, Joan M. Collopy, Special Counsel, Todd E. Freier and Christina M. Adams, Staff Attorneys, Office of Trading Practices and Processing, Division of Trading and Markets, at (202) 551–5720, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed Rule 10b–21 under the Exchange Act.

I. Introduction

The Commission is proposing an anti-fraud rule, Rule 10b–21, aimed at short sellers, including broker-dealers acting for their own accounts, who deceive specified persons, such as a broker or dealer, about their intention or ability to deliver securities in time for settlement and that fail to deliver securities by settlement date. Among other things, proposed Rule 10b–21 would target short sellers who deceive their broker-dealers about their source of borrowable shares for purposes of complying with Regulation SHO's ''locate'' requirement.[1] The proposed rule would also apply to sellers who misrepresent to their broker-dealers that they own the shares being sold.

A seller misrepresenting its short sale locate source or ownership of shares may intend to fail to deliver securities in time for settlement and, therefore, engage in abusive ''naked'' short selling. Although abusive ''naked'' short selling is not defined in the federal securities laws, it refers generally to selling short without having stock available for delivery and intentionally failing to deliver stock within the standard three-day settlement cycle.[2]

Although abusive ''naked'' short selling as part of a manipulative scheme is always illegal under the general anti-fraud provisions of the federal securities laws, including Rule 10b–5 under the Exchange Act,[3] proposed Rule 10b–21 would highlight the specific liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate source or ownership of shares.[4] We believe that a rule highlighting the illegality of these activities would focus the attention of market participants on such activities. The proposed rule would also highlight that the Commission believes such deceptive activities are detrimental to the markets and would provide a measure of predictability for market participants.

All sellers of securities should promptly deliver, or arrange for delivery of, securities to the respective buyer and all buyers of securities have a right to expect prompt delivery of securities purchased. Thus, the proposal takes direct aim at an activity that may create fails to deliver. Those fails can have a negative effect on shareholders, potentially depriving them of the benefits of ownership, such as voting and lending. They also may create a misleading impression of the market for an issuer's securities. Proposed Rule 10b–21 would also aid broker-dealers in complying with the locate requirement of Regulation SHO and, thereby, potentially reduce fails to deliver. In addition, the proposed rule could help reduce manipulative schemes involving ''naked'' short selling.

II. Background

A. Regulation SHO

Short selling involves a sale of a security that the seller does not own and that is consummated by the delivery of a security borrowed by or on behalf of the seller.[5] In a ''naked'' short sale, a seller does not borrow or arrange to borrow securities in time to make delivery to the buyer within the standard three-day settlement period.[6] As a result, the seller fails to deliver securities to the buyer when delivery is due (known as a ''fail'' or ''fail to deliver'').[7] Sellers sometimes

[1] *See* 17 CFR 242.203(b)(1).

[2] *See* Exchange Act Release No. 56212 (Aug. 7, 2007), 72 FR 45544 (Aug. 14, 2007) (''2007 Regulation SHO Amendments''); Exchange Act Release No. 54154 (July 14, 2006), 71 FR 41710 (July 21, 2006) (''2006 Regulation SHO Proposed Amendments'').

[3] 17 CFR 240.10b–5.

[4] This conduct is also in violation of other provisions of the federal securities laws, including the anti-fraud provisions.

[5] 17 CFR 242.200(a).

[6] *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (Aug. 6, 2004) (''2004 Regulation SHO Adopting Release'') (stating that ''naked'' short selling generally refers to selling short without having borrowed the securities to make delivery).

[7] Generally, investors complete or settle their security transactions within three business days. This settlement cycle is known as T+3 (or ''trade date plus three days''). T+3 means that when the investor purchases a security, the purchaser's payment generally is received by its brokerage firm no later than three business days after the trade is executed. When the investor sells a security, the

intentionally fail to deliver securities as part of a scheme to manipulate the price of a security,[8] or possibly to avoid borrowing costs associated with short sales.

Although the majority of trades settle within the standard three-day settlement period,[9] the Commission adopted Regulation SHO[10] in part to address problems associated with persistent fails to deliver securities and potentially abusive ''naked'' short selling.[11] Rule 203 of Regulation SHO, in particular, contains a ''locate'' requirement that provides that, ''[a] broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (1) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (2) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (3) Documented compliance with this paragraph (b)(1).''[12] In the 2004 Regulation SHO Adopting Release, the Commission explicitly permitted broker-dealers to rely on customer assurances that the customer has identified its own source of borrowable securities, provided it is reasonable for the broker-dealer to do so.[13] We are concerned, however, that some short sellers may have been deliberately misrepresenting to broker-dealers that they have obtained a legitimate locate source.[14]

In addition, we are concerned that some short sellers may have made misrepresentations to their broker-dealers about their ownership of shares as an end run around Regulation SHO's locate requirement.[15] Some sellers have also misrepresented that their sales are long sales in order to circumvent Rule 105 of Regulation M,[16] which prohibits certain short sellers from purchasing securities in a secondary or follow-on offering.[17] Under Rule 200(g)(1) of Regulation SHO, ''[a]n order to sell shall be marked ''long'' only if the seller is deemed to own the security being sold pursuant to paragraphs (a) through (f) of this section[18] and either: (i) The security to be delivered is in the physical possession or control of the broker or dealer; or (ii) it is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction.''[19]

Under Regulation SHO, the executing or order-entry broker-dealer is responsible for determining whether there are reasonable grounds to believe that a security can be borrowed so that it can be delivered on the date delivery is due on a short sale, and whether a seller owns the security being sold and can reasonably expect that the security will be in the physical possession or control of the broker-dealer no later than settlement date for a long sale. However, a broker-dealer relying on a customer that makes misrepresentations about its locate source or ownership of shares may not receive shares when delivery is due. For example, sellers may be making misrepresentations to their broker-dealers about their locate sources or ownership of shares for securities that are very difficult or expensive to borrow. Such sellers may know that they cannot deliver securities by settlement date due to, for example, a limited number of shares being available to borrow or purchase, or they may not intend to obtain shares for timely delivery because the cost of borrowing or purchasing may be high. This result undermines the Commission's goal of addressing concerns related to ''naked'' short selling and extended fails to deliver.

B. Concerns About ''Naked'' Short Selling

We are concerned about persons that sell short securities and deceive specified persons about their intention or ability to deliver the securities in time for settlement, or deceive their broker-dealer about their locate source or ownership of shares, or otherwise engage in abusive ''naked'' short selling. Commission enforcement actions have contributed to our concerns about the extent of misrepresentations by short sellers about their locate sources and ownership of shares. For example, the Commission recently announced a settled enforcement action against hedge fund adviser Sandell Asset Management Corp. (''SAM''), its chief executive officer, and two employees in connection with allegedly (i) improperly marking some short sale orders ''long'' and (ii) misrepresenting to executing brokers that SAM personnel had located sufficient stock to borrow for short sale orders.[20]

seller generally delivers its securities, in certificated or electronic form, to its brokerage firm no later than three business days after the sale. The three-day settlement period applies to most security transactions, including stocks, bonds, municipal securities, mutual funds traded through a brokerage firm, and limited partnerships that trade on an exchange. Government securities and stock options settle on the next business day following the trade. In addition, Rule 15c6–1 prohibits broker-dealers from effecting or entering into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction. 17 CFR 240.15c6–1; Exchange Act Release No. 33023 (Oct. 7, 1993), 58 FR 52891 (Oct. 13, 1993). However, failure to deliver securities on T+3 does not violate Rule 15c6–1.

[8] In 2003, the Commission settled a case against certain parties relating to allegations of manipulative short selling in the stock of a corporation. The Commission alleged that the defendants profited from engaging in massive naked short selling that flooded the market with the stock, and depressed its price. *See Rhino Advisors, Inc. and Thomas Badian,* Lit. Rel. No. 18003 (Feb. 27, 2003); *see also, SEC* v. *Rhino Advisors, Inc. and Thomas Badian,* Civ. Action No. 03 civ 1310 (RO) (S.D.N.Y) (Feb. 26, 2003).

[9] According to the NSCC, 99% (by dollar value) of all trades settle within T+3. Thus, on an average day, approximately 1% (by dollar value) of all trades, including equity, debt, and municipal securities fail to settle on time. The vast majority of these fails are closed out within five days after T+3. In addition, fails to deliver may arise from either short sales or long sales of securities. There may be legitimate reasons for a fail to deliver. For example, human or mechanical errors or processing delays can result from transferring securities in custodial or other form rather than book-entry form, thus causing a fail to deliver on a long sale within the normal three-day settlement period. The Commission's Office of Economic Analysis (''OEA'') estimates that, on an average day between May 1, 2007 and January 31, 2008, trades in ''threshold securities,'' as defined in Rule 203(b)(c)(6) of Regulation SHO, that fail to settle within T+3 account for approximately 0.6% of dollar value of trading in all securities.

[10] 17 CFR 242.200. Regulation SHO became effective on January 3, 2005.

[11] *See* 2007 Regulation SHO Amendments, 72 FR at 45544 (stating that ''[a]mong other things, Regulation SHO imposes a close-out requirement to address persistent failures to deliver stock on trade settlement date and to target potentially abusive ''naked'' short selling in certain equity securities'').

[12] 17 CFR 242.203(b). Market makers engaged in bona fide market making in the security at the time they effect the short sale are excepted from this requirement.

[13] *See* 2004 Regulation SHO Adopting Release, 69 FR at 48014.

[14] *See, e.g., Sandell Asset Management Corp., Lars Eric Thomas Sandell, Patrick T. Burke and Richard F. Ecklord,* Securities Act Release No. 8857 (Oct. 10, 2007) (settled order).

[15] *See id.*

[16] 17 CFR 242.105.

[17] *See Goldman Sachs Execution and Clearing L.P.,* Exchange Act Release No. 55465 (Mar. 14, 2007) (settled order).

[18] Rule 200(b) of Regulation SHO provides that a seller is deemed to own a security if, ''(1) The person or his agent has title to it; or (2) The person has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it; or (3) The person owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (4) The person has an option to purchase or acquire it and has exercised such option; or (5) The person has rights or warrants to subscribe to it and has exercised such rights or warrants; or (6) The person holds a security futures contract to purchase it and has received notice that the position will be physically settled and is irrevocably bound to receive the underlying security.''

[19] 17 CFR 242.200(g)(1).

[20] *See Sandell Asset Management Corp.,* Securities Act Release No. 8857; *see also Goldman*

Continued

As we have stated previously, we are concerned that fails to deliver may have a negative effect on the market and shareholders.[21] For example, fails to deliver may deprive shareholders of the benefits of ownership, such as voting and lending.[22] In addition, where a seller of securities fails to deliver securities on settlement date, in effect the seller unilaterally converts a securities contract (which should settle within the standard three-day settlement period) into an undated futures-type contract, to which the buyer might not have agreed, or that might have been priced differently.[23] Moreover, sellers that fail to deliver securities on settlement date may be subject to fewer restrictions than sellers that are required to deliver the securities by settlement date, and such sellers may attempt to use this additional freedom to engage in trading activities that are designed to improperly depress the price of a security.[24] For example, by not borrowing securities and, therefore, not making delivery within the standard three-day settlement period, the seller does not incur the costs of borrowing.

In addition, issuers and investors have expressed concerns about fails to deliver in connection with ''naked'' short selling. For example, in response to proposed amendments to Regulation SHO in 2006 [25] designed to further reduce the number of persistent fails to deliver in certain equity securities by eliminating Regulation SHO's ''grandfather'' provision, and limiting the duration of the rule's options market maker exception, the Commission received a number of comments that expressed concerns about ''naked'' short selling and extended delivery failures.[26]

To the extent that fails to deliver might be indicative of manipulative ''naked'' short selling, which could be used as a tool to drive down a company's stock price,[27] such fails to deliver may undermine the confidence of investors.[28] These investors, in turn, may be reluctant to commit capital to an issuer they believe to be subject to such manipulative conduct.[29] In addition, issuers may believe that they have suffered unwarranted reputational damage due to investors' negative perceptions regarding fails to deliver in the issuer's security.[30] Any unwarranted reputational damage caused by fails to deliver might have an adverse impact on the security's price.[31]

III. Discussion of Proposed Rule

A. Proposed Anti-Fraud Rule

To further address potentially abusive ''naked'' short selling and fails to deliver, we are proposing a narrowly-tailored rule, Rule 10b–21, which would specify that it is unlawful for any person to submit an order to sell a security if such person deceives a broker-dealer, participant of a registered clearing agency, or purchaser [32] regarding its intention or ability to deliver the security on the date delivery is due, and such person fails to deliver the security on or before the date delivery is due.[33] Scienter would be a necessary element for a violation of the proposed rule.[34]

The proposed rule would cover those situations where a seller deceives a broker-dealer, participant of a registered clearing agency, or a purchaser about its intention to deliver securities by settlement date, its locate source, or its share ownership, and the seller fails to deliver securities by settlement date. Proposed Rule 10b–21 would apply to the deception of persons participating in the transaction—broker-dealers, participants of registered clearing agencies, or purchasers. Further, because one of the principal goals of proposed Rule 10b–21 is to reduce fails

Sachs Execution and Clearing L.P., Exchange Act Release No. 55465; *U.S.* v. *Naftalin,* 441 U.S. 768 (1979) (discussing a market manipulation scheme in which brokers suffered substantial losses when they had to purchase securities to replace securities they had borrowed to make delivery on short sale orders received from an individual investor who had falsely represented to the brokers that he owned the securities being sold).

[21] *See* 2007 Regulation SHO Amendments, 72 FR at 45544; 2006 Regulation SHO Proposed Amendments, 71 FR at 41712; Exchange Act Release No. 56213 (Aug. 7, 2007), 72 FR 45558, 45558–45559 (Aug. 14, 2007) (''2007 Regulation SHO Proposed Amendments'').

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See* 2006 Regulation SHO Proposed Amendments.

[26] *See, e.g.*, letter from Patrick M. Byrne, Chairman and Chief Executive Officer, Overstock.com, Inc., dated Sept. 11, 2006 (''Overstock''); letter from Daniel Behrendt, Chief Financial Officer, and Douglas Klint, General Counsel, TASER International, dated Sept. 18, 2006 (''TASER''); letter from John Royce, dated April 30, 2007 (''Royce''); letter from Michael Read, dated April 29, 2007 (''Read''); letter from Robert DeVivo, dated April 26, 2007 (''DeVivo''); letter from Ahmed Akhtar, dated April 26, 2007 (''Akhtar'').

[27] *See supra,* note 8 (discussing a case in which the Commission alleged that the defendants profited from engaging in massive naked short selling that flooded the market with the company's stock, and depressed its price); *see also S.E.C.* v. *Gardiner,* 48 S.E.C. Docket 811, No. 91 Civ. 2091 (S.D.N.Y. March 27, 1991) (alleged manipulation by sales representative by directing or inducing customers to sell stock short in order to depress its price); *U.S.* v. *Russo,* 74 F.3d 1383, 1392 (2d Cir. 1996) (short sales were sufficiently connected to the manipulation scheme as to constitute a violation of Exchange Act Section 10(b) and Rule 10b–5).

[28] In response to the 2006 Regulation SHO Proposed Amendments, the Commission received comment letters discussing the impact of fails to deliver on investor confidence. *See, e.g.*, letter from Mary Helburn, Executive Director, National Coalition Against Naked Shorting, dated Sept. 30, 2006 (''NCANS''); letter from Richard Blumenthal, Attorney General, State of Connecticut, dated Sept. 19, 2006 (''Blumenthal'').

[29] In response to the 2006 Regulation SHO Proposed Amendments, the Commission received comment letters expressing concern about the impact of potential ''naked'' short selling on capital formation, claiming that ''naked'' short selling causes a drop in an issuer's stock price and may limit the issuer's ability to access the capital markets. *See, e.g.*, letter from Congressman Tom Feeney—Florida, U.S. House of Representatives, dated Sept. 25, 2006 (''Feeney''); *see also* letter from Zix Corporation, dated Sept. 19, 2006 (''Zix'') (stating that ''[m]any investors attribute the Company's frequent re-appearances on the Regulation SHO list to manipulative short selling and frequently demand that the Company ''do something'' about the perceived manipulative short selling. This perception that manipulative short selling of the Company's securities is continually occurring has undermined the confidence of many of the Company's investors in the integrity of the market for the Company's securities.'').

[30] Due in part to such concerns, some issuers have taken actions to attempt to make transfer of their securities ''custody only,'' thus preventing transfer of their stock to or from securities intermediaries such as the Depository Trust Company (''DTC'') or broker-dealers. *See* Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972, at 62975 (Nov. 6, 2003). Some issuers have attempted to withdraw their issued securities on deposit at DTC, which makes the securities ineligible for book-entry transfer at a securities depository. *See id.* Withdrawing securities from DTC or requiring custody-only transfers would undermine the goal of a national clearance and settlement system, designed to reduce the physical movement of certificates in the trading markets. *See id.* We note, however, that in 2003 the Commission approved a DTC rule change clarifying that its rules provide that only its participants may withdraw securities from their accounts at DTC, and establishing a procedure to process issuer withdrawal requests. *See* Securities Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037 (June 11, 2003).

[31] *See also* 2006 Regulation SHO Proposed Amendments, 71 FR at 41712; 2007 Regulation SHO Amendments, 72 FR at 45544; 2007 Regulation SHO Proposed Amendments, 72 FR at 45558–45559 (providing additional discussion of the impact of fails to deliver on the market); *see also* Exchange Act Release No. 48709 (Oct. 28, 2003), 68 FR 62972, 62975 (Nov. 6, 2003) (''2003 Regulation SHO Proposing Release'') (discussing the impact of ''naked'' short selling on the market).

[32] The term ''participant'' has the same meaning as in section 3(a)(24) of the Exchange Act. *See* 15 U.S.C. 78c(a)(24). The term ''registered clearing agency'' means a clearing agency, as defined in section 3(a)(23) of the Exchange Act, that is registered as such pursuant to section 17A of the Exchange Act. *See* 15 U.S.C. 78c(a)(23)(A), 78q–1 and 15 U.S.C. 78q–1(b), respectively.

[33] Proposed Rule 10b–21.

[34] *Ernst & Ernst* v. *Hochfelder, et. al.,* 425 U.S. 185 (1976). Scienter has been defined as ''a mental state embracing the intent to deceive, manipulate or defraud.'' *Id.* at 193, n.12. While the Supreme Court has not decided the issue (*see Aaron* v. *SEC,* 446 U.S. 686 (1980); *Ernst & Ernst,* 425 at 193 n.12), federal appellate courts have concluded that scienter may be established by a showing of either knowing conduct or by ''an 'extreme departure from the standards of ordinary care * * * which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.' '' *Dolphin & Bradbury* v. *SEC,* 512 F.3d 634 (D.C. Cir. Jan. 11, 2008) (quoting *Sundstrand Corp.* v. *Sun Chemical Corp.,* 553 F.2d 1033, 1045 (7th Cir. 1977)).

to deliver, violation of the proposed rule would occur only if a fail to deliver results from the relevant transaction.

For purposes of the proposed rule, broker-dealers (including market makers) acting for their own accounts would be considered sellers. For example, a broker-dealer effecting short sales for its own account would be liable under the rule if it does not obtain a valid locate source and fails to deliver securities to the purchaser. Such broker-dealers defraud purchasers that may not receive delivery on time, in effect unilaterally forcing the purchaser into accepting an undated futures-type contract.[35]

As noted above, under Regulation SHO, the executing or order-entry broker-dealer is responsible for determining whether there are reasonable grounds to believe that a security can be borrowed so that it can be delivered on the date delivery is due on a short sale.[36] In the 2004 Regulation SHO Adopting Release, the Commission explicitly permitted broker-dealers to rely on customer assurances that the customer has identified its own locate source, provided it is reasonable for the broker-dealer to do so.[37] If a seller elects to provide its own locate source to a broker-dealer, the seller is representing that it has contacted that source and reasonably believes that the source can or intends to deliver the full amount of the securities to be sold short by settlement date. In addition, if a seller enters a short sale order into a broker-dealer's direct market access or sponsored access system (''DMA'') with any information purporting to identify a locate source obtained by the seller, the seller would be making a representation to a broker-dealer for purposes of proposed Rule 10b–21.[38]

If a seller deceives a broker-dealer about the validity of its locate source, the seller would be liable under proposed Rule 10b–21 if the seller also fails to deliver securities by the date delivery is due. For example, a seller would be liable for a violation of proposed Rule 10b–21 if it represented that it had identified a source of borrowable securities, but the seller never contacted the purported source to determine whether shares were available and could be delivered in time for settlement and the seller fails to deliver securities by settlement date. A seller would also be liable if it contacted the source and learned that the source did not have sufficient shares for timely delivery, but the seller misrepresented that the source had sufficient shares that it could deliver in time for settlement and the seller fails to deliver securities by settlement date; or, if the seller contacted the source and the source had sufficient shares that it could deliver in time for settlement, but the seller never instructed the source to deliver the shares in time for settlement and the seller otherwise refused to deliver shares on settlement date such that the sale results in a fail to deliver.

If, however, a seller is relying on a broker-dealer to comply with Regulation SHO's locate obligation and to make delivery on a sale, the seller would not be representing at the time it submits an order to sell a security that it can or intends to deliver securities on the date delivery is due. For example, a seller might be relying on its broker-dealer to borrow or arrange to borrow the security to make delivery by settlement date. Alternatively, a seller might be relying on a broker-dealer's ''Easy to Borrow'' list. If a seller in good faith relies on a broker-dealer's ''Easy to Borrow'' list to satisfy the locate requirement, the seller would not be deceiving the broker-dealer at the time it submits an order to sell a security that it can or intends to deliver securities on the date delivery is due. In discussing the locate requirement of Regulation SHO, in the 2004 Regulation SHO Adopting Release, the Commission stated that ''absent countervailing factors, 'Easy to Borrow' lists may provide 'reasonable grounds' for a broker-dealer to believe that the security sold short is available for borrowing without directly contacting the source of the borrowed securities.''[39]

In addition, a market maker engaged in bona fide market making activity would not be making a representation at the time it submits an order to sell short that it can or intends to deliver securities on the date delivery is due, because such market makers are excepted from the locate requirement of Regulation SHO. Regulation SHO excepts from the locate requirement market makers engaged in bona-fide market making activities because market makers need to facilitate customer orders in a fast moving market without possible delays associated with complying with the locate requirement.[40] Thus, at the time of submitting an order to sell short, market makers that have an exception from the locate requirement of Regulation SHO may know that they may not be able to deliver securities on the date delivery is due.

Under proposed Rule 10b–21, a seller would be liable if it deceives a broker-dealer, participant of a registered clearing agency, or purchaser about its ownership of shares or the deliverable condition of owned shares and fails to deliver securities by settlement date. For example, a seller would be liable for a violation of proposed Rule 10b–21 for causing a broker-dealer to mark an order to sell a security ''long'' if the seller knows or recklessly disregards that it is not ''deemed to own'' the security being sold, as defined in Rules 200(a) through (f) of Regulation SHO[41] or if the seller knows or recklessly disregards that the security being sold is not, or cannot reasonably be expected to be, in the broker-dealer's physical possession or control by the date delivery is due, and the seller fails to deliver the security by settlement date. Broker-dealers acting for their own accounts would also be liable under the proposed rule for marking an order ''long'' if the broker-dealer knows or recklessly disregards that it is not ''deemed to own'' the security being sold or that the security being sold is not, or cannot reasonably be expected to be, in the broker-dealer's physical possession or control by the date delivery is due, and the broker-dealer fails to deliver the security by settlement date.[42]

However, a seller would not be making a representation at the time it submits an order to sell a security that it can or intends to deliver securities on the date delivery is due if the seller submits an order to sell securities that are held in a margin account but the broker-dealer has loaned out the shares pursuant to the margin agreement. Under such circumstances, it would be reasonable for the seller to expect that the securities will be in the broker-dealer's physical possession or control by settlement date.

Although the proposed rule is primarily aimed at sellers that deceive specified persons about their intention or ability to deliver shares or about their locate sources and ownership of shares, as with any rule, broker-dealers could be liable for aiding and abetting a

[35] *See* 2007 Regulation SHO Amendments, 72 FR at 45544; 2006 Regulation SHO Proposed Amendments, 71 FR at 41712; 2007 Regulation SHO Proposed Amendments, 72 FR at 45558–45559.

[36] *See* 17 CFR 242.203(b)(3)(1).

[37] *See* 2004 Regulation SHO Adopting Release, 69 FR at 48014.

[38] Broker-dealers may offer DMA to customers by providing them with electronic access to a market's execution system using the broker-dealer's market participant identifier. The broker-dealer, however, retains the ultimate responsibility for the trading activity of its customer.

[39] 2004 Regulation SHO Adopting Release, 69 FR at 48014.

[40] *See* 2004 Regulation SHO Adopting Release, 69 FR at 48015, n. 67.

[41] 17 CFR 242.200(a)–(f).

[42] Such broker-dealers would also be liable under Regulation SHO.

customer's fraud under the proposed rule. In addition, broker-dealers would remain subject to liability under Regulation SHO and the general anti-fraud provisions of the federal securities laws.

Proposed Rule 10b–21 is narrowly tailored to apply when a seller, including a broker-dealer trading for its own account, deceives specified persons about its ability or intention to deliver securities in time for settlement, or about its locate source or ownership of shares and that fails to deliver securities by settlement date. While ''naked'' short selling as part of a manipulative scheme is already illegal under the general anti-fraud provisions of the federal securities laws, we believe that the proposed anti-fraud rule would highlight the specific liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate source or ownership of shares. Proposed Rule 10b–21 would also aid broker-dealers in complying with the locate requirement of Regulation SHO and, thereby, potentially reduce fails to deliver.[43]

Request for Comment

The Commission seeks comment generally on all aspects of proposed Rule 10b–21. In addition, we seek comment on the following:

- Proposed Rule 10b–21 would apply to sales in all equity securities. Should we narrow the scope of the proposed rule to apply only to sales of ''threshold securities'' as that term is defined in Rule 203(c)(6) of Regulation SHO[44] or to certain types of securities? Why or why not? If so, to what types of securities should the proposed rule apply? If we narrow the proposed rule to apply only to certain types of securities, should exchange traded funds or other basket securities be excluded? Why or why not?
- The proposed rule highlights the specific liability of persons that deceive broker-dealers, participants of a registered clearing agency, or purchasers about their intention or ability to deliver securities in time for settlement. Are there other entities that could be deceived about a seller's intention or ability to deliver securities in time for settlement that should be included in the proposed rule? As an alternative to listing who must be deceived, should the proposed rule provide that a person would be liable if it deceives ''another person'' about its intention or ability to deliver securities in time for settlement? Please explain.
- The proposed rule includes a person failing to deliver securities when delivery is due as an element for a violation of the proposed rule. What are the costs and benefits, including to broker-dealers or customers, for including delivery as an element of the violation? Would the inclusion of a fail to deliver as an element of the proposed rule encourage broker-dealers, as a service to customers, to deliver securities on behalf of customers to prevent customers from failing to deliver securities by settlement date? Would broker-dealers feel any additional obligation to purchase or borrow securities on behalf of their customers to deliver on a customer's sale? What would be the costs to broker-dealers if they were to take such actions, particularly if the sale involves an expensive or hard to borrow security? Would the inclusion of failing to deliver as an element for a violation of the proposed rule increase costs for customers for inadvertent fails? Should delivery be excluded as a required element for a violation? For example, should the rule language instead be: *''It shall constitute a 'manipulative or deceptive device or contrivance' as used in section 10(b) of this Act for any person to submit an order to sell a security if such person deceives a broker or dealer, participant of a registered clearing agency, or a purchaser about its intention or ability to deliver the security on the date delivery is due''?* What would be the costs and benefits of excluding delivery as an element for a violation of the proposed rule? Would excluding failing to deliver as an element for liability under the proposed rule affect a self-regulatory organization's ability to surveil for violations of the rule?
- In the 2004 Regulation SHO Adopting Release, the Commission stated that a broker-dealer could satisfy the locate requirement of Regulation SHO by obtaining an assurance from a customer that the customer can obtain securities from another identified source in time to settle the trade, provided the broker-dealer reasonably believes the customer's assurance. Proposed Rule 10b–21 is aimed, in part, at sellers who make misrepresentations to their broker-dealers about their locate sources. Should we instead no longer permit a broker-dealer to rely on such customer assurances in satisfying the locate requirement of Regulation SHO? What would be the costs and benefits of removing the ability of broker-dealers to rely on such customer assurances? What would be the impact on market participants (such as broker-dealers, stock lenders, investors)? Would smaller entities be affected more or less adversely than larger entities?
- What procedures do broker-dealers currently have in place to assist in making the determination that there are reasonable grounds to believe that customers' representations regarding a locate source are accurate? How do those procedures help to provide confidence regarding the accuracy of such representations?
- What procedures do broker-dealers currently have in place to determine the accuracy of a seller's representations that it owns the securities being sold and that the securities are reasonably expected to be in the broker-dealer's physical possession or control by settlement?
- Are there other types of transactions to which proposed Rule 10b–21 should not apply?
- Are there any issues with respect to the application of the proposed rule in the context of the use of DMAs? If so, please explain.
- Are there any issues with respect to the application of the proposed rule to trades submitted to, or effected on, electronic communications networks?
- To what extent, if any, would the proposed rule encourage or result in fewer executing broker-dealers relying on customer assurances to satisfy the locate requirement of Regulation SHO? To what extent would such a result of the proposed rule impact prime brokerage relationships? Please explain.
- Although the type of activity that would be illegal under the proposed rule is already prohibited by the general anti-fraud provisions of the federal securities laws, to what extent, if any, would the proposed rule impact liquidity and market quality in securities traded? Please explain. To what extent, if any, might the proposed rule result in short squeezes? What costs, if any, would the potential for short squeezes have on the efficiency of the market?
- To what extent, if any, would the proposed rule induce short sellers to execute trades in overseas markets?

IV. General Request for Comment

The Commission seeks comment generally on all aspects of the proposed rule. Commenters are requested to provide empirical data to support their views and arguments related to

[43] The Commission would continue to monitor the effect of ''naked'' short selling practices to determine whether additional rulemaking is warranted.

[44] Rule 203(c)(6) defines ''threshold securities'' as ''any equity security of an issuer that is registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or for which the issuer is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78o(d)).'' 17 CFR 242.203(c)(6).

proposed Rule 10b–21. In addition to the questions posed above, commenters are welcome to offer their views on any other matter raised by the proposed rule. With respect to any comments, we note that they are of the greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments and if accompanied by alternative suggestions to our proposals where appropriate.

V. Paperwork Reduction Act

Proposed Rule 10b–21 does not contain a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995.[45] 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.

VI. Consideration of Costs and Benefits of the Proposed Amendments

The Commission is considering the costs and benefits of proposed Rule 10b–21. The Commission is sensitive to these costs and benefits, and encourages commenters to discuss any additional costs or benefits beyond those discussed here, as well as any reductions in costs. In particular, the Commission requests comment on the potential costs for any modification to both computer systems and surveillance mechanisms and for information gathering, management, and recordkeeping systems or procedures, as well as any potential benefits resulting from the proposals for issuers, investors, brokers or dealers, other securities industry professionals, regulators, and other market participants. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposed rule.

A. Benefits

Proposed Rule 10b–21 is intended to address abusive ''naked'' short selling and fails to deliver. The proposed rule is aimed at short sellers, including broker-dealers acting for their own accounts, who deceive broker-dealers, participants of a registered clearing agency, or purchasers about their intention or ability to deliver securities in time for settlement and that fail to deliver securities by settlement date. Among other things, proposed Rule 10b–21 would target short sellers who deceive their broker-dealers about their source of borrowable shares for purposes of complying with Regulation SHO's ''locate'' requirement.[46] The proposed rule would also apply to sellers who misrepresent to their broker-dealers that they own the shares being sold.[47]

A seller misrepresenting its short sale locate source or ownership of shares may intend to fail to deliver securities in time for settlement and, therefore, engage in abusive ''naked'' short selling. As noted above, although abusive ''naked'' short selling is not defined in the federal securities laws, it refers generally to selling short without having stock available for delivery and intentionally failing to deliver stock within the standard three-day settlement cycle.[48] Such short selling may or may not be part of a scheme to manipulate the price of a security. Although ''naked'' short selling as part of a manipulative scheme is always illegal under the general anti-fraud provisions of the federal securities laws, including Rule 10b–5 under the Exchange Act,[49] proposed Rule 10b–21 would highlight the specific liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate source or ownership of shares and that fail to deliver securities by settlement date. We believe that a rule specifying the illegality of these activities would focus the attention of market participants on such activities. The proposed rule would also highlight that the Commission believes such deceptive activities are detrimental to the markets and would provide a measure of predictability for market participants.

All sellers of securities should promptly deliver, or arrange for delivery of, securities to the respective buyer and all buyers of securities have a right to expect prompt delivery of securities purchased. Thus, the proposal takes direct aim at an activity that may create fails to deliver. Those fails can have a negative effect on shareholders, potentially depriving them of the benefits of ownership, such as voting and lending. They also may create a misleading impression of the market for an issuer's securities. As noted above, issuers and investors have expressed concerns about fails to deliver in connection with ''naked'' short selling. For example, in response to proposed amendments to Regulation SHO in 2006[50] designed to further reduce the number of persistent fails to deliver in certain equity securities by eliminating Regulation SHO's ''grandfather'' provision, and limiting the duration of the rule's options market maker exception, the Commission received a number of comments that expressed concerns about ''naked'' short selling and extended delivery failures.[51]

To the extent that fails to deliver might be indicative of manipulative ''naked'' short selling, which could be used as a tool to drive down a company's stock price,[52] such fails to deliver may undermine the confidence of investors.[53] These investors, in turn, may be reluctant to commit capital to an issuer they believe to be subject to such manipulative conduct.[54] In addition, issuers may believe that they have suffered unwarranted reputational damage due to investors' negative perceptions regarding fails to deliver in the issuer's security.[55] Any unwarranted reputational damage caused by fails to deliver might have an adverse impact on the security's price.[56]

Thus, to the extent that fails to deliver might create a misleading impression of the market for an issuer's securities, the proposed rule would benefit investors and issuers by taking direct aim at an activity that may create fails to deliver. In addition, to the extent that ''naked'' short selling and fails to deliver result in an unwarranted decline in investor confidence about a security, the proposed rule should improve investor confidence about the security. In addition, the proposed rule could lead to greater certainty in the settlement of securities which should strengthen investor confidence in that process.

The proposed rule could result in broker-dealers having greater confidence that their customers have obtained a valid locate source and, therefore, that shares are available for delivery on settlement date. Thus, the proposed rule would aid broker-dealers in complying with the locate requirement of Regulation SHO and, thereby, potentially reduce fails to deliver. The proposed rule also may provide additional encouragement for broker-

[45] 44 U.S.C. 3501 *et seq.*

[46] *See* 17 CFR 242.203(b)(1).

[47] Proposed Rule 10b–21.

[48] *See supra* note 2.

[49] 17 CFR 240.10b–5.

[50] *See* 2006 Regulation SHO Proposed Amendments.

[51] *See, e.g.,* letters from Overstock; TASER, Royce; Read; DeVivo; Akhtar.

[52] *See supra* note 27.

[53] *See supra* note 28.

[54] *See supra* note 29.

[55] *See supra* note 30 (discussing the fact that due to such concerns some issuers have taken actions to attempt to make transfer of their securities ''custody only,'' thus preventing transfer of their stock to or from securities intermediaries such as the DTC or broker-dealers).

[56] *See supra* note 31.

dealers to deliver shares by settlement date and, therefore, result in a reduction in fails to deliver. In addition, to the extent that sales of threshold securities do not result in fails to deliver, the proposed rule would reduce costs to broker-dealers because such broker-dealers would have to close out a lesser amount of fails to deliver under Regulation SHO's close-out requirement.[57]

In addition, the proposed rule could help reduce manipulative schemes involving ''naked'' short selling. We solicit comment on any additional benefits that could be realized with the proposed rule, including both short-term and long-term benefits. We solicit comment regarding benefits to market efficiency, pricing efficiency, market stability, market integrity and investor protection.

B. Costs

As an aid in evaluating costs and reductions in costs associated with proposed Rule 10b–21, the Commission requests the public's views and any supporting information.

The proposed rule is intended to address abusive ''naked'' short selling by highlighting the liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate source or ownership of shares and that fail to deliver securities by settlement date. The Commission recognizes that the proposed rule might result in increased costs to broker-dealers to the extent that the proposed rule encourages or results in broker-dealers limiting the extent to which they rely on customer assurances in complying with the locate requirement of Regulation SHO. Because the failure to deliver securities by the date delivery is due is an element for a violation of the proposed rule, as a service to customers broker-dealers could feel an additional obligation to borrow or purchase securities to deliver on customer sales even though the broker-dealer did not enter into an arrangement with the customer to do so. The proposed rule could result in increased costs to customers who inadvertently fail to deliver securities because such customers, in an attempt to avoid liability under the proposed rule, might purchase or borrow securities to deliver on a sale at a time when, but for the proposed rule, the seller would have allowed the fail to deliver position to remain open.

The Commission believes that the proposed rule would not compromise investor protection. We seek data, however, supporting any potential costs associated with the proposed rule. In addition, we request specific comment on any systems changes to computer hardware and software, or surveillance costs that might be necessary to implement the proposed rule. Specifically:

- What would be the costs and benefits of the proposed rule?
- Would the proposed rule create any costs associated with systems, surveillance, or recordkeeping modifications? Would these costs justify the benefits of better ensuring compliance with the federal securities laws?
- How much would the proposed rule affect compliance costs for small, medium, and large broker-dealers (*e.g.*, personnel or system changes)? We seek comment on the costs of compliance that may arise.

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and whenever it is required to consider or determine if an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.[58] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact such rules would have on competition.[59] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Proposed Rule 10b–21 is intended to address abusive ''naked'' short selling and fails to deliver. The proposed rule is aimed at short sellers, including broker-dealers acting for their own accounts, who deceive specified persons, such as a broker-dealer, about their intention or ability to deliver securities in time for settlement and fail to deliver securities by settlement date. Among other things, proposed Rule 10b–21 would target short sellers who deceive their broker-dealers about their source of borrowable shares for purposes of complying with Regulation SHO's ''locate'' requirement.[60] The proposed rule would also apply to sellers who misrepresent to their broker-dealers that they own the shares being sold.[61]

Although ''naked'' short selling as part of a manipulative scheme is always illegal under the general anti-fraud provisions of the federal securities laws, including Rule 10b–5 under the Exchange Act,[62] proposed Rule 10b–21 would highlight the liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate source or ownership of shares and that fail to deliver securities by settlement date. We believe that a rule highlighting the illegality of these activities would focus the attention of market participants on such activities. The proposed rule would also provide a measure of predictability for market participants. We believe proposed Rule 10b–21 would have minimal impact on the promotion of price efficiency. We seek comment regarding whether proposed Rule 10b–21 may adversely impact liquidity, disrupt markets, or unnecessarily increase risks or costs to customers.

In addition, we believe that the proposed rule would have minimal impact on the promotion of capital formation. The perception that abusive ''naked'' short selling is occurring in certain securities can undermine the confidence of investors. These investors, in turn, may be reluctant to commit capital to an issuer they believe to be subject to such manipulative conduct. We believe that any such effect on capital formation is limited by the relatively few securities from corporate issuers that persist on the Regulation SHO threshold list[63] and the fact that this persistence does not necessarily indicate abusive ''naked'' short selling

[57] Rule 203(b)(3)(iii) of Regulation SHO contains a close-out requirement that applies only to broker-dealers for securities in which a substantial amount of fails to deliver have occurred, also known as ''threshold securities.'' Specifically, Rule 203(b)(3)'s close-out requirement requires a participant of a clearing agency registered with the Commission to take immediate action to close out a fail to deliver position in a threshold security in the Continuous Net Settlement (CNS) system that has persisted for 13 consecutive settlement days by purchasing securities of like kind and quantity.

[58] 15 U.S.C. 78c(f).

[59] 15 U.S.C. 78w(a)(2).

[60] *See* 17 CFR 242.203(b)(1).

[61] Proposed Rule 10b–21.

[62] 17 CFR 240.10b–5.

[63] On an average day over a nine month period from May 1, 2007 to January 31, 2008, approximately 50 securities had persisted on the threshold list for more than 17 days and had fails to deliver of 10,000 shares or more. However, the majority of these securities are exchange traded funds which suggests that only a small number of corporate issuers are potentially affected.

or a deleterious effect on the cost of capital for the issuer.

In the 2006 Proposing Release, we sought comment on whether the proposed amendments to Regulation SHO would promote capital formation, including whether the proposed increased short sale restrictions would affect investors' decisions to invest in certain equity securities. In response, commenters expressed concern about the potential impact of ''naked'' short selling on capital formation claiming that ''naked'' short selling causes a drop in an issuer's stock price that may limit the issuer's ability to access the capital markets.[64] Thus, to the extent that ''naked'' short selling and fails to deliver result in an unwarranted decline in investor confidence about a security, the proposed rule should improve investor confidence about the security. We note, however, that persistent fails to deliver exist in only a small number of securities and may be a signal of overvaluation rather than undervaluation of a security's price.[65] In addition, we believe that the proposed rule could lead to greater certainty in the settlement of securities which should strengthen investor confidence in the settlement process.

We also believe that proposed Rule 10b–21 would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. By specifying that abusive ''naked'' short selling is a fraud, the Commission believes the proposed rule would promote competition by providing the industry with guidance regarding the liability of sellers that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate sources or share ownership and that fail to deliver securities by settlement date. The Commission requests specific comment on whether the proposed rule would promote efficiency, competition, and capital formation.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,''[66] we must advise the Office of Management and Budget as to whether the proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

IX. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), in accordance with the provisions of the Regulatory Flexibility Act (''RFA''),[67] regarding the proposed rule.

A. Reasons for the Proposed Action

Proposed Rule 10b–21 is intended to address fails to deliver associated with abusive ''naked'' short selling. While ''naked'' short selling as part of a manipulative scheme is already illegal under the general anti-fraud provisions of the federal securities laws, proposed Rule 10b–21 would specify that it is a fraud for any person to submit an order to sell a security if such person deceives a broker-dealer, participant of a registered clearing agency, or purchaser about its intention or ability to deliver securities on the date delivery is due and such person fails to deliver securities on or before the date delivery is due. Thus, the proposed rule would highlight the liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate source or ownership of shares.

B. Objectives

Proposed Rule 10b–21 is aimed at short sellers, including broker-dealers acting for their own accounts, who deceive specified persons, such as a broker or dealer, about their intention or ability to deliver securities in time for settlement and that fail to deliver securities by settlement date. We believe that a rule highlighting the illegality of these activities would focus the attention of market participants on such activities. The proposed rule would also underscore that the Commission believes such deceptive activities are detrimental to the markets and would provide a measure of predictability for market participants.

All sellers of securities should promptly deliver, or arrange for delivery of, securities to the respective buyer and all buyers of securities have a right to expect prompt delivery of securities purchased. Thus, the proposal takes direct aim at an activity that may create fails to deliver. Those fails can have a negative effect on shareholders, potentially depriving them of the benefits of ownership, such as voting and lending. They also may create a misleading impression of the market for an issuer's securities. Proposed Rule 10b–21 would also aid broker-dealers in complying with the locate requirement of Regulation SHO and, thereby, potentially reduce fails to deliver. In addition, the proposed rule could help reduce manipulative schemes involving ''naked'' short selling.

C. Legal Basis

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 6, 9(h), 10, 11A, 15, 15A, 17, 17A, 19 and 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78f, 78i(h), 78j, 78k–1, 78o, 78o–3, 78q, 78q–1, 78s and 78w(a), the Commission is proposing a new anti-fraud rule, Rule 10b–21, to address fails to deliver associated with abusive ''naked'' short selling.

D. Small Entities Subject to the Rule

The entities covered by the proposed rule would include small broker-dealers, small businesses, and any investor who effects a short sale that qualifies as a small entity. Although it is impossible to quantify every type of small entity that may be able to effect a short sale in a security, Paragraph (c)(1) of Rule 0–10 under the Exchange Act[68] states that the term ''small business'' or ''small organization,'' when referring to a broker-dealer, means a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d); and is not affiliated with any person (other than a

[64] *See, e.g.*, letter from Feeney.

[65] Persistent fails to deliver may be symptomatic of an inadequate supply of shares in the equity lending market. If short sellers are unable to short sell due to their inability to borrow shares, their opinions about the fundamental value of the security may not be fully reflected in a security's price, which may lead to overvaluation.

[66] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[67] 5 U.S.C. 603.

[68] 17 CFR 240.0–10(c)(1).

natural person) that is not a small business or small organization. As of 2006, the Commission estimates that there were approximately 894 broker-dealers that qualified as small entities as defined above.[69]

Any business, however, regardless of industry, could be subject to the proposed amendments if it effects a short or long sale. The Commission believes that, except for the broker-dealers discussed above, an estimate of the number of small entities that fall under the proposed rule is not feasible.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule is intended to address abusive ''naked'' short selling by highlighting the liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate source or ownership of shares and that fail to deliver securities by settlement date. The Commission believes that the proposed rule could impose new or additional reporting, recordkeeping, or compliance costs on any affected party, including broker-dealers, that are small entities. To comply with Regulation SHO, small broker-dealers needed to modify their systems and surveillance mechanisms to comply with Regulation SHO's locate, marking and delivery requirements. Thus, any systems and surveillance mechanisms necessary for broker-dealers to comply with the proposed rule should already be in place. We believe that any necessary additional systems and surveillance changes, in particular changes by sellers who are not broker-dealers, would be similar to the changes incurred by broker-dealers when Regulation SHO was implemented.

We solicit comment on what new recordkeeping, reporting or compliance requirements may arise as a result of this proposed rule.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate or conflict with the proposed rule. ''Naked'' short selling as part of a manipulative scheme is always illegal under the general anti-fraud provisions of the federal securities laws, including Rule 10b–5 under the Exchange Act,[70] and, therefore, overlap to a certain extent with the proposed rule. Proposed Rule 10b–21 would highlight the specific liability of persons that deceive specified persons about their intention or ability to deliver securities in time for settlement, including persons that deceive their broker-dealer about their locate source or ownership of shares and that fail to deliver securities by settlement date. We believe that a rule highlighting the illegality of these activities would focus the attention of market participants on such activities. The proposed rule would also highlight that the Commission believes such deceptive activities are detrimental to the markets and would provide a measure of predictability for market participants.

G. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. Pursuant to Section 3(a) of the RFA,[71] the Commission must consider the following types of alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule, or any part thereof, for small entities.

A primary goal of proposed Rule 10b–21 is to address abusive ''naked'' short selling. While ''naked'' short selling as part of a manipulative scheme is always illegal under the general anti-fraud provisions of the federal securities laws, Rule 10b–21 would specify that it is a fraud for any person to submit an order to sell a security if such person deceives a broker-dealer, participant of a registered clearing agency, or purchaser about its intention or ability to deliver the security on the date delivery is due and such person fails to deliver the security on or before the date delivery is due. The proposed rule is aimed at short sellers, including broker-dealers acting for their own accounts, who deceive specified persons, such as a broker or dealer, about their intention or ability to deliver securities in time for settlement and who do not deliver securities by settlement date. Among other things, proposed Rule 10b–21 would target short sellers who deceive their broker-dealers about their source of borrowable shares for purposes of complying with Regulation SHO's ''locate'' requirement.[72] The proposed rule would also apply to sellers who misrepresent to their broker-dealers that they own the shares being sold.

We believe that imposing different compliance requirements, and possibly a different timetable for implementing compliance requirements, for small entities would undermine the Commission's goal of addressing abusive ''naked'' short selling and fails to deliver. In addition, we have concluded similarly that it would not be consistent with the primary goal of the proposed rule to further clarify, consolidate, or simplify the proposed rule for small entities. Finally, the proposed rule would impose performance standards rather than design standards.

H. Request for Comments

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. In particular, the Commission seeks comment on (i) the number of small entities that will be affected by the proposed rule; and (ii) the existence or nature of the potential impact of the proposed rule on small entities. Those comments should specify costs of compliance with the proposed rule, and suggest alternatives that would accomplish the objective of the proposed rule.

X. Statutory Authority

Pursuant to the Exchange Act and, particularly, Sections 2, 3(b), 6, 9(h), 10, 11A, 15, 15A, 17, 17A, 19 and 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78f, 78i(h), 78j, 78k–1, 78o, 78o–3, 78q, 78q–1, 78s and 78w(a), the Commission is proposing a new anti-fraud rule, Rule 10b–21, to address abusive ''naked'' short selling.

List of Subjects in 17 CFR Part 240

Brokers, Fraud, Reporting and recordkeeping requirements, Securities.

Text of the Proposed Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows.

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

1. The authority citation for part 240 continues to read, in part, as follows:

[69] These numbers are based on OEA's review of 2006 FOCUS Report filings reflecting registered broker-dealers. This number does not include broker-dealers that are delinquent on FOCUS Report filings.

[70] 17 CFR 240.10b–5.

[71] 5 U.S.C. 603(c).

[72] See 17 CFR 242.203(b)(1).

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, 78ll, 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.

2. Add § 240.10b–21 to read as follows:

§ 240.10b–21 Deception in connection with a seller's ability or intent to deliver securities on the date delivery is due.

It shall constitute a ''manipulative or deceptive device or contrivance'' as used in section 10(b) of this Act for any person to submit an order to sell a security if such person deceives a broker or dealer, a participant of a registered clearing agency, or a purchaser about its intention or ability to deliver the security on the date delivery is due, and such person fails to deliver the security on or before the date delivery is due.

By the Commission.

Dated: March 17, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–5697 Filed 3–20–08; 8:45 am]

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S. 2745/P.L. 110–196

To extend agricultural programs beyond March 15, 2008, to suspend permanent price support authorities beyond that date, and for other purposes. (Mar. 14, 2008; 122 Stat. 653)

S.J. Res. 25/P.L. 110–197

Providing for the appointment of John W. McCarter as a citizen regent of the Board of Regents of the Smithsonian Institution. (Mar. 14, 2008; 122 Stat. 655)

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