Federal Register

4–24–08 Thursday

Vol. 73 No. 80 Apr. 24, 2008

Pages 22049–22270

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

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participants' Choices of TSP Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) amends its interfund transfer (IFT) regulations to limit the number of interfund transfer requests to two per calendar month. After a participant has made two interfund transfers in a calendar month, the participant may make additional interfund transfers only into the Government Securities Investment (G) Fund until the first day of the next calendar month.

DATES: This rule is effective on May 1, 2008.

FOR FURTHER INFORMATION CONTACT: Megan Graziano, 202–942–1644.

SUPPLEMENTARY INFORMATION:

Preamble

Under the Federal Employees' Retirement System Act of 1986, the Thrift Savings Plan (TSP) was created to offer passive long-term investments designed to improve the retirement security of Federal employees. As a result of analysis performed in 2007, it became clear that a small number of TSP participants were pursuing ''market timing'' active investment strategies in the TSP. These activities were diluting the earnings of the long-term investors, and adversely affecting the ability of TSP managers to replicate the performance of selected indexes as required by law.

The Chief Investment Officer reported these findings to the Executive Director on November 6, 2007. The Executive Director presented the information to the Federal Retirement Thrift Investment Board members at their public monthly meeting on November 19. Subject to the input from the Employee Thrift Advisory Council (ETAC), the Board authorized the Executive Director to put in place both interim and structural restrictions on frequent interfund transfer activity.

The 15 members of the ETAC were advised that same day and presented with the information developed by Agency staff. Under longstanding custom, ETAC members were also provided an advance copy of the Agency's interim proposed rule. Two ETAC member organizations voiced some concerns, and the Agency decided to withhold publication of the proposed interim rule until a public meeting of the ETAC and the Executive Director could be conducted on December 19. After extensive discussion at the meeting, no ETAC member objected to the Agency's implementation of its interim plan. The proposed interim rule was forwarded to the **Federal Register** on December 21, where it was published on December 27. The rule took effect on January 7, 2008.

On January 24, 2008, under the interim rule, the Executive Director sent letters to 3,775 TSP participants who had been identified as frequently requesting IFTs. The letters explained the need to reduce this activity and asked recipients to voluntarily reduce their IFT requests. The letters also warned each individual that a failure to practice self-restraint could result in the imposition of restrictions. Eighty-five percent of those who received a letter voluntarily complied. However, 549 individuals continued their frequent IFT activity during February. These individuals were subsequently notified by certified mail that they would be restricted to requesting IFTs by mail, effective April 1, 2008. Their option to request IFTs via the TSP Web site or over the Thriftline was suspended until plan-wide structural restrictions are implemented. However, some have appealed their restrictions, and, in appropriate cases, the Agency has approved their appeals.

On March 10, 2008, the Agency published a proposed rule with request for comments in the **Federal Register** (73 FR 12665, March 10, 2008). The Agency received comments from three Federal employees' unions and from 354 TSP participants. One comment purported to include the views of over 4,000 participants. Additionally, the Agency received and reviewed 110 comments prior to the Agency's publication of its January 7, 2008 interim regulation; these comments were reconsidered as a part of this rulemaking process.

Comment Summary

Summary

Commenters raised a number of issues and a detailed response to each one is provided below. By way of summary, those individual respondents who have personally made frequent interfund transfers and oppose the proposed limits display a fundamental misunderstanding of the statutory TSP design. They also present two overarching arguments which deserve discussion at the outset, because they obscure the damage which their frequent IFTs inflict on other plan participants.

Misunderstanding

By misappropriating language used in the capital markets (buys, sells, trades), some TSP participants give the impression that their frequent interfund transfers are trades in and out of the markets which affect only their own funds. This is incorrect. All TSP assets are in a pooled investment which is designated by statute as the Thrift Savings Fund.

In this regard the TSP funds are like mutual funds regulated by the Securities and Exchange Commission (SEC). In 2005 the SEC took steps to reduce activity in mutual funds. It did so after finding that: ''Excessive trading in mutual funds occurs at the expense of long-term investors, diluting the value of their shares. It may disrupt the management of a fund's portfolio and raise the fund's transaction cost because the fund manager must either hold extra cash or sell investments at inopportune times to meet redemptions.''

Congress established the Thrift Savings Fund as a long-term, passive investment. The legislative history shows that active investments were considered, but rejected. The Federal Retirement Thrift Investment Board is required by law to develop policies under which four Thrift Savings Fund offerings—commonly known as the C, S, I, and F Funds—are invested to ''replicate'' the performance of selected

market indexes at a low cost. Through careful and diligent management, these goals have been achieved for more than twenty years.

Each day the Agency and its contractors tally new contributions, loan activities, disbursements, and IFTs to arrive at net amounts available for investment in each of the Thrift Savings Fund offerings that day. A similar netting process occurs in the TSP asset manager's commingled investment funds, which include the assets of many other institutional investors. Predictable cash flows and offsets due to netting minimize trading costs.

This carefully designed structure, which optimizes achievement of the statutory goals, has been challenged over the past year by a noticeable increase of IFTs by a small group of participants. The Agency's analysis has demonstrated that fewer than 1 percent of TSP participants are engaging in this activity to the detriment of more than 99 percent of participants who are long-term investors (those who requested 12 or fewer IFTs in calendar year 2007).

The actions by the small group have become less random, which suggests coordination and leads to fewer opportunities for cost savings due to offsets. The deleterious consequences of these activities in the TSP are the same as those which the SEC found occurring in mutual funds. Importantly, the clear intent of this activity—to ''beat'' the market indexes—fundamentally conflicts with statutory mandates that the Board provide passive investments which replicate the performance of market indexes.

Claim That Frequent Interfund Transfers Do Not Significantly Increase Costs Is Misleading

Commenters who oppose restrictions cite the very low TSP administrative expenses as evidence that their actions are harmless. Some concede additional costs, but argue that those additional costs are de minimus and only amount to $4 per year, per participant.

While we neither accept this number nor the process by which it is derived, the view that exceptional costs generated by 1 percent of participants should be viewed as inconsequential if they can be charged off to 100 percent of plan participants is troubling. The resulting small average cost obscures a significant problem, *i.e.*, the cost to other individual participants can be very high depending on how funds are invested on a particular day. This issue is discussed further below.

Moreover, the Agency rejects the argument that $16 million in trading costs is small. The entire budget for the TSP in 2007 was just $87 million. In the context of how the TSP fiduciaries run the TSP, this additional $16 million is a very large number.

Costs remain low in the TSP because the Board, exercising due diligence, looks behind broad averages. Indeed, diligent examination led to the discovery last summer of frequent interfund transfer activity by this very small but determined cohort of participants.

As noted above, individual TSP interfund transfers are not ''trades'' and transferees are not ''traders.'' However, frequent IFTs can and do generate expenses which include trading costs at the Fund level. The Agency and its asset manager endeavor to minimize trading costs through offsets, netting, and cost free ''cross-trading.'' Ultimately, if the asset manager must go to the market to buy or sell securities, the associated transaction costs (including commissions paid to the brokers, transfer taxes, and market impact) are borne by all participants in the Fund. These costs are not reflected in the highly publicized and very low TSP expense ratio. Further discussion of transaction costs is featured below.

Recommendation That Interfund Transfer Restrictions Apply Only to the I Fund Obscures Significant Abuse

A number of commenters acknowledge that the analysis presented by the Agency staff makes a compelling case to restrict interfund transfers in the I Fund. However, they argue that the analysis is not as compelling for the other TSP funds. The Agency has decided to apply the restrictions to all TSP offerings for two reasons:

First, the Agency's analysis does demonstrate measurable and growing adverse effects of frequent IFT activity in the S Fund. Moreover, since the analysis was performed, interfund activity in the F Fund increased as well.

Second, the G Fund has been subjected to a frequent transfer/market timing practice that is particularly insidious.

The G Fund is invested in specially-issued Treasury securities which provide a fixed rate of return established monthly. It is considered the TSP ''stable value'' fund, and is especially important to those cautious investors who seek security of principle and interest.

Some of the frequent interfund transferors have determined that by making one-day round trips in and out of the G Fund three to five times each month, they are able to effectively collect a full month's worth of G Fund earnings for just three to five days of actual G Fund investment. The windfall they secure comes at the direct expense of long-term G Fund investors who never anticipated that their safe retirement investment would be subjected to such mercenary treatment by their fellow TSP participants.

Practitioners visit a Web site in order to compare notes and calculations to assist each other in the execution of this scheme. They congregate at a message board which they have aptly titled ''G Fund Payday.'' Indeed, like ghost workers, these individuals only show up in the G Fund on the days when their calculations show that G Fund shares will increase in value. With a finite amount of earnings to be allocated, these individuals unquestionably dilute G Fund value at the expense of long-term investors.

This indefensible practice will be severely curtailed by the limit on interfund transfers. Additionally, the Agency will make a structural change beyond the purview of this rulemaking which will totally eradicate this particularly abusive form of frequent interfund transfer activity.

Union Comments

The Agency received three comments from Federal employees' unions. All acknowledged that frequent IFT activity is detrimental to the performance of the funds and that some action to restrict it is necessary.

One union supports the regulation as written.

One union commented that changes that have already been made address the frequent transfer problem and no further changes are needed. This union is referring to the interim regulation implemented by the TSP in January 2008, whereby the Executive Director identified 3,775 participants who were making excessive IFT requests, thus driving up costs for the participants who are using the TSP in the way it was intended, as a long-term retirement vehicle. Letters were sent to those participants requesting that they voluntarily restrict their IFTs to fewer than four in the month of February. The letter noted that, if the participant did not voluntarily comply, s(he) could be limited to making IFT requests by mail only. This limitation would remain in effect until the Agency implemented structural changes that would automatically apply to all participants.

Thus, the Agency's actions so far were only approved as a temporary measure, to deal with an immediate problem, until the longer-term solution could be put in place. It was an extremely labor-intensive process to identify these individuals, notify them by mail,

identify those who did not voluntarily comply, send them certified letters, restrict their online access, and handle their appeals.

Additionally, in all fairness to those individuals, the Agency would have to continue to apply that same labor-intensive process to all participants on a monthly basis.

With this final regulation, the Agency will implement a structural, automated process. While the union asserted that the interim measure was less ''Draconian'' than the proposed regulation, the Agency sees it as the opposite. Under the interim regulation, affected participants must submit IFT requests by mail and, as the Agency processes mail requests in the order received (not necessarily in the order mailed), participants have reduced control over what order their IFTs are executed. (One participant commented against the union proposal and noted that the interim regulation is ''Draconian.'')

This union also suggested that if a change is necessary, it should be ''to allow two transfers per month and after two transfers (if other than the G Fund), attach a fee for servicing the transfer.'' ''While it may be 'impossible to correctly assign the exact costs,' we can follow the leads of other such funds in arriving at a figure.''

In its research, the TSP found no mutual fund or defined contribution plan which allows participants to make a certain number of free transfers and then charges a fee for additional transfers. In fact, fund managers who use trading limitations and fees, do so as a double deterrent, not as a way to accommodate more transfer activity. In recommending this approach at an ETAC meeting, the union noted that TIAA–CREF pursued a similar policy. The Agency contacted TIAA–CREF, and its policy is: A participant who transfers from any fund, transfers back, and then sells it within 60 days may not repurchase that fund for 90 days and, if the transaction involves the international (similar to I Fund), high yield, or small-cap (similar to S Fund) funds, a 2 percent fee is assessed. The TSP regulation is far less restrictive.

The TSP also looked to Vanguard, the largest mutual fund index manager in the country. Holders who redeem shares in any Vanguard mutual fund must wait 60 days before repurchase. For some funds, including the fund that is similar to the TSP's I Fund, if the shareholder redeems a fund that has not been held for 60 days, the shareholder cannot repurchase the fund for 60 days, *and* must pay a redemption fee, which would be 2 percent for the international fund. Again, the TSP regulation is far less restrictive.

The third union suggested two proposals. The first was addressed in the preceding paragraph. Alternatively, it proposed four instead of two unrestricted IFTs per month. TSP studies showed that allowing four IFTs per month would not result in any meaningful reduction in the dollar amount of the daily trades. Allowing three IFTs per month would result in a 31 percent reduction in the dollar value and two per month would result in a 53 percent reduction. Thus, the TSP is expecting a reduction in dollar value of between 31 percent and 53 percent, after factoring in some activity related to unlimited transfers to the safe harbor of the G Fund. TSP research has shown that less than 1 percent of participants make more than 12 IFTs per year. Therefore, the regulation will not affect 99 percent of participants. It will allow participants to rebalance their accounts twice per month, which, in the view of the Plan's two investment consultants, is more than adequate.

Participant Comments

Support for Proposed Regulation

Thirty participants supported the regulation.

Opposition to Proposed Regulation

Some participants suggested there should be a certain number of ''free'' IFTs per month and then a fee per transaction. This proposal was addressed under the union comments discussed above.

Many participants commented that TSP expenses are already very low or that costs are going down. Some noted that TSP Funds are already outperforming their underlying indexes.

TSP expenses are very low. The TSP's enabling legislation requires the Board to develop investment policies which provide for low administrative costs. 5 U.S.C. 8475. Due to efforts by the Board, the net expense ratio for the TSP Funds declined to 1.5 (0.00015%) basis points last year.

However, the Funds also incur transaction costs, which are directly related to the dollar amount of IFTs requested by participants. These transaction costs are investment expenses that reduce investment income *before* deductions for administrative expenses and *are not* included in the expense ratio.

TSP net administrative expenses in 2007 were reduced to $31,392,286. However, costs from trading activity were an additional $13,880,098. Although more than 99 percent of participants made 12 or fewer IFTs last year, all participants shared the full cost of executing the interfund transfers generated by those who made numerous IFTs.

Numerous IFTs increase the dollar amounts of the orders that are given to the investment manager on a daily basis. The investment manager must therefore hold more cash to meet potential redemptions, leading to a greater chance of differences in performance from the indexes tracked by the funds. This difference (tracking error) can be positive or negative, but the TSP is charged by statute to keep this tracking error as low as possible since the funds must, by law, ''replicate'' their respective indexes. 5 U.S.C. 8438. It is indisputable that reducing the dollar amount of IFTs will lower transaction costs and the amount of cash the investment manager must hold and will, therefore, reduce tracking error.

Several participants noted that ''there is no problem;'' that trading costs are going down; that trading costs the average participant $3, $3.55, $3.56, $4, or $4.60. They asked ''Why does it cost $240 to trade a $300,000 account?'' ''Why can't you determine the exact cost and charge participants accordingly?''

The TSP has avoided using averages when averaging can obscure important distinctions. For example, over the years, some have suggested that the Agency develop an average cost per participant. One could devise a simple calculation, i.e., in 2007, net administrative expenses at approximately $32 million spread over approximately four million participants would yield an average annual cost of $8 per participant.

However, this is misleading because costs are borne pro-rata, and increase based on account size. So in order to be precise, the Agency expresses costs in terms of basis points. Thus, with last year's net expense ratio of 1.5 basis points, a new participant with $1,000 on account can easily determine that his cost was 15 cents, while a veteran participant with $1 million on account can quickly know that her share of these expenses was $1,500.

With regard to IFTs, because there are several moving parts each day, an average would obscure important distinctions. For example, on August 16, 2007, participants redeemed 22,219,762 shares of the I Fund. The price they received was $22.48 based on a 4 p.m. market pricing. When the securities were sold at the opening of the foreign markets later that evening and the following morning, they were sold for $9,554,497 less than the prices used to determine the $22.48 share price. This

equates to a $0.43 per share trading cost. That is, if the Agency could have determined this in advance, the share price would have been only $22.05. Instead, the $9,554,497 difference was charged to the remaining holders of the I Fund. That is in one DAY, not in one year.

Each day is unique, and the timing of participants' redemptions affects how much of the cost is borne by any given participant. A participant who would have redeemed the day before would not have been impacted at all by this transaction. One who transferred funds into the I Fund just before August 16 and transferred out just after would have experienced the full effect.

On August 16, almost half of the dollar amount of the trade was from participants who were requesting frequent IFTs. The Agency knows from its analysis that a large number of the participants who make frequent interfund transfers were moving $250,000 or more. Each participant who redeemed $250,000 on that day would have sold 11,121 shares, and therefore would have made *an extra $4,782.* (11,121 shares sold multiplied by $0.43 per share trading cost.) *These ''extra'' funds did not come from the market. Rather, they came from the accounts of other participants who remained in the I Fund.* When examined this way, it becomes clear why frequent IFTers would prefer to express this cost as an annual average spread over all participants.

Additionally, because the investment manager's liquidity pool had been depleted on August 16, $452 million of that trade settled on August 21 instead of August 17. That cost the G Fund $235,000 in foregone interest.

The Agency also cannot measure the cost to participants that results from increased tracking error because the investment manager has to keep a larger liquidity pool to meet frequent redemptions.

Every day is different, and different participants are impacted in different ways depending on the timing of their interfund transfer activity. Stating an average cost per participant would be misleading. The goal of this regulation is to reduce IFT activity in order to control the costs borne by the other participants, costs which are different for every participant depending on what days they may be invested in, or not invested in, any particular fund and that are impossible to determine in advance.

Several participants noted that money could be saved by eliminating mailed IFT confirmations and that the DVD for the L Funds was very expensive. Those costs are reflected in the already low expense ratio, which is assigned pro rata to all TSP participants. The trading expenses are not borne pro rata. In fact, a participant, who transfers out of a fund on a day when the cost to complete that trade is very high, bears none of the cost of that trade, while those who remain in the fund bear it all. It is the inequity of the allocation of the trading expenses which the TSP seeks to address, and which, as discussed in the proposed regulation (73 FR 12667, March 10, 2008), the SEC has identified as a problem for mutual funds.

Several participants said (incorrectly) that the L Funds are responsible for the transactions costs and that these funds should also be limited. The dollar amount of trade activity attributable to the L Funds, especially when compared to the dollar amount of trading activity attributable to participants making frequent IFT requests, is very small. For example, in the I Fund, for September and October 2007, the average daily dollar amount attributable to the L Funds' rebalancing accounted for just 7 percent of the total daily trade, while the average daily dollar amount attributable to those making frequent IFTs (defined in this instance as participants who made IFTs into or out of the I Fund eight or more times in the prior 60 days) was 63 percent. The impact of the L Funds' rebalancing is demonstrably minimal. The Agency monitors the L Funds, as it does all its funds, and, in the unlikely event that the dollar volume of the L Funds' rebalancing becomes costly, the Agency can take steps to reduce the frequency or amount of the rebalancings.

Many participants requested that a fee be charged instead of limiting the number of IFT requests. Some of these participants recommended a ''$10 flat fee.'' Others noted that the Agency charges a fee for loans, and therefore, should be able to charge a fee for interfund IFTs. This comment was addressed in the proposed regulation as explained below:

Many fund families charge redemption fees for shares which are redeemed within 30, 60, or 90 days of purchase. T. Rowe Price, for example, levies fees on 27 funds, including a 2 percent redemption fee on shares of its International Index Fund (similar to the I Fund) and a 0.5 percent fee on shares of its Equity Index 500 (similar to the C Fund) and Extended Equity Market Index Funds (similar to the S Fund), if they are sold within 90 days of purchase. TIAA–CREF (with $400 billion of assets under management and 3 million participants) charges a redemption fee of 2 percent on shares of its International Equity, International Equity Index, High Yield II, Small-Cap Equity, Small-Cap Growth Index, Small-Cap Value Index or Small-Cap Blend Index Funds redeemed within 60 days of purchase. We noted particularly that the fee is a percentage of the dollar amount transacted, not a flat processing charge.

When brokerage firms charge $10 to execute a stock trade, they know how much it costs them to make that transaction. Mutual fund managers (and the TSP) cannot determine the exact amount of costs to the plan from IFT activity for the following reasons. First, each day, a price for each fund is determined based on closing stock prices for that day. However, the fund manager does not execute every stock trade at that closing price. Any difference is market impact and is charged or credited to the fund, thus impacting the returns of the long-term holders. Second, to accommodate the large trades which result from frequent IFT activity, managers must keep a larger liquidity pool, which causes performance to deviate from that of the index. Lastly, for the TSP, when the liquidity pool is depleted as a result of a number of large trades in a row, cash due to the TSP is not received for up to three days, costing participants foregone interest. None of these three costs is calculable in advance, and all three are different every single day. Because it is impossible to determine how much to charge for each transaction, mutual fund families assess a percentage of the dollar amount transacted, which is then credited back to the Fund.

Many fund families employ trading restrictions similar to Vanguard's whereby an investor may not repurchase any fund within 60 days after a redemption.

We would also note that both TIAA–CREF and Vanguard, among others, use a double-barreled approach by charging a fee on top of the trading restrictions for some funds. For example, if an investor sells the Vanguard Developed Markets Index Fund (similar to the TSP's I Fund) within 60 days of purchasing it, that investor is charged a 2 percent fee and cannot repurchase the fund for 60 days.

In developing its recommendation, the Agency chose not to pursue redemption fees because it is impossible to correctly assign the exact costs to those who are making IFTs. Additionally, imposing a percentage fee would deny our participants the ability to go to the safe harbor of the G Fund at any time for no charge. The Agency considers that capability to be of paramount importance. A fee-based system would especially punish an

infrequent trader who may wish to redeem within 30, 60, or 90 days (depending on the policy) because the market is declining. In this situation, the participant could face losing 2 percent of his/her investment in addition to the market decline, a worst case scenario.

The FRTIB is implementing a procedure to reduce costs to participants. The SEC recommends that all mutual funds take such actions, and according to a 2007 study by Hewitt and Associates, 73 percent of defined contribution plans have adopted policies designed to minimize transaction activities in their funds.

Several participants expressed wanting more than two (e.g., three, four, or more) IFTs per month. Others noted that the Agency should gradually implement its policy (e.g., have a ''trial period'') and start with a limit greater than two. Further, several participants asked ''why two'' trades and stated that the number seemed ''arbitrary.'' According to data compiled by the Agency, limits of four IFTs per month will have very little impact on the dollar volume of daily trades, three IFTs would reduce volume by just 31 percent while two IFTs would reduce volume by approximately half. The Funds in the Plan are index funds. Therefore, the Agency examined the trading policies of the largest index fund manager, Vanguard, and of numerous other mutual fund managers and defined contribution plans. An investor in any Vanguard fund who redeems shares of a Vanguard fund may not purchase any shares of that fund for 60 days. Additionally, in Vanguard's Developed Markets Index Fund (similar to the TSP's I Fund), if the redeemed shares have not been held for 60 days, the investor is charged a 2 percent redemption fee. Thus the approach of two IFTs per month, with unlimited redemptions to the G Fund, is demonstrably more liberal than that provided by the largest provider of index funds.

Some participants expressed a desire to have 24 (or, as suggested by one participant, 12) trades available across the year, as opposed to two per month. The purpose of the regulation is to reduce costs to TSP participants. Transaction costs are highest when the markets are the most volatile. The Agency is seeking to minimize the dollar volume of trades, especially during those times. TIAA–CREF, a very large defined contribution plan provider, tried allowing a certain number of transactions per year and found that it experienced a ''bunching'' of trades during volatile times, precisely the opposite of the intention of the transfer restrictions. That provider then amended its policy to read, ''A participant who transfers from ANY fund, transfers back, and then sells it within 60 days may not repurchase that fund for 90 days,'' *and,* if the transaction involves the international, high yield, or small-cap funds, a 2 percent fee will be assessed.

Some participants commented that it is their money in the TSP and, therefore, the Agency can't limit their activities. Some contend that the policy will prevent them from maximizing their retirement income. Others stated that the TSP is changing the rules mid-course. Some felt it is unfair to younger TSP participants, they assert, who need to be more aggressive; some felt it was unfair to TSP participants who are close to retirement and, they assert, need to be more aggressive. The SEC and 73 percent of defined contribution plans (according to the 2007 Hewitt Associates study) have acknowledged that market timing (frequent IFT) activity is harmful to the performance of funds. The SEC found that this activity ''dilutes'' value for all investors, and has mandated that mutual funds take action to discourage or eliminate such activity. Additionally, 73 percent of defined contribution plans have taken actions to reduce this activity. The Agency's research has indicated that its proposed limits are more liberal than those of many mutual funds and defined contribution plans. For example, the Thrift Plan for the Employees of the Federal Reserve System does not allow participants to redeem shares of any fund for 14 days after purchase.

Several participants commented that the proposed change would prevent them from engaging in dollar cost averaging. Dollar cost averaging is spending a fixed amount at regular intervals (e.g., monthly) on a particular investment *regardless of share price.* Dollar cost averaging is, by definition, not driven by the level of the market. A participant can most certainly employ a systematic investment plan, making IFTs every two weeks regardless of the performance of the market, just as dollar cost averaging is intended. In fact, this would essentially be the same frequency of dollar cost averaging into the TSP via withholding from biweekly paychecks.

Several participants stated that, if the Agency changes its IFT policy, they should be allowed to take their money out of the Plan. Congress has established the circumstances under which a participant may withdraw money from his/her account. According to a survey by Hewitt Associates, 73 percent of defined contribution plans have implemented policies to discourage market timing activities because such activities are detrimental to the performance of the plans. None of the affected participants was permitted a special withdrawal of funds from these plans. Further, the Agency is confident that its proposal is more liberal than most and furthers the TSP's status as a world class retirement vehicle.

Some participants wrote that the new rule should apply to new participants only; current participants should remain under current rules. The Agency's objective in promulgating this regulation was to reduce the impact of frequent IFT activity. Allowing current participants to rebalance using current rules would likely mean that IFT requests would remain at high levels. Thus, this would not reduce the impact of market trading activities and would also be very difficult to program and administer.

Several participants stated that there is no evidence that frequent IFT activity in the C, S, and F Funds has any measurable impact on participants as a whole and that the Agency should restrict only the I Fund. Further still, a handful of participants stated that frequent IFT activity benefits shareholders. While the I Fund transaction costs were the highest, at $16.5 million, the F and C Funds incurred measurable costs of $1.1 million and $605,000, respectively, in 2007. Moreover, the Agency is committed to eradicating the abusive frequent transfer activity in and out of the G fund by which some participants extract earnings which rightfully belong to long-term G fund investors.

As noted above, the TSP cannot determine the exact amount of costs to the plan from IFT activity for the following reasons. First, each day, a price for each fund is determined based on closing stock prices for that day. However, the fund manager does not execute every stock trade at that closing price. Any difference is market impact and is *charged or credited* to the fund, thus impacting the returns of the long-term holders. Second, to accommodate the large trades which result from frequent IFT activity, managers must keep a larger liquidity pool, which causes performance to deviate from that of the index. Lastly, for the TSP, when the liquidity pool is depleted as a result of a number of large trades in a row, cash due to the TSP is not received for up to three days, costing participants foregone interest. None of those three costs is calculable in advance, and all three are different every single day.

Note from above that trading costs may actually be credits. In fact, trading costs in the S Fund in 2007 did benefit

the Fund by $4.3 million. However, it is extremely important to highlight that that number could just as easily have been a cost. There is no way for the Agency to control the size of such costs or whether they are costs versus credits. It can only work to minimize the exposure of the TSP to the potential costs by reducing the dollar amount of the trade. The manager of the S Fund did need to increase the liquidity pool for the Fund, and there were several times during the year that the TSP and its participants lost interest income because cash payment was delayed. Due to these uncertainties, the restrictions must be applied to the TSP Funds as a whole.

Many participants suggested changing the time that the I Fund is priced. By statute, the I Fund must be designed to replicate the performance of an international index (5 U.S.C. 8438(b)(4)(B)). The index is priced at 4 p.m. Eastern Time. Therefore, the I Fund must be priced at 4 p.m.

Some participants commented that fair valuation of the I Fund is increasing costs. On the contrary, costs would be even higher without fair valuation. All of the TSP stock funds are priced at 4 p.m. Eastern Time. For the C and S Funds, the prices used are the 4 p.m. closing prices of the stocks. The I Fund comprises international stocks in countries such as Japan and England. Although the I Fund is priced at 4 p.m., the Japanese market actually closed 13 hours earlier, at 3 a.m. Eastern Time, and the British market closed four and half hours earlier at 11:30 a.m. On most days, those closing prices are used to price the I Fund. However, in times of market turbulence, it can become obvious that if the securities had still been trading at 4 p.m. Eastern Time, the prices would be materially different. Fair value pricing is a process (recommended by the SEC) to update those ''stale'' prices to make them a more accurate reflection of the current market environment.

When the investment manager receives the daily trade order from the TSP, the foreign markets are closed. The investment manager cannot process the order until the markets reopen, and any differences in the opening stock prices from the closing stock prices (market impact) are charged back to the I Fund, affecting its performance. Since fair valuation updates the prices, it brings them closer to where the trades are actually executed, thereby lowering the cost to the Fund. Without fair valuation, the exposure to market impact costs would be greater. Fair valuation is an estimate of prices at 4 p.m. It is not meant to be an estimation of where the foreign markets will open.

Some participants said it was misleading to compare the TSP to a mutual fund. Others said TSP funds are more like electronically (the Agency assumes the participant meant exchange) traded indexed funds (or ETFs) that are traded through brokers. Others noted the TSP should not be compared to private sector funds because they have active managers. While the TSP Funds are not mutual funds, they are invested in collective trust funds (CTFs) which are virtually identical to mutual funds in the way they are priced and the way that trades are executed. Collective trusts differ from mutual funds in the following ways. In general, only eligible, tax-exempt assets such as a 401(k) or defined benefit plan can invest in a CTF. CTFs are regulated by the Comptroller of the Currency, not the SEC and Financial Industry Regulatory Authority (FINRA) (which oversee mutual funds). CTFs do not need to provide prospectuses to investors. Management fees tend to be lower with CTFs. This is in part because CTFs, as the preferred institutional account structure, can offer significant scale advantages to the investment manager. CTFs offer absolute fee transparency. There is a single management fee, unlike the multiple layers of fees associated with mutual funds.

There is a marked trend towards using CTFs in the 401(k) industry, particularly among large plans. Furthermore, low-cost transparent vehicles are entirely consistent with the spirit of the Pension Protection Act of 2006. Unlike commingled funds and mutual funds, ETFs can be bought or sold on an exchange throughout the trading day. They can also be shorted. The TSP Funds have an entirely different structure from that of ETFs. While it is true that ETFs track indexes, the first actively-managed ETF was introduced on March 25, 2008. While it is true that there are actively-managed mutual funds, there are also passively-managed mutual funds which track index performance. Like mutual funds, the TSP Funds are priced once per day, and unlike ETFs, they are not traded on an exchange throughout the day.

Hence, the Agency looks to 401(k) plans, the SEC, and the best practices of mutual fund managers when developing policy. The Agency cited figures from passively-managed index funds whenever possible since these most closely resemble the TSP.

Some participants commented that individual retirement accounts (IRAs) do not have trading restrictions. The TSP is not an IRA and is not similar in structure to an IRA.

The Agency received a number of comments about the rulemaking process. Some participants stated that the Agency's notice of proposed rulemaking was deficient because it stated it would not affect either small business entities or members of the uniformed services. This comment is unfounded. The Executive Director certified that ''this regulation will not have a significant economic impact on a substantial number of small entities'' but that it could affect ''members of the uniformed services.'' 73 FR 12668, March 10, 2008. He further certified the regulation would affect ''an insubstantial number of financial advisors who may provide advice in connection with the Fund.'' Id.

Some participants asked ''aren't individual shareholders considered small entities.'' They are not. Small entities are defined at 5 U.S.C. 601(6) as a ''small business,'' a ''small organization,'' and a ''small governmental jurisdiction.''

Some participants commented that the Agency's notice of proposed rulemaking was deficient because the proposed regulation is a major rule. A major rule is one that is likely to result in: (A) An annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. 5 U.S.C. 804(2). The proposed rule is not a major rule under this definition.

Some participants asked how the Agency could impose IFT restrictions on some participants when the regulation was still proposed. The interim IFT restrictions are based on a regulation which took effect on January 7, 2008. 72 FR 73251, December 27, 2007. Other participants asked how the interim regulation could be enforced against frequent requestors of IFTs when the comments from the interim regulation had not been posted or considered. The Agency's Executive Director did consider comments submitted in connection with the interim regulation. Additionally, the proposed regulation notes ''[c]omments submitted in response to the interim regulation need not be resubmitted; they will be considered as part of this rulemaking process.'' 73 FR 12665,

March 10, 2008. The Agency is not required to post comments in connection with an interim regulation.

One participant commented that the proposed regulation should be published at ''regulations.gov.'' The proposed regulation was published at *www.regulations.gov* and also published at *www.gpoaccess.gov, www.tsp.gov,* and *www.frtib.gov.* This participant also noted that the Agency should participate in the Federal Docket Management System (FDMS) functionality provided at regulations.gov. Because the Agency is cost-conscience (Agency research indicates a fee may be associated with the FDMS starting in 2010) and also because the Agency publishes regulations relatively infrequently, the Agency has not analyzed whether this optional functionality would benefit the Agency. However, the Agency may inquire into this functionality in the future. Regardless of these issues, as each participant was individually notified (in the Executive Director's February 2008 letter) regarding this regulation change, and as the Agency received hundreds of comments, the Agency does not believe participating in this optional functionality impacted the rulemaking process.

Some participants commented that the Agency sent out its regulation during a quiet time so that no one would notice. This comment likely refers to the Agency's interim regulation, which was published in the **Federal Register** on December 27, 2007. On November 19, 2007, at an open Board meeting, the Agency's Board heard a presentation from the Agency's Chief Investment Officer. In response, the Board approved a policy to limit interfund transfers. The Board's decision was the subject of extensive press coverage. Additionally, not long after this November 2007 meeting, the Chief Investment Officer's PowerPoint presentation and policy memorandum and the minutes of this meeting were posted on the Agency's Web site. Further, on November 27, 2007, links to additional information about the interfund transfer restrictions were prominently displayed on the TSP website. Before adopting the Board's policy, the Agency sought the advice of the Employee Thrift Advisory Counsel (ETAC) and on December 19, 2007 held an open meeting with the representatives to discuss the proposed approach of using an initial interim regulation followed by a structural limit. This meeting was also subject to extensive press coverage. As soon as practicable after the ETAC meeting, the Agency submitted its interim regulation to the **Federal Register** which published the interim rule on December 27, 2007. The Agency also forwarded a copy of the interim rule to the President of the Senate, the Speaker of the House of Representatives, the Government Accountability Office, and the U.S. Small Business Administration. Continuing with this spirit of openness, the Agency's Executive Director notified every participant about the proposed regulation in his letter that accompanied the annual participant statement mailed in February of 2008.

Some participants questioned whether this regulation was consistent with the Board's fiduciary obligation. The Board's IFT policy decision is completely consistent with, and, more accurately, mandated by, its fiduciary duty. By law, the Board must adopt investment policies that provide for low administrative costs. 5 U.S.C. 8475. The Board's IFT decision helps it to keep costs low.

A few participants stated that the costs explained in the proposed regulation were not persuasive and suggested that the Agency hire an outside company to do an audit. Some participants also challenged the experience and motivations of the Agency's Chief Investment Officer, Tracey Ray. Ms. Ray graduated summa cum laude from Washington College. She was immediately hired by Merrill Lynch and worked there as an account executive for six years, providing investment advice about stocks, bonds, options and mutual funds to clients. After her tenure at Merrill Lynch, she spent 16 years in the investment department of USF&G Corporation, a Baltimore-based *Fortune 500* insurance company, which was purchased by St. Paul Companies in 1998. While there, she served as a Vice President, portfolio manager and trader for stock, bond, option and short-term cash portfolios, and was responsible for the derivatives program. She also completed the program to earn the designation of Chartered Financial Analyst. She left St. Paul Companies in 2001 to take the position of Deputy Chief Investment Officer for the State of Maryland Pension Fund, where she spent four years evaluating, hiring and firing active money managers until she was hired by the Thrift Savings Plan in 2005. She also serves on the Advisory Committee for the Virginia Retirement System's Defined Contribution Plans.

While Ms. Ray's credentials are impeccable, and her study of the problem facing the TSP was diligent, thoughtful, and thorough, it is important to note that the decision to move forward with IFT restrictions was made by the Board members, after careful consideration and acting in their capacity as fiduciaries for the TSP. The Agency, in its notice of proposed rulemaking, explained in great detail the adverse effects of frequent IFT activity. The Agency also made available, on the TSP Web site, the memorandum and presentation that led its Board to adopt such a policy. Since these comments neither critique the Agency's methodology nor make substantive challenges to the accuracy of its conclusion, the Agency determined it would not be prudent to spend TSP money to have an outside auditor verify its determinations.

Several participants wrote that, as of March 31, the Agency will be effectively discriminating against a select group of TSP members and that all TSP members should be treated equally under the current TSP rules. Others wrote that it discriminated against members of the military (many of whom are stationed overseas where mail service takes longer). This comment is directed at the interim regulation which allowed the Executive Director to require those participants who engaged in excessive trading to request IFTs by mail only. Pursuant to the interim regulation, the Agency analyzed the trading activity of all participants in October, November, and December 2007. In January, the Agency sent a letter to all participants who made more than three IFTs each month. The letter warned that if they made more than three IFTs in February, or the following months, the Agency could require them to request IFTs by mail only. Thus, it is not accurate to state that the Agency is discriminating against a select group. The Agency scanned the IFT activity of all participants and warned those who made four or more IFTs in three consecutive months that they must stop. Only those participants who failed to heed the warning have been restricted. Although the Investment Allocation form used for IFTs is not generally available on the TSP Web site, restricted participants are able to access it via the TSP Web site; the Agency has also mailed a copy of the IFT transfer form to participants and they can reproduce it as necessary (or call the ThriftLine to obtain more copies).

Several participants mentioned that the proposed regulation is against the Agency's policy of encouraging participants to make their own retirement decisions. For example, some characterized the regulation as ''paternalistic'' or ''patronizing.'' Further, several participants stated that this move takes away employees' control over their retirement and cited

the Thrift Savings Plan Open Elections Act of 2004 (Act). This Act allowed Federal employees and members of the uniformed services to begin or alter their TSP contributions at any time instead of limiting such changes to biannual open-season periods. The Act did not alter the requirement in 5 U.S.C. 8438(d) that the Executive Director prescribe regulations allowing at least two interfund transfers per year. This regulation affords participants many more opportunities to make IFTs than the minimum Congress determined necessary and, further, does not change the Agency's continuing policy of educating its participants so that they can control their own retirement.

Several participants commented that the proposed regulation was contrary to an existing Federal regulation. Section 1601.32(b) of title 5, Code of Federal Regulations does currently provide that there is no limit on the number of IFT requests that may be made by a participant. In 2003, the Executive Director published this regulation pursuant to his authority to prescribe such regulations as may be necessary to administer the Thrift Savings Plan. 5 U.S.C. 8474(b)(5). The Executive Director has determined that, in order to effectively administer the TSP, it is necessary to amend this regulation in order to address the impact of frequent transfers on the TSP.

Several participants stated that the TSP spent millions of dollars upgrading its systems to handle daily interfund transfers, and wasting that investment is inconsistent with the Board's fiduciary duty. The Agency did not move to a daily-valued record-keeping platform in order to facilitate frequent IFTs. This upgrade improved efficiency by spreading the volume of IFTs over the course of a full month, rather than requiring a one-time ''batch-process'' at month's end. This upgrade also eliminated the previous 15-day waiting period between IFT requests and execution. The daily-valued platform also enabled participants to have immediate account information access on the Web site and reduced paper statement costs (thus saving the participants over $3 million per year). Thus, the enhancement to the record-keeping system was not intended to facilitate frequent IFTs. In fact, the Agency's Executive Director and Board have expressed concern over the potential for misuse of the daily-valued platform both before and since its implementation.

In 2004, Agency staff reviewed the TSP's IFT records to determine if the newly enhanced system was being misused. The level of frequent IFT activity was de minimus at the time and there was no need to put restrictions in place.

Since fielding the daily-valued platform, the Agency has added toll-free telephone service, reduced processing and transaction timing, added dual/simultaneous call centers with extended hours, enhanced participant education materials, added a back-up state-of-the-art data center, and implemented the lifecycle funds. During this four-year period, the Agency's budget actually decreased on an annual basis.

In short, the Board takes its fiduciary duty very seriously. It has improved service while decreasing costs. It has adopted this IFT policy because the costs associated with frequent transfers have harmed TSP participants. By law, the Board must adopt investment policies that provide for low administrative costs. 5 U.S.C. 8475. The Board's IFT policy decision is completely consistent with this duty.

One participant wrote that the frequent transferors must be making money or else Congress would have stepped in to prevent these people from harming their retirement accounts. The Board, not Congress, has the statutory authority and duty to act solely in the interest of the Plan's participants and beneficiaries. 5 U.S.C. 8477(b)(1). Although the Agency advised the Congress of its plan to limit IFTs, Agency fiduciaries were solely responsible for this decision.

A participant asked if rebalancing a portfolio which may include adjusting the balances of 10 funds constitutes a single IFT. The answer is yes.

A participant suggested that the TSP ''should buy the EFA index which can be bought and sold with a low fee.'' The Agency believes this participant meant the exchange-traded fund (ETF) which tracks the Europe, Australia and Far East (EAFE) Index and has a stock symbol ''EFA.'' EFA is actually not a low cost alternative as it has an expense ratio of 34 basis points versus the TSP's expense ratio of 1.5 basis points.

A participant noted that comparison to other funds is ''meaningless'' as the TSP had unlimited transfers. Other funds also had unlimited transfers prior to 73 percent of them implementing curbs to reduce market timing activity.

A participant noted that Barclay's should make more use of EAFE futures to offset I Fund transactions. Barclays does make use of EAFE and country futures to offset a portion of I Fund transactions. The same participant noted that the Agency should balance out IFT requests to a single order to buy or sell. The Agency does that. That same participant noted that the Agency needs to evaluate whether total I Fund transactions in 2007 produced net positive or net negative trading costs, on what days and in what amounts. The Agency has that information for each day. The total cost for 2007 was $16,513,454.

Several participants commented they thought the G Fund should not be favored because it is not a good investment and does not keep up with inflation. The Agency is allowing unlimited redemptions to the G Fund to provide a safe harbor for participants who may wish to exit the stock market during times of financial distress. The Agency would also like to note that, by virtue of the fact that the G Fund rate adjusts every month and is based on longer-term Treasury rates, the G Fund is an inflation hedge because interest rates generally rise when inflation rises.

Several participants commented that the TSP should have more investment options. In 2006, the TSP hired an investment consultant to review the TSP's investment choices. The conclusion of that study was that participants were well served by the current fund lineup. The TSP will conduct similar reviews periodically in the future.

Some participants suggested that Agency comparisons to Fidelity, T. Rowe Price, and Vanguard (among others) are imperfect because these plans offer more diverse investment vehicles and that they are for-profit organizations. It is true that those fund families do offer more choices than the TSP, but defined contribution plans do not offer all available Fidelity, Vanguard, or T. Rowe Price funds. In 2006, the Board hired an investment consultant, Ennis Knupp and Associates, to review the plan. The consultant noted that 70 percent of defined contribution plans with more than 5,000 participants offer 15 or fewer investment options. Additionally, as cited before, over 73 percent of defined contribution plans have some type of trading restrictions. Mutual fund families are for-profit organizations, but all redemption fees are credited back to the funds, not to the profits of the companies. Additionally, why would a profit-oriented company, such as Vanguard, prohibit shareholders from repurchasing funds for 60 days unless it truly believed that market timing was detrimental to fund performance? It does so because the company is attempting to maximize performance of the funds by minimizing costs due to market timing activity.

Based on several comments, there seems to be a misconception that when a participant requests an IFT that his or

her entire account is sold and repurchased to reflect the new percentages. In fact only the difference between the original percentage and the new percentage is traded, and that is netted against all other participant activity. The investment manager is then given a single dollar amount for each fund each day.

Some participants commented that there is a problem with the contract with Barclays, the investment manager, or that the fund should be managed by a firm better able to control the fees. The Barclays contract is extremely competitive. All of the costs related to the administration of that contract are included in the TSP's 1.5 basis point net administrative expense ratio. Every manager, who participated in the request for proposal process to manage the Funds of the TSP, charges trading costs back to their clients' funds, just as Barclays does for the TSP Funds.

A participant noted that he could not find information on the Vanguard Web site that Vanguard funds could not be repurchased within 60 days of redemption. On the site, in the search function, typing ''frequent trading policy'' will display that information.

The Agency appreciated the opportunity to review and respond to comments from participants who take an active interest in the TSP and wish to offer suggestions. The comment process allowed the Agency to address any misunderstandings about the proposed interfund transfer change, to learn if there are unanticipated legal or policy impediments to the proposed change, and to hear suggestions about how better to implement the proposed change. Although the comments received did not cause the Executive Director to make any changes to the proposed interfund transfer rule, he did carefully consider all comments received. Therefore, the Agency is publishing the proposed rule as final without change.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. It will affect only Thrift Savings Plan participants and beneficiaries. To the extent that limiting interfund transfers is necessary to curb excessive trading, very few, if any, ''small entities,'' as defined in 5 U.S.C. 601(6), will be affected by the final rule. This is because the Thrift Savings Plan is sponsored by the U.S. Government and because the interfund transfer limitations are likely to affect primarily Federal employees, members of the uniformed services, and an insubstantial number of financial advisors who may provide advice in connection with the TSP.

Paperwork Reduction Act

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

Unfunded Mandates Reform Act of 1995

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

Submission to Congress and the Government Accountability Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1601

Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, the Agency is amending 5 CFR chapter VI as follows:

PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS

■ 1. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

■ 2. Amend § 1601.32, by revising paragraph (b) to read as follows:

§ 1601.32 Timing and posting dates.

* * * * *

(b) *Limit.* There is no limit on the number of contribution allocation requests. A participant may make two unrestricted interfund transfers (account rebalancings) per account (e.g., civilian or uniformed services), per calendar month. An interfund transfer will count toward the monthly total on the date posted by the TSP and not on the date requested by a participant. After a participant has made two interfund transfers in a calendar month, the participant may make additional interfund transfers only into the G Fund until the first day of the next calendar month.

[FR Doc. E8–8957 Filed 4–23–08; 8:45 am]

BILLING CODE 6760–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–0367; FRL–8552–4]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Whitefish PM_{10} Nonattainment Area Control Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the Governor of Montana on June 26, 1997, and June 13, 2000. (Portions of the June 26, 1997 submittal were withdrawn by the Governor of Montana on February 8, 1999). These revisions contain an inventory of emissions for Whitefish and establish and require continuation of all control measures adopted and implemented for reductions of particulate aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) in order to attain the PM_{10} National Ambient Air Quality Standards (NAAQS) in Whitefish. Using the PM_{10} clean data areas approach, we are approving the control measures and the emissions inventory that were submitted as part of the PM_{10} nonattainment area SIP for Whitefish. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

DATES: This rule is effective on June 23, 2008 without further notice, unless EPA receives adverse comment by May 27, 2008. If adverse comment is 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–R08–OAR–2007–0367, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: dygowski.laurel@epa.gov* and *ostrand.laurie@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER**

INFORMATION CONTACT if you are faxing comments).

• *Mail:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2007–0367.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA Region 8, 1595 Wynkoop, Denver, CO 80202–1129, (303) 312–6144; *dygowski.laurel@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. General Information
II. Summary of SIP Revision
III. Analysis of Requirements to Use Clean Data Areas Approach
IV. Final Action
V. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or Montana mean the State of Montana, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Summary of SIP Revision

A. Background

The Whitefish area was designated nonattainment for PM_{10} and classified as moderate under section 107(d)(3) of the Clean Air Act on October 19, 1993 (see 58 FR 36908 (July 9, 1993), 58 FR 53886 (October 19, 1993), and 40 CFR 81.327 (Flathead County (part)). The Whitefish designation became effective on November 18, 1993. The air quality planning requirements for moderate PM_{10} nonattainment areas are set out in subparts 1 and 4 of Title I of the Act. Subpart 1 applies to nonattainment areas generally and subpart 4 applies to PM_{10} nonattainment areas. At times, subpart 1 and subpart 4 overlap or conflict. We have attempted to clarify the relationship among these provisions in guidance entitled the ''General Preamble'' (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)) and, as appropriate, in today's notice.

B. What Requirements Do States Need To Follow in Developing PM_{10} Nonattainment Area SIPs?

Our ''General Preamble'' describes our preliminary views on how we will

review SIPs and SIP revisions submitted under Title I of the Act, including State-submitted SIPs for moderate PM_{10} nonattainment areas (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). In this document, we are applying our interpretations considering the specific factual issues presented.

A State containing a moderate PM_{10} nonattainment area designated after the 1990 Amendments is normally required to submit several provisions within 18 months of the effective date of the designation. These provisions were due for the Whitefish area by May 18, 1995. They include an emissions inventory, control measures, an attainment demonstration, quantitative milestones for reasonable further progress (RFP), and contingency measures. Requirements for the control measures include: provisions to assure that reasonably available control measures (RACM), including reasonably available control technologies (RACT), shall be implemented no later than four years after designation, which was November 18, 1997 for Whitefish. However, under the PM_{10} clean data areas approach that we are proposing to use here, we are only proposing to require the control measures, the provisions for enforcing those measures, and the emissions inventory for Whitefish.

1. Clean Data Areas Approach

The air quality planning requirements for PM_{10} nonattainment areas are set out in subparts 1 and 4 of title I of the Act. EPA has issued a General Preamble [1] and Addendum to the General Preamble [2] describing our preliminary views on how the Agency intends to review state implementation plans (SIPs) submitted to meet the CAA's requirements for PM_{10} plans. These documents provide detailed discussions of our interpretation of the title I requirements.

In nonattainment areas where monitored data demonstrate that the NAAQS have already been achieved, EPA has determined that certain requirements of part D, subparts 1 and 2 of the Act do not apply. Therefore we do not require certain submissions for an area that has attained the NAAQS. These include reasonable further progress (RFP) requirements, attainment demonstrations, RACM, and contingency measures, because these provisions have the purpose of helping achieve attainment of the NAAQS.

This interpretation of the CAA is known as the Clean Data Policy and is the subject of two EPA memoranda. EPA also finalized the statutory interpretation set forth in the policy in a final rule, 40 CFR 51.918, as part of its ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2'' (Phase 2 Final Rule). See discussion in the preamble to the rule at 70 FR 71612, 71645–46 (November 29, 2005).

EPA believes that the legal bases set forth in detail in our Phase 2 Final rule, our May 10, 1995 memorandum from John S. Seitz, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' and our December 14, 2004 memorandum from Stephen D. Page entitled ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' are equally pertinent to the interpretation of provisions of subparts 1 and 4 applicable to PM_{10}. Our interpretation that an area that is attaining the standards is relieved of obligations to demonstrate RFP and to provide an attainment demonstration, RACM and contingency measures pursuant to part D of the CAA, pertains whether the standard is PM_{10}, ozone or $PM_{2.5}$ (see 71 FR 40954–40955).

If an area meets the following requirements, the state will no longer be required to develop an attainment demonstration, contingency measures or a RFP demonstration. The area must meet the following requirements:

(a) The area must be attaining the PM_{10} NAAQS with the three most recent years of quality-assured air quality data.

(b) The state must continue to operate an appropriate PM_{10} air quality monitoring network, in accordance with 40 CFR part 58, in order to verify the attainment status of the area.

(c) The control measures for the area, which were responsible for bringing the area into attainment, must be approved by EPA as meeting the CAA requirements for RACM/RACT.

(d) A PM_{10} emissions inventory must be completed for the area.

III. Analysis of Requirements to Use Clean Data Areas Approach

A. Attainment of the PM_{10} NAAQS

Whether an area has attained the PM_{10} NAAQS is based exclusively upon measured air quality levels over the most recent and complete three calendar year period (see 40 CFR part 50 and 40 CFR 50, appendix K). On November 1, 2001 (66 FR 55102), we published a final rulemaking action declaring that the Whitefish PM_{10} nonattainment area was in attainment of the PM_{10} standard based on 2003–2005 monitoring data and that the area had attained the standard by its attainment date. The applicable attainment date as required by the CAA for Whitefish was December 31, 2000. If you wish to obtain more information regarding our attainment determination, please see our November 1, 2001, **Federal Register** document.

To use the PM_{10} clean data areas approach, an area must be attaining with the three most recent years of quality assured data at the time of this notice. In this case, the three most recent years are 2003–2005. During the 2003–2005 period, data was collected at the Dead End monitoring station (AQS identification #30–029–0009). The regulatory requirement for data capture in 40 CFR part 50, Appendix K, is 75 percent on a quarterly basis. The 2003–2005 monitoring data shows no exceedances of either the 24-hour or annual PM_{10} NAAQS during this period, and data capture met the 75 percent criterion.

B. Continued Operation of PM_{10} Monitoring Network

The Montana Department of Environmental Quality (MDEQ) shall continue to operate its PM_{10} air quality monitoring network in accordance with 40 CFR, part 58, in order to verify the attainment status of the area. We approved Montana's state-wide air quality monitoring program on March 9, 1981 (see 46 FR 15686). This approval established the state and local air monitoring station (SLAMS) network, the maintenance requirements for the monitoring stations, and the method of data reporting and annual review for the stations. The stations are to monitor ambient levels of criteria pollutants (for which NAAQS have been established). All SLAMS are to be operated in accordance with the criteria established in 40 CFR 58, subpart B, and are to be sited according to 40 CFR 58, appendix E. Reference or equivalent monitors are to be used as defined in 40 CFR 50.1 and the quality assurance procedures are to be followed as outlined in 40 CFR 58, appendix A. On December 21, 1993 (see 58 FR 67324), we approved revisions to the state-wide monitoring SIP to update the existing monitoring SIP.

Monitoring in Whitefish for PM_{10} is currently performed at the Dead End

[1] ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992), as supplemented at 57 FR 18070 (April 28, 1992).

[2] ''State Implementation Plans for Serious PM_{10} Nonattainment Areas, and Attainment Date Waivers for PM_{10} Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).

monitoring station (AQS identification #30–029–0009). EPA Region VIII conducts periodic reviews of Montana's ambient air network, which includes the Whitefish site. Based on these reviews, our monitoring staff has approved this location of this monitoring station.

C. Control Measure Requirements

Moderate PM_{10} nonattainment areas, designated after the 1990 Amendments, must submit provisions to ensure that RACM is implemented no later than 4 years after designation, which was November 18, 1997 for Whitefish (see sections 172(c)(1) and 189(a)(1)(C) of the Act). The General Preamble contains a detailed discussion of our interpretation of the RACM requirements (see 57 FR 13539–13545 and 13560–13561).

The State should identify available control measures to make sure they are reasonable and that they meet the area's attainment needs, (see 57 FR 13540–13544). A State may reject an available control measure if it is technologically infeasible or unreasonably expensive. In addition, RACM doesn't require controls on emissions from sources that are insignificant (de minimis) and doesn't require an area to use all available control measures if it demonstrates timely attainment and if using additional controls wouldn't expedite attainment.

Whitefish Control Measures

The Whitefish PM_{10} Control Plan contains control measures for particulate emissions of fugitive dust that have been incorporated into the Flathead County Air Pollution Control Program. The measures adopted in the plan include control of fugitive dust from paved roads, parking lots, construction and demolition activities, and land clearing. In addition, the measures include requirements for street sweeping and flushing. Whitefish adopted the provisions for this control program as local regulations (Rule 701–707) and they were adopted as part of the Flathead County Air Pollution Control Program on June 24, 1997. In addition, the Flathead County Air Pollution Control Program contains county wide open burning regulations that are applicable to Whitefish. Each of the regulations specific to Whitefish are explained below.

Rule 701—Material To Be Used on Roads and Parking Lots—Standards

Rule 701 pertains to the types of sanding material that can be used for sanding roads and parking lots. This rule requires the application of sanding material with a material content passing a number 200 mesh screen to be no more than 4.0 percent oven dry weight and have a durability rating, as defined by the Montana Modified L.A. Abrasion test, of less than or equal to 9.0 percent wear loss.

Rule 702—Construction and Demolition Activity

The construction and demolition rule requires owners or operators of such activities to obtain a permit that describes the project and contains a dust control plan that constitutes RACT. RACT is the use of techniques to prevent the emission and/or airborne transport of dust and dirt from the site and includes the application of water or other liquid, limiting access to the site, securing loads, cleaning vehicles, and scheduling projects for optimum meteorological conditions.

Rule 703—Pavement of Roads Required and Rule 704—Pavement of Parking Lots Required

Rule 703 and Rule 704 require a plan and schedule of implementation to improve existing unpaved roads and parking lots by paving, routine application of dust suppressants, or other reasonable control measures, as determined in a compliance plan that must be filed with the Flathead County Health Department. In addition, the paving regulations require new streets, roads, or alleys that are greater than fifty feet in length and have an average projected traffic volume greater than 200 vehicles per day be paved. The rule also requires that new parking lots greater than 5,000 square feet, or with a parking capacity greater than fifteen vehicles, or with a traffic volume of more than fifty vehicles per day be paved.

Rule 705—Street Sweeping and Flushing

Rule 705 requires a prioritized street sweeping and flushing program that commences on the first working day after any streets become temporarily or permanently ice-free and temperatures are expected to remain above thirty-five degrees for a 24-hour period. Prioritized street sweeping and flushing applies during November through April. Streets with the highest traffic volume are cleaned first. During May through October, street sweeping and flushing occurs on an as needed basis.

Rule 706—Clearing of Land Greater than ¼ Acre in Size

The owner or operator of any land greater than 0.25 acre in size that has been cleared or excavated is required to use RACT to control dust emissions. In this case, RACT means techniques to prevent the emission or transport of dust and dirt from any disturbed or exposed land. RACT includes, but is not limited to, vegetative cover, synthetic cover, water or chemical stabilization, and installing wind breaks.

Rule 707—Contingency Plan

Rule 707 provides that in the event EPA provides notification to the State that the SIP for the Whitefish area failed to timely attain the PM_{10} NAAQS or make reasonable further progress, contingency measures will be required. The contingency measures require that de-icing agents will be used on roads or parking lots.

D. Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. MDEQ submitted an emissions inventory for Whitefish on June 26, 1997, withdrew that inventory on February 28, 1999, and resubmitted it on June 13, 2000. MDEQ chose January 1, 1993 through December 31, 1993 as the base year for the emission inventory due to the occurrence of PM_{10} violations during the preceding year. The results of the emissions inventory indicate that crustal particulate matter was the major contributor to PM_{10} concentrations in the Whitefish area during 1993. Crustal particulate matter accounted for 92.1% of the PM_{10} emissions during that time, with the majority of the PM_{10} emissions occurring in the spring quarter. The major source of PM_{10} was identified as road dust. The major contributors to road dust were re-entrained road dust generated from road sanding material and vehicle carry-on of mud and dirt from unpaved roads, alleys, and parking lots.

EPA is proposing to approve the emission inventory for Whitefish because it is accurate and comprehensive, and consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the CAA. In addition to the above requirements for the use of the clean data areas approach, any requirements that depend solely on designation or classification, such as new source review (NSR) and RACM/RACT, will remain in effect. New source review requirements have been approved as part of the Administrative Rules of Montana, title 17, chapter 8, subchapters 8 and 9 and were approved as part of the SIP on August 13, 2001 (see 66 FR 42427). (Administrative and clerical changes have been made to the rule on January 24, 2006 (see 71 FR 3770 and 3776) and July 19, 2006 (see

71 FR 40922)). New source review requirements that were approved into the SIP will continue to be in effect.

However, the requirements under CAA section 172(c) for developing attainment demonstrations, RFP demonstrations, and contingency measures are waived due to the fact that the areas which are eligible under this approach have already attained the PM_{10} NAAQS and have met RFP. Any sanctions clocks that may be running for an area due to failure to submit, or disapproval of, any attainment demonstration, RFP or contingency measure requirements, are stopped. In addition, areas are still required to demonstrate transportation conformity using the build/no-build test, or the no-greater-than-1990 test. The emissions budget test would not be required because the requirements for an attainment demonstration and RFP, which establish the budgets, no longer apply. The applicable tests for general conformity still apply. The use of the clean data areas approach doesn't act as a CAA section 107(d) redesignation, but only serves to approve nonattainment area SIPs required under part D of the CAA.

IV. Final Action

EPA is approving State Implementation Plan (SIP) revisions submitted by the Governor of Montana on June 26, 1997 and June 13, 2000. The June 26, 1997 submittal revises the SIP by adding the Whitefish PM_{10} Control Plan and an emissions inventory for the Whitefish area. On February 28, 1999, the Governor of Montana withdrew all chapters of the Whitefish PM_{10} Control Plan submitted on June 26, 1997, except chapters 15.2.7, 15.12.8, and 15.12.10. The June 13, 2000 submittal contains corrections to chapter 15.12.8. Chapters 15.2.7, 15.12.8, and 15.12.10 contain the PM_{10} control measures, control demonstration, and enforceability sections of the plan. We are approving the emissions inventory for Whitefish and chapters 15.2.7, 15.12.8, and 15.12.10 of the Whitefish PM_{10} Control Plan using the PM_{10} clean areas data approach.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective June 23, 2008 without further notice unless the Agency receives adverse comments by May 27, 2008. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must 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.

V. Statutory and Executive Order 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. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 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: March 27, 2008.

Carol Rushin,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended to read 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 BB—Montana

■ 2. Section 52.1370 is amended by adding paragraph (c)(66) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(66) On June 26, 1997, the Governor of Montana submitted the Whitefish OM_{10} Control Plan and on June 13, 2000, the Governor submitted revisions to the June 26, 1997 submittal. On February 28, 1999, the Governor of Montana withdrew all sections of the Whitefish PM_{10} Control Plan submitted on June 26, 1997, except sections 15.2.7, 15.12.8, and 15.12.10. EPA is approving sections 15.2.7, 15.12.8, and 15.12.10 of the Whitefish PM_{10} Control Plan.

(i) Incorporation by reference.

(A) Sections 15.2.7, 15.12.8, and 15.12.10 of the Whitefish PM_{10} Control Plan.

(ii) Additional Material.

(A) Flathead County Air Pollution Control Program as of June 20, 1997.

[FR Doc. E8–8862 Filed 4–23–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XH35

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 21, 2008, through 1200 hrs, A.l.t., July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 300 metric tons as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), for the period 1200 hrs, A.l.t., April 1, 2008, through 1200 hrs, A.l.t., July 1, 2008.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 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.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 18, 2008.

Emily H. Menashes,

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

[FR Doc. 08–1179 Filed 4–21–08; 1:43 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673–8011–02]

RIN 0648–XH36

Fisheries of the Economic Exclusive Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands

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 Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully use the 2008 total allowable catch (TAC) of Pacific cod specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 30, 2008, through 2400 hrs, A.l.t., December 31, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., May 8, 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–XH36, 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 directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI under § 679.20(d)(1)(iii) on March 21, 2008 (73 FR 15677, March 25, 2008).

NMFS has determined that as of April 11, 2008, approximately 475 metric tons of Pacific cod remain in the 2008 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2008 TAC of Pacific cod specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI. The opening is effective 1200 hrs, A.l.t., April 30, 2008, through 2400 hrs, A.l.t., December 31, 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 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 Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 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 Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI 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 May 8, 2008.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: April 18, 2008.

Emily H. Menashes,

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

[FR Doc. E8–9006 Filed 4–23–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XH37

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish and Pelagic Shelf Rockfish for Trawl Catcher Vessels Participating in the Entry Level Rockfish Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish and pelagic shelf rockfish for trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 total allowable catch (TAC) of northern

rockfish and pelagic shelf rockfish allocated to trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 1, 2008, through 1200 hrs, A.l.t., September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.83(a)(1)(i), allocations of entry level rockfish to trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area are first made from the Pacific ocean perch TAC. Trawl catcher vessels participating in the entry level rockfish program are allocated northern rockfish and pelagic shelf rockfish only if the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for the entry level trawl catcher vessels. NMFS has determined that the 2008 TAC of Pacific ocean perch allocated to the entry level fishery exceeds the total allocation of rockfish allowable for the entry level trawl catcher vessels. Therefore, the 2008 TACs of northern rockfish and pelagic shelf rockfish allocated to trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area are 0 mt.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TACs of northern rockfish and pelagic shelf rockfish allocated to trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 0 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish and pelagic shelf rockfish for trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of northern rockfish and pelagic shelf rockfish for trawl catcher vessels participating in the entry level rockfish fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 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.

This action is required by § 679.20 and § 679.83 and is exempt from review under Executive Order 12866.

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

Dated: April 18, 2008.

Emily H. Menashes,

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

[FR Doc. E8–8990 Filed 4–23–08; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 80
Thursday, April 24, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 215, 217, 231, and 235

19 CFR Parts 4 and 122

RIN 1601–AA34

[DHS–2008–0039]

Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program (''US–VISIT'')

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) proposes to establish an exit program at all air and sea ports of departure in the United States. This proposed rule would require aliens who are subject to United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT) biometric requirements upon entering the United States to provide biometric information to commercial air and vessel carriers before departing from the United States at air and sea ports of entry. This rule proposes a performance standard for commercial air and vessel carriers to collect the biometric information and to submit this information to DHS no later than 24 hours after air carrier staff secure the aircraft doors on an international departure, or for sea travel, no later than 24 hours after the vessel's departure from a U.S. port. DHS does not propose to apply these requirements to persons departing the United States on certain private carriers or small carriers as defined herein.

The exit system proposed under this rule meets the recommendations of the 9–11 Commission Report and the requirements of section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007.

DATES: Comments are due no later than June 23, 2008.

ADDRESSES: You may submit comments pursuant to the instructions in the Public Comments section of the Supplemental Information, identified by Docket Number DHS–2008–0039, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting the comments.
- *Mail:* Michael Hardin, Senior Policy Advisor, US–VISIT, Department of Homeland Security; 1616 North Fort Myer Drive, 18th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Michael Hardin, Senior Policy Advisor, US–VISIT, Department of Homeland Security; 1616 North Fort Myer Drive, 18th Floor, Arlington, VA 22209 or by phone at (202) 298–5200.

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Table of Abbreviations and Acronyms

9/11 Recommendations Act—The Implementing Recommendations of the 9/11 Commission Act of 2007

ADIS—Arrival and Departure Information System
AOIP—Aircraft Operator Implementation Plan
APIS—Advance Passenger Information System
AQQ—APIS Quick Query
CBP—Customs and Border Protection
CEQ—Council on Environmental Quality
CII—Critical Infrastructure Information
CJIS—Criminal Justice Information Services
COI—Countries of Interest
CUG—Consolidated Users Guide
DHS—Department of Homeland Security
DOJ—Department of Justice
DOS—Department of State
DMIA—Immigration and Naturalization Service Data Management Improvement Act of 2000
EBSVERA—Enhanced Border Security and Visa Entry Reform Act of 2002
FBI—Federal Bureau of Investigation
FIN—Fingerprint Identification Number
FOIA—Freedom of Information Act
FONSI—Finding of No Significant Impact
IDENT—Automated Biometric Identification System
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Service
IRTPA—Intelligence Reform and Terrorism Prevention Act of 2004
MRZ—Machine Readable Zone
NEPA—National Environmental Policy Act of 1969
NCTC—National Counterterrorism Center
NIST—National Institute of Standards and Technology
PCII—Protected Critical Infrastructure Information
PEA—Programmatic Environmental Assessment

PIA—Privacy Impact Assessment
PII—Personally Identifiable Information
PRA—Paperwork Reduction Act
SBA—Small Business Administration
SFPD—Secure Flight Passenger Data
SSI—Sensitive Security Information
TRIP—Traveler Redress Inquiry Program
TSA—Transportation Security Administration
USA PATRIOT Act—Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001
US–VISIT—United States Visitor and Immigrant Status Indicator Technology Program
VWP—Visa Waiver Program
VWPPA—Visa Waiver Permanent Program Act of 2000
WSA—Work Station Attendant

I. Request for Public Comments

The Department of Homeland Security (DHS) requests public comment on this proposed rule. The most helpful comments will specifically address discrete elements of the proposal, including on-point operational and financial data and the potential economic and business impacts from the performance standards proposed under this rule.

This rule proposes a performance standard that requires the carriers to collect biometric information on the premises of the facility from which the alien departs the United States, but provides the carriers with some discretion in the manner of collection and submission to allow the carriers to meet the requirements in the most efficient and cost-effective manner. DHS specifically requests public comments on all of the alternatives discussed in this proposed rule and the underlying assumptions and analyses related to those alternatives.

Although the proposed rule identifies means for collection of biometrics, personnel, and methods of transmission, DHS also welcomes proposals on alternatives that have not been proposed in this rule. The most useful proposals or alternatives would include information on how the proposed alternative would reduce the burden on travelers and the travel industry without sacrificing accuracy in the collection of biometric information.

DHS also solicits comments on the regulatory evaluations supporting this proposed rule, including:

- The cost models of each alternative, including all assumptions that underlie the labor costs;
- Any cost-sharing alternatives to the proposals presented between the carriers and the government;
- The assumptions and numbers used to develop the carrier and government alternatives; and
- The potential for cost savings for alternatives not included as options in this proposed rule.

DHS may select another variation between the outer bounds of the alternatives presented or another alternative if subsequent analysis and public comments warrant.

All comments will be included in the public docket, except those comments that, on their face, contain trade secrets, confidential commercial or financial information, or sensitive security information (SSI) or critical infrastructure information (CII). Comments that include trade secrets, confidential commercial or financial information, or SSI should not be submitted to the public regulatory docket. Submit such comments separately from other comments on the rule. Comments containing this type of information should be appropriately marked and submitted by mail to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Upon receipt of such comments, DHS will handle them in accordance with applicable safeguards and restrictions on access. DHS will not place the comments in the public docket, but rather will hold them in a separate file to which the public does not have access and place a note in the public docket that DHS has received such materials from the commenter.

Industry is invited to submit critical infrastructure information (CII) in response to this rulemaking. The CII must be submitted to the Protected Critical Infrastructure Information (PCII) Program Office and validated as PCII in order to be considered PCII. In addition, the submitted CII must be accompanied by an express statement requesting the protections of the Critical Infrastructure Information Act of 2002, Public Law No. 107–296, tit. II, subtit. B, section 211–214, 116 Stat. 2135, 2150 (Nov. 25, 2002) (6 U.S.C. 131–134) (the CII Act), and a signed Certification Statement. Once the PCII Program receives the requisite documentation, and provided that the submitted information meets the definition of CII under the CII Act, the PCII Program Office will validate the information as PCII. Submissions of CII for consideration for validation as PCII should be submitted electronically, if possible, through the PCII Web site at *www.dhs.gov/pcii* and marked with the docket number for this rulemaking. If the comments cannot be submitted electronically for PCII consideration, please contact the PCII Program Office at *pcii-info@dhs.gov.* DHS will disclose and dispose of CII and PCII only in accordance with the CII Act and 6 CFR part 29.

II. Background and Purpose

A. Need for a US–VISIT Exit System

Under the Department's current US–VISIT Program, the U.S. Government, through Customs and Border Protection (CBP) officers or Department of State (DOS) consular offices, collects biometrics (digital finger scans and photographs) from aliens seeking to enter the United States. DHS checks that information against government databases to identify suspected terrorists, known criminals, or individuals who have previously violated U.S. immigration laws. This system assists DHS and DOS in determining whether an alien seeking to enter the United States is, in fact, admissible to the United States under existing law.

Currently, however, there is no exit system to assist DHS or DOS in determining whether an alien has overstayed the terms of his or her visa (or other authorization to be present in the United States). Following the terrorist attacks on the United States in 2001, the National Commission on Terrorist Attacks upon the United States (the 9/11 Commission), in its seminal report, noted:

> Looking back, we can see that the routine operations of our immigration laws—that is, aspects of those laws not specifically aimed at protecting against terrorism—inevitably shaped al Qaeda planning and opportunities * * * had the immigration system set a higher bar for determining whether individuals are who or what they claim to be—and ensuring routine consequences for violations—it could potentially have excluded, removed, or come into further contact with several hijackers who did not appear to meet the terms for admitting short-term visitors.

The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States (2004) (9/11 Commission Report), p. 384.

The 9/11 Commission's final report illustrated the shortcomings of a system without exit controls. The Commission reported that several of the 9/11 hijackers (Mohamed Atta, Ziad Jarrah, Satam Suqami, Salam al Suqami, and Nawaf al Hazmi) could have been denied admission to the United States based on previous violations of immigrations laws, including having previously overstayed their terms of admission. Had these individuals been denied admission, they would not have been present or available in the United States on September 11, 2001, to carry out the terrorist attacks. See 9/11 Commission Report at 564 note 33, also Staff Statement No. 1 to the Report,

''Entry of the 9/11 Hijackers in the United States'' (''Staff Statement''). The Staff Statement emphasizes the consequences of this particular unfinished congressional mandate: ''Congress required the Attorney General to develop an entry-exit system in 1996. The system's purpose was to improve INS' ability to address illegal migration and overstays for all types of foreign visitors. * * * [W]hen hijackers Suqami and Nawaf al Hazmi overstayed their visas, the system Congress envisaged did not exist. Moreover, when federal law enforcement authorities realized in late August 2001 that [Khalid al] Mihdhar had entered with Hazmi in January 2000 in Los Angeles, they could not reliably determine whether or not Hazmi was still in the United States, along with Mihdhar.'' Staff Statement at 8–9.

The purpose of the exit system proposed under this rule is to allow the U.S. Government to better identify aliens who have violated the terms of their stay in the United States. This system will complement the existing entry system and meets the mandates of Congress in the 9/11 Recommendations Act (9/11 Recommendations Act), Public Law No. 110–53, 121 Stat. 266, 338 (Aug. 3, 2007), and the recommendations of the 9/11 Commission.

This rule proposes to amend 8 CFR 215.8 and 231.4 to require commercial air and vessel carriers to collect fingerprints from aliens departing the United States and to transmit those fingerprints to DHS either within 24 hours after securing the cabin doors of the aircraft for departure from the United States or within 24 hours of departure of a vessel from the United States.

DHS also proposes to amend 8 CFR 215.8 to expand the US–VISIT exit program beyond its current limitation of fifteen pilot programs. DHS proposes to require that the air and vessel carriers will submit the information to DHS for comparison against relevant watchlists and immigration information, as required under the Implementing Recommendations of the 9/11 Commission Act of 2007. DHS does not propose to apply these requirements to an air or vessel carrier that is a small entity as defined under Small Business Administration (SBA) regulations. 13 CFR 121.201 (NAIC Codes 481111, 481212, 483112).

This proposed rule is based, in part, on the same statutory authorities under which DHS requires air and vessel carriers to provide passenger manifest information under CBP's Advanced Passenger Information System (APIS). Immigration and Nationality Act of 1952, as amended (INA), section 231, 8 U.S.C. 1221. Pursuant to existing DHS regulations, carriers are required to collect, verify, and transmit APIS data before securing the aircraft doors for international flights. Carriers will be required to send the biometric portion of the passenger manifest data to US–VISIT in an XML formatted message that contains the biometric image, US–VISIT specified biographic data (e.g., last name, first name, date of birth, country of citizenship, gender, document type, document number), and carrier specific information (e.g., carrier ID, flight number, port of departure, date and time of fingerprint capture, device identification). US–VISIT will process the biographic data to find the passenger's entry records in the DHS Automated Biometric Identification System (IDENT) and the Arrival and Departure Information System (ADIS) and then compare the exit biometric to the entry biometric to verify identity.

When an alien arrives at the international departure air or sea port, the carrier will collect the alien's biometric data. The biometric data and the associated unique identifier will then be transmitted, within 24 hours of departure, to US–VISIT for processing. US–VISIT will use the unique identifier to associate the APIS biographic and biometric data for each alien.

DHS will use the alien biometric data in conjunction with biographic exit data to create an exit record for each departing alien. Biometric exit records will be reconciled against biometric entry records. Aliens who have overstayed their admission period could be subject to adverse action upon subsequent encounters with the U.S. Government, such as during visa application or renewal or application for admission or re-admission to the United States. DHS will also use this data to undertake larger statistical analyses to weigh specific inclusions in the Visa Waiver Program (VWP), as required by INA section 217, 8 U.S.C. 1187.

B. Statutory Authority for US–VISIT

Numerous Congressional enactments provide for the creation of an integrated and automated system to record the arrival and departure of aliens; the deployment of equipment at all ports of entry to verify aliens' identities and authenticate travel documents through the comparison of biometric identifiers; and the recording of alien arrival and departure information from biometrically authenticated travel documents.[1] DHS may control alien travel and inspect aliens under sections 215(a) and 235 of the INA, 8 U.S.C. 1185, 1225. Aliens may be required to provide fingerprints, photographs, or other biometric identifiers upon arrival in, or departure from, the United States, and select classes of aliens may be required to provide information at any time. *See, e.g.*, INA sections 214, 215(a), 235(a), 262(a), 263(a), 264(c), 8 U.S.C. 1184, 1185(a), 1225(a), 1302(a), 1303(a), 1304(c). Pursuant to section 215(a) of the INA, and Executive Order No. 13323, 69 FR 241 (Jan. 2, 2004), the Secretary of Homeland Security, with the concurrence of the Secretary of State, has the authority to require certain aliens to provide requested biographic identifiers and other relevant identifying information as they depart the United States. Under section 214 of the INA, 8 U.S.C. 1184, DHS may make compliance with US–VISIT departure procedures a condition of admission and maintenance of status for nonimmigrant aliens while in the United States.

The creation of an automated entry-exit system that integrates electronic alien arrival and departure information was first authorized in the Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA), Public Law No. 106–215, 114 Stat. 339, 8 U.S.C. 1365a. The DMIA provided that the entry-exit system consist of the integration of all authorized or required alien arrival and departure data that is maintained in electronic format. The DMIA also provided for DHS to use the entry-exit system to match the available arrival and departure data on aliens. DMIA section 2, 8 U.S.C. 1365a(e).

In addition, section 205 of the Visa Waiver Permanent Program Act of 2000 (VWPPA), Public Law No. 106–396, 114 Stat. 1637 (October 30, 2000), amending INA section 217(h), 8 U.S.C. 1187(h), provides for the creation of a system that contains a record of the arrival and departure of every alien admitted under the VWP at air or sea ports of entry. The provisions of the DMIA resulted in the integration of the VWP arrival/departure information into the primary entry-exit system component of US–VISIT.

Following the attacks on the United States on September 11, 2001, Congress enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA

[1] Implementation of the United States Visitor and Immigrant Status Indicator Technology Program (''US–VISIT''); Biometric Requirements, 69 FR 468, 468 (Jan. 5, 2004).

PATRIOT Act), Public Law No. 107–56, 115 Stat. 353 (October 26, 2001), and the Enhanced Border Security and Visa Entry Reform Act of 2002 (EBSVERA), Public Law No. 107–173, 116 Stat. 553 (May 14, 2002). Section 403(c) of the USA PATRIOT Act, 8 U.S.C. 1379, required DHS and DOS to jointly develop and certify a technology standard that can be used to verify the identity of visa applicants and aliens seeking to enter the United States pursuant to a visa and to do background checks on such aliens. The technology standard was developed through the National Institute of Standards and Technology (NIST), in consultation with the Secretary of the Treasury, other appropriate Federal law enforcement and intelligence agencies, and Congress. The standard includes appropriate biometric identifier standards. The USA PATRIOT Act further provided for DHS and DOS to ''particularly focus on the utilization of biometric technology; and the development of tamper-resistant documents readable at ports of entry.'' USA PATRIOT Act section 414(b), 8 U.S.C. 1365a and note.

The statutory provisions for biometric identifiers to be utilized in the context of the entry-exit system also were strengthened significantly under EBSVERA. Section 302(a)(1) of EBSVERA provides that the entry-exit system must use the technology and biometric standards required to be certified by DHS and DOS under section 403(c) of the USA PATRIOT Act. 8 U.S.C. 1731. Section 303(b)(1) of EBSVERA provides that the United States may issue to aliens only machine-readable, tamper-resistant visas and other travel and entry documents that use biometric identifiers. 8 U.S.C. 1732(b)(1). Further, DHS and DOS must jointly establish document authentication and biometric identifier standards for alien travel documents from among those recognized by domestic and international standards organizations. *Id.* However, unexpired travel documents that have been issued by the U.S. Government but do not use biometrics are not invalidated under section 302(c)(2) of EBSVERA. 8 U.S.C. 1732(c)(2). Section 303(b)(2) of EBSVERA provided for the installation, at all ports of entry, of equipment and software that allow biometric comparison and authentication of all United States visas and machine-readable, tamper-resistant travel and entry documents issued to aliens, as well as passports that are issued by countries participating in the VWP. 8 U.S.C. 1732(b)(2).

The entry-exit system includes a database that contains alien arrival and departure data from the machine-readable visas, passports, and other travel and entry documents. EBSVERA section 302(a)(2), 8 U.S.C. 1731(a)(2). In developing the entry-exit system, EBSVERA provided that the Secretaries of Homeland Security and State make interoperable all security databases relevant to making determinations of alien admissibility. EBSVERA section 302(a)(2), 8 U.S.C. 1731(a)(3). In addition, EBSVERA provided that the entry-exit system share information with other systems required by EBSVERA. Section 202 of EBSVERA addresses requirements for an interoperable law enforcement and intelligence data system and requires the integration of all databases and data systems that process or contain information on aliens. 8 U.S.C. 1722.

In December 2004, further statutory provisions were enacted pertaining to the entry-exit system. Section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law No. 108–458, 118 Stat. 3638, 3817 (Dec. 17, 2004), 8 U.S.C. 1365b, provides for DHS to collect biometric exit data for all categories of aliens who are required to provide biometric entry data. IRTPA requires that the system contain, as an interoperable component, the fully integrated databases and data systems maintained by DHS, DOS and the Department of Justice (DOJ) that process or contain information on aliens. IRPTA also requires current and immediate access to information in the databases of Federal law enforcement agencies and the intelligence community, which is relevant in determining whether to issue a visa or the admissibility or deportability of an alien. Section 7208 also provided a complete list of entry-exit system goals, which include, among other things, screening aliens efficiently.

Finally, section 711 of the 9/11 Recommendations Act directs the Secretary of Homeland Security, within one year of enactment, to ''establish an exit system that records the departure on a flight leaving the United States of every alien participating in the visa waiver program[.]'' INA section 217(i), 8 U.S.C. 1187(i). This air exit system must match the biometric information of aliens against relevant watch lists and immigration information and compare such biometric information against manifest information collected by air carriers on passengers departing the country. *Id.* In addition, subsection (c) of the 9/11 Recommendations Act permits the Secretary of Homeland Security to waive the applicability of INA section 217(c)(2)(A), 8 U.S.C. 1187(c)(2)(A), which restricts eligibility for designation into the VWP to countries that have a low nonimmigrant visa refusal rate, subject to a determination that certain security-related measures are met. Specifically, DHS must certify the following to exercise the waiver authority: (1) An air exit system is in place that can verify the departure of not less than 97% of foreign nationals who exit through airports of the United States, and (2) an electronic travel authorization system to collect biographic and other information in advance of travel to the United States (as required under 9/11 Recommendations Act) subsection (d)(1)(E), adding INA section 217(h)(3), 8 U.S.C. 1187(h)(3), is fully operational. The VWP waiver authority suspends on July 1, 2009, unless the Secretary of Homeland Security provides notification that the air exit system fully satisfies the biometric requirements of INA section 217(i), 8 U.S.C. 1187(i).[2]

The VWP is important to U.S. international trade and tourism, and preservation of the Secretary's discretion within the VWP program is critical to balancing U.S. security interests and international trade priorities. The program was established in 1986 with the objective of eliminating unnecessary barriers to travel, stimulating the tourism industry, and permitting the United States to focus resources on other areas of greater risk or with problematic immigration issues. Currently, VWP enables nationals of twenty-seven countries to travel to the United States for tourism or business for stays of 90 days or less without obtaining a visa.[3] All VWP travelers,

[2] The House and Senate Conference Committee reported:

The Conference further agrees to provide the Secretary this waiver authority upon certification by the Secretary to Congress that there is an air exit system in place to verify the departure of not less than 97% of foreign nationals who exit by air, which may or may not be fully biometric. The Conference also agrees that the ultimate goal is to achieve a fully biometric air exit system, as described in subsection (i) of the bill. Therefore, if such a biometric system is not implemented by June 30, 2009, the Secretary's waiver authority that was based upon his certification of 97 percent accuracy of any non-biometric exit system shall be suspended until a biometric exit system is fully operational. Establishment of this biometric system will implement a 9/11 Commission recommendation and will enhance our border security and immigration enforcement by ensuring our ability to track the arrivals and departures of foreign nationals.

Implementing Recommendations of the 9/11 Commission Act of 2007: Conference Report to Accompany H.R. 1, H. R. Rept. 110–259, 110th Cong., 1st Sess., at 318 (July 25, 2007) (H. R. Rept. 110–259). The statutory provisions clearly indicate Congress's imperative to create a biometric exit system for air travel.

[3] The VWP countries are Andorra; Australia; Austria; Belgium; Brunei; Denmark; Finland;

regardless of age or type of passport used, must present individual machine-readable passports. Effective September 30, 2004, nonimmigrants seeking to enter the United States under the VWP also are required to provide biometric information under US–VISIT. 69 FR 53318 (Aug. 31, 2004).

DHS's broad authority to control alien travel and inspect aliens under INA sections 215(a) and 235, 8 U.S.C. 1185 and 1225, further supports the requirements under US–VISIT that foreign nationals provide biometric identifiers and other relevant identifying information upon admission to, or departure from, the United States.

C. Program History of US–VISIT

On January 5, 2004, DHS implemented the first phase of the US–VISIT program by requiring that aliens seeking admission into the United States through nonimmigrant visas provide fingerprints, photographs, or other biometric identifiers upon arrival in, or departure from, the United States at air and sea ports of entry. 69 FR 468 (Jan. 5, 2004). Since September 30, 2004, nonimmigrants seeking to enter the United States without visas under the VWP also have been required to provide biometric information under US–VISIT. 69 FR 53318 (Aug. 31, 2004). DHS has expanded US–VISIT entry to 119 airports, 19 seaports, and 154 land border ports of entry.

In many cases, US–VISIT biometric identification begins overseas at DOS consular offices. There, biometrics (digital finger scans and photographs) of aliens applying for visas are collected and checked against a database of known criminals, suspected terrorists, and those who have previously violated the immigration laws of the United States or had other DHS or DOS encounters.

When any person, whether a U.S. citizen or an alien, arrives at a port of entry by air, he or she enters a CBP inspection area for immigration and customs inspection. At that time, every person must show that he or she is either a U.S. citizen or an alien who is admissible to the United States. 8 CFR 235.1.

While the alien remains before CBP, US–VISIT will verify that the alien at the port of entry is the same alien who received the visa by comparing the biometrics of the alien to the record created at the time of visa application. For those aliens whose biometrics were not captured overseas, such as VWP visitors, a CBP officer at the port of entry will collect digital finger scans and a digital photograph of the alien. These biometrics will be verified at the time of exit and, if required, during subsequent applications for admission to the United States.

DHS's ability to establish and verify the identity of an alien and to determine whether that alien is admissible to the United States is critical to the security of the United States and the enforcement of the laws of the United States. By linking the alien's biometric information with the alien's travel documents, DHS reduces the likelihood that another individual could assume the identity of an alien already recorded in US–VISIT or use an existing recorded identity to gain admission to the United States.

US–VISIT biometrically screens alien arrivals at air and sea ports of entry during primary inspection, but will only screen during secondary inspection at land border ports of entry. At the land border ports of entry, secondary inspection is used rather than primary inspection because of the volume of traffic and facility limitations. Referral of aliens to secondary inspection at the land border ports of entry is premised on processes that already require secondary inspection (*e.g.*, issuance of a Form I–94 Arrival/Departure Record) or an inspecting officer's determination that further investigation of the alien's identity or admissibility is needed to properly determine whether the alien is admissible to the United States.

From its inception on January 5, 2004 through February 29, 2008, US–VISIT has biometrically screened 112,884,097 aliens at the time they applied for admission to the United States. DHS has taken adverse action against more than 3,039 of these aliens based on information obtained through the US–VISIT biometric screening process. By ''adverse action,'' DHS means that the aliens were:

- Arrested pursuant to a criminal arrest warrant;
- Denied admission, placed in expedited removal, or returned to the country of last departure; or
- Otherwise detained and denied admission to the United States.

In addition, by quickly verifying the identities of aliens and the validity of documents, US–VISIT has expedited the travel of millions of legitimate entrants. Adding the biometric records of aliens visiting the United States to the IDENT database will likely result in DHS identifying other aliens who are inadmissible or who otherwise present security and criminal threats, including those who may be traveling under a previously established identity and potentially pose a threat to the security or law enforcement interests of the United States.

The Secretary of State and the Secretary of Homeland Security may jointly exempt classes of aliens from US–VISIT. The Secretary of State and the Secretary of Homeland Security, as well as the Director of the Central Intelligence Agency, also may exempt any individual from US–VISIT. 8 CFR 235.1(f)(iv)(B). Aliens currently expressly exempt from US–VISIT requirements by DHS regulations include:

- Aliens admitted on an A–1, A–2, C–3, G–1, G–2, G–3, G–4, NATO–1, NATO–3, NATO–4, NATO–5, or NATO–6 visa;
- Children under the age of 14;
- Aliens over the age of 79;
- Taiwan officials admitted on an E–1 visa and members of their immediate families admitted on E–1 visas.

8 CFR 235.1(f)(1)(iv).

On July 27, 2006, DHS proposed to expand the population of aliens required to provide biometric information under US–VISIT. *See* 71 FR 42605. Under that proposed rule, DHS would extend US–VISIT requirements to all aliens, including lawful permanent residents, with the exception of aliens who are specifically exempted and Canadian citizens applying for admission as B1/B2 visitors for business or pleasure. The Department anticipates issuing a final rule before the end of 2008.

III. US–VISIT Exit Pilot Program

Under current regulations, DHS may conduct exit pilot programs at up to fifteen air or sea ports of entry. 8 CFR 215.8(a). DHS conducted a series of pilot programs from January 2004 through May 2007 at fourteen ports of entry across the United States.[4] The results of the pilot programs, discussed below, were informative to DHS in its determination to propose that the most effective method of collecting biometric information from alien travelers and submitting such information to DHS

France; Germany; Iceland; Ireland; Italy; Japan; Liechtenstein; Luxembourg; Netherlands; New Zealand; Norway; Portugal; San Marino; Singapore; Slovenia; Spain; Monaco; Sweden; Switzerland; and United Kingdom.

[4] Those ports were: Baltimore/Washington International Thurgood Marshall Airport; Chicago O'Hare International Airport; Denver International Airport; Dallas Fort Worth International Airport; Miami Cruise Terminal; San Juan Luis Munoz Marin International Airport; Detroit Metropolitan Wayne County Airport (McNamara Terminal); Newark Liberty International Airport; San Francisco International Airport; Los Angeles Cruise Terminal; Hartsfield-Jackson Atlanta International Airport; Philadelphia International Airport; Ft. Lauderdale/Hollywood International Airport; and Seattle-Tacoma International Airport.

would be to have commercial air and vessel carriers—who have the most information and expertise in collecting information from travelers during the travel process—to collect biometric information in addition to the biographic information already collected by commercial carriers for business purposes and as required under federal law.

Under these pilot programs, aliens admitted to the United States pursuant to a nonimmigrant visa who departed the United States from a designated air or sea port of entry were required to provide: (1) Fingerprints, photograph(s), or other specified biometric identifiers; (2) documentation of his or her immigration status in the United States; and (3) such other evidence as a CBP officer might have requested to determine the alien's identity and whether he or she had properly maintained his or her status while in the United States.

US–VISIT evaluated various technologies and processes to collect biometric data from aliens at the time of departure. The pilot locations were chosen to provide a mix of locations based upon geography, passenger volume, the number of watchlist hits observed from US–VISIT entry, travel industry input, and deployment logistics. US–VISIT conducted site surveys of air and sea ports nationwide.

The US–VISIT exit pilots tested the technical feasibility of three solution alternatives: A biometric exit kiosk, a mobile (handheld) biometric device, and a mobile biometric validation device.

Kiosk Alternative. The kiosk alternative provided a stationary self-service device with a touch screen interface, document scanner, finger scanner, digital camera, and a receipt printer. In some locations, a Work Station Attendant (WSA) would assist aliens. These fixed kiosks were located beyond the TSA screening checkpoint (in the sterile sector of the airport), but before the individual airport boarding gates. The alien required to be processed in US–VISIT was responsible for locating the kiosks and using the device to record his or her biometrics to confirm his or her departure.

Mobile Alternative. The mobile alternative involved a handheld device, operated by a WSA, that included a document scanner, finger scanner, digital camera, and receipt printer. The WSAs were located in various places in the airport concourse between the TSA checkpoint and the gates. The WSAs attempted to be as close to applicable gates as possible without disrupting the boarding process.

Mobile Validator Alternative. The mobile validator alternative used a handheld device as an additional step in the kiosk alternative. This device verified that an alien boarding a departing aircraft was the same alien who had submitted documentation and finger scans to the kiosk. This was, essentially, a combination of the previous two alternatives.

In all three alternatives, the alien was expected to comply with the biometric exit requirements without government enforcement or compulsion. WSAs were not given the authority to require aliens to comply with the biometric exit requirements, but were present only to assist aliens in the exit process, if needed.

During the pilot programs, approximately 6.5 million biometric exit records were collected. During the same time period, however, over 26 million entry records were collected for the same ports of entry. Biometric exit records collection should have been approximately four times higher. This projection is based on analysis of biographic entry and exit data for the same ports where the pilots were in operation. Of those biometric exit records that were collected, approximately 94.7% were successfully matched to biometric entry records.

US–VISIT conducted an evaluation of the pilots between October 2004 and March 2005 and terminated the pilot programs on May 6, 2007, to prepare for the deployment of the follow-on system. From the pilot programs, DHS found the following:

Biometrics provide a significant enhancement to the existing ability to match arrival and departure records. Biographic records sometimes contain inaccurate, incomplete, or untimely data that can prevent the matching of exit records to entry records. While using improved algorithms can improve biographic matching of records, it is not as accurate as biometric matching. The pilot established that with two-fingerprint matching, biometric entry and exit records could be matched with 99.73% accuracy, which is significantly higher than the rate obtained through the matching of biographic records. With US–VISIT's change to a ''slap'' or ''flat'' capture of the fingerprints from one hand for verification, it is likely that this matching accuracy rate will be higher.[5] Thus, biometric exit collection would permit DHS to match thousands more records annually.

Exit processing compliance could improve by integration with the departure process. DHS found that compliance with biometric exit procedures improved depending on the convenience of the process. In certain airports, DHS was unable, due to contractual reasons with the airports and airport authorities, to place as many exit kiosks as it would have liked or in the precise locations where it would have liked. In places such as these, where the kiosks were inconveniently located, the compliance rate was lower. In addition, DHS was often limited due to airport space restrictions in placing signage or other outreach material in places that it felt would have adequately informed the public of obligations for certain aliens to provide biometrics upon exiting the United States at certain airports. Similarly, these locations also had a low compliance rate.

One conclusion from these pilots is that a biometric exit system is beneficial and necessary to the security of the United States and the integrity of its immigration system. In addition, the pilots demonstrated that the technology used to collect biometric exit records worked, but that the process of collecting biometric exit records should be integrated into the existing departure process to improve compliance. Consistency and integration will ensure that each alien subject to US–VISIT requirements will have a biometric exit record created before departing the United States. This proposed rule implements the lessons learned from the pilot programs.

IV. Proposed Exit Program

A. Purpose

The principal reason for this rulemaking is the need to ascertain with greater certainty the identity of those aliens departing the United States and whether those aliens who have entered for limited times and purposes have, in fact, left the United States in accordance with the terms of their admission. DHS must be able to record which aliens have left the United States with reliable identity information to assess adequately the nature or likelihood of a domestic terrorist threat posed by any given alien and to better allocate interior immigration enforcement resources to enforce the immigration laws of the United States.

Moreover, as discussed above, the 9/11 Recommendations Act requires DHS to establish a biometric air exit system that records the departure of aliens who entered under the VWP on flights

[5] The change from a two-index-fingerprint to all fingerprints (no thumb) from one hand system is expected to provide faster processing and more reliable verification.

leaving the United States. Unlike past programmatic authorizations, Congress provided a specific consequence that will occur on a date certain if the implementation schedule is not met. As discussed previously, if a fully biometric air exit system is not implemented, the Secretary's authority to waive the low non-immigrant visa refusal rate for participation in the VWP will be suspended on July 1, 2009, until a biometric air exit system is fully operational. H.R. Rept. 110–259, at 318. In this event, the Secretary would lose the authority to waive the visa refusal rate for countries seeking to enter the VWP under INA section 217(c)(2)(A), 8 U.S.C. 1187(c)(2)(A).

The collection of exit biometric data will allow DHS to identify those aliens who have complied with or overstayed their previous period of admission. The system will provide DHS with evidence supporting approval or rejection of any subsequent application for admission to the United States, a visa application, or other immigration benefit. This information will also be used, in the aggregate, to allow DHS and other federal agencies to better tabulate existing statistical reports on alien immigration, travel, and economic activities. Moreover, comprehensive trend analysis might reveal to DHS and DOS specific visa-issuing posts, visa categories, VWP countries, or other information relating to an unacceptably high overstay rate.

Under existing DHS rules, carriers are required to collect, verify, and transmit certain passenger manifest data to CBP through APIS before air carrier personnel secure the aircraft doors for international flights. If CBP's processing of the APIS data through CBP databases produces a Fingerprint Identification Number (FIN) that corresponds to the US–VISIT subject alien passenger, then the FIN will be sent to US–VISIT.

As part of the APIS transmission requirements, carriers create a unique identifier for each passenger on the APIS manifest and submit that identifier as part of their APIS transmission. Under this proposed rule, when an alien arrives at the international departure air or sea port, the carrier will collect the alien's biometric data.[6] The carrier will then transmit to US–VISIT the biometric data and the associated unique identifier, within 24 hours of departure, to US–VISIT for processing. US–VISIT will match the unique identifier from the APIS biographic data with the biometric record for each alien.

DHS will use the alien biometric data in conjunction with biographic exit data to create an exit record for each departing alien. Biometric exit records will be reconciled against biometric entry records. Aliens who have overstayed their admission period could be subject to adverse action upon subsequent encounters with the U.S. Government, such as during visa application or renewal or application for admission or re-admission to the United States. DHS will also use this data to undertake larger statistical analyses to weigh specific inclusions in the VWP, as required by INA section 217, 8 U.S.C. 1187.

B. Summary of the Exit Proposal and Alternatives Considered

1. Current Passenger Information Requirements for Carriers

DHS currently requires commercial aircraft and vessels to electronically submit passenger manifest information in accordance with several statutory mandates. These mandates include, but are not limited to the following: Section 115 of the Aviation and Transportation Security Act (ATSA), Public Law 107–71, 115 Stat. 597; 49 U.S.C. 44909 (applicable to passenger and crew manifests for flights arriving in the United States); section 402 of the EBSVERA, INA section 231, 8 U.S.C. 1221 (applicable to passenger and crew manifests for flights and vessels arriving in and departing from the United States); and CBP's general statutory authority under 19 U.S.C. 1431 and 1644a (requiring manifests for vessels and aircraft).

Under APIS regulations, commercial air carriers are required to submit passenger manifest information to DHS before the flight crew secure the aircraft doors for departure. *See Advance Electronic Transmission of Passenger and Crew Member Manifests for Commercial Aircraft and Vessels,* 72 FR 48319 (Aug. 23, 2007). Air carriers have three options to transmit to DHS manifest data for aircraft departing from or en route to the United States: (1) Transmission of passenger manifests in batch form by an interactive method no later than 30 minutes prior to the securing of the aircraft doors (APIS 30); (2) transmission of individual passenger manifest information as each passenger checks in for the flight up to, but no later than, the time the flight crew secures the aircraft doors (APIS interactive Quick Query or AQQ); and (3) transmission of passenger manifests in batch form by a non-interactive method no later than 30 minutes prior to the securing of the aircraft doors (APIS 30 ''non-interactive'').

For commercial sea travel, CBP currently requires vessel carriers to electronically transmit arrival passenger and crew member manifests at least 24 hours (for voyages of fewer than 24 hours) and up to 96 hours (for voyages of 96 or more hours), prior to the vessel's entry at a U.S. port or place of destination, depending on the length of the voyage (for voyages of at least 24 but less than 96 hours, transmission must be prior to departure of the vessel from any place outside the United States). *See* 19 CFR 4.7b(b)(2). A vessel carrier also must electronically transmit passenger and crew member departure manifests to CBP 60 minutes prior to the vessel's departure from the United States. *See* 72 FR 48320, 48325 (Aug. 23, 2007).

DHS also regulates the security of, among others, certain U.S. aircraft operators (49 CFR part 1544) and foreign air carriers (49 CFR parts 1546 and 1550) that conduct passenger and all-cargo operations to, from, within, and overflying the United States. In addition to these regulations, the Transportation Security Administration (TSA) has implemented detailed security requirements tailored for specific sectors of the transportation industry that are implemented through security programs, Security Directives, and Emergency Amendments. *See e.g.,* 49 CFR 1544.305, 1546.105, 1550.5. Under certain Security Directives and Emergency Amendments now in effect, TSA requires the advance submission of crew member and non-crew member manifest information for certain flights operating to, from, continuing within, and overflying the United States.

DHS has made every effort in this notice of proposed rulemaking to harmonize its operational and technical requirements with these programs to reduce the impacts on the carriers and the public. DHS seeks comment regarding ways in which DHS can improve that harmonization and reduce any traveling burdens that this rule may create.

2. Current Process for Individuals Departing the United States by Commercial Air Carrier

Today, the process for individuals (including aliens) departing the United States varies widely, but generally consists of the following steps. An individual leaving the United States by commercial air carrier may purchase a ticket and ''check-in'' through the

[6] This proposed rule addresses the collection of biometrics from aliens departing the United States from air and sea ports. Land border ports of entry present challenges different from air and sea ports, due in large part from a lack of sufficient public or private infrastructure at land border exits. Therefore, the collection of information from aliens departing the United States from land ports will be addressed in a subsequent rule.

internet in advance of arriving at the airport or terminal. If the individual has not purchased a ticket in advance or must check baggage, he must first approach the carrier's counters and kiosks. CBP requires commercial air carriers to obtain a travel document, typically a passport, from every passenger prior to boarding that passenger on a flight departing the United States. Commercial air carriers typically require the individual to present his travel documents when he approaches a counter or kiosk to acquire a boarding pass. If the individual obtains the boarding pass in advance of arriving at the airport and does not need to check baggage, he may bypass the check-in counter and kiosk and proceed directly to the TSA security screening checkpoint. At TSA's screening, the individual is asked to present appropriate photo identification to TSA or the air carrier, whichever is specified in the TSA-approved existing security programs. *See* 49 CFR 1544.103. If the individual fails to provide appropriate photo identification, the individual will be subject to secondary screening.

Information provided to the carrier prior to or at the time of check-in is used to compile the flight manifest. The carrier uses some of this information for its own commercial business purposes. The majority of this information is also transmitted to DHS, through APIS, as part of the mandatory passenger reporting requirements for carriers.[7] 19 CFR 122.75a.

The TSA security screening checkpoint demarks the line beyond which the airport is ''sterile'' of prohibited materials as determined by TSA for flight operations.[8] *See* 49 CFR part 1542. The sterile area of an airport provides passengers access to boarding aircraft. Access to the sterile area is controlled through the screening of persons and property for weapons, explosives and incendiaries by TSA at the security screening checkpoint, or by an aircraft operator under 49 CFR part 1544 or a foreign air carrier under 49 CFR part 1546. *See* 49 CFR 1544.5, 1540.111. With few exceptions, individuals must present a valid boarding pass (including a computer-printed one) and submit their carry-on luggage and themselves to screening. *See* 49 CFR 1540.107.

Those individuals who check-in online and do not present their travel documents for inspection at the check-in counter or kiosk do so at the departure gate. This allows carrier staff to verify their identities and ensure that their documentation is appropriate for admission into their foreign destination.

Carrier staff also must collect the departure portion of any Form I–94 or I–94W, Arrival/Departure Record, which are issued to all nonimmigrant aliens, unless otherwise exempted, as evidence of the terms of their admission. *See id.* Typically, the carrier collects and records all boarding passes. In most instances, the boarding pass collection occurs directly at the door to the jetway or walkway leading directly to emplaning.

Information collected at the boarding gate is used to confirm and complete the final flight close-out message, which is then sent electronically to CBP. This information provides a biographic record of an alien's departure from the United States.

3. Proposed Process for Aliens Departing the United States by Commercial Air Carrier

DHS proposes that an alien covered by US–VISIT be required to provide biometrics to an air carrier, consistent with established standards, prior to boarding an international flight. DHS acknowledges this requirement impacts existing carrier business processes. Aliens will be informed of the need to comply with biometric exit screening by the air carrier. Regardless of where the alien checks-in for his or her international flight, the carrier would be required to collect, and the alien would be required to provide, biometrics prior to the alien boarding an international flight leaving the United States.

Given the unique configuration of airports, air carriers have adapted their business practices to simplify air travel for all passengers, taking steps to eliminate queues and minimize passengers' airport time. For example, many air carriers permit passengers to check in and receive a boarding pass on-line prior to arriving at the airport. Similarly, passengers may check luggage with a skycap outside the airport and therefore avoid the check-in counter completely. DHS does not seek to inhibit air carriers' business processes. DHS therefore proposes to permit the air carriers latitude in where they collect biometrics from their departing alien passengers.

DHS expects that, in some instances, an alien will be directed to an air carrier's check-in counter or kiosk prior to security screening by TSA where the alien will provide biometrics to the air carrier in addition to the usual proof of identity, typically a passport. In other instances, DHS expects that air carriers will choose to collect biometrics from aliens at their international departure gates. This alternative permits minimal disruption for aliens making connecting flights who must provide biometrics prior to international departure.

Air carriers may also collect biometrics from aliens on connecting flights at the first airport in their departure itinerary. This collection could be made by the air carrier that transports the alien on the international leg or by a domestic or other carrier with which it has reached an agreement on biometric collection. Notwithstanding any such agreements, however, the air carrier transporting the alien on the international departure flight retains ultimate responsibility for assuring that the biometrics are collected and transmitted in accordance with the proposed rule.

Although there are some general limitations, discussed below, DHS is not designating any specific place within the airport(s) where the biometrics of alien passengers must be collected. Beyond these general limitations, DHS only requires that air carriers collect alien biometrics prior to the alien boarding the flight departing the United States.

DHS seeks comment on other locations for collection of biometrics from aliens traveling by air from a domestic location to a foreign location. As noted above in the connecting flight example, under currently considered options, the air carrier transporting the alien from a domestic location to a

[7] Information for aircraft to be submitted includes: Full name, date of birth, gender, citizenship, country of residence, status on board the aircraft, travel document type, passport information if passport is required (number, country of issuance, expiration date), alien registration number where applicable, address while in the United States (unless a United States citizen, lawful permanent resident, or person in transit to a location outside the United States), Passenger Name Record locator if available, foreign code of foreign port/place where transportation to the United States began, code of port/place of first arrival, code of final foreign port/place of destination for in-transit passengers, airline carrier code, flight number, and date of aircraft arrival. *See* 19 CFR 122.49a–122.49c, 122.75a, and 122.75b. Vessel carriers are governed by 19 CFR 4.7b, 4.64.

[8] TSA is responsible for security in all modes of transportation, including aviation. *See* 49 U.S.C. 114(d). TSA restricts the articles a passenger may carry into the sterile areas of airports and into the cabins of air carrier aircraft. Under TSA's regulations for acceptance and screening of individuals and accessible property, 49 CFR 1540.111, an individual (other than a law enforcement or other authorized individual) may not have a weapon, explosive, or incendiary on or about the individual's person or accessible property when performance has begun of the inspection of the individual's person or accessible property before entering a sterile area or before boarding an aircraft for which screening is conducted under 49 CFR 1544.201 or 1546.201; when the individual is entering or in a sterile area; or when the individual is attempting to board or is onboard an aircraft for which screening is conducted under 49 CFR 1544.201 or 1546.201.

foreign location is responsible for ensuring the collection and transmission of biometrics in a manner that conforms to the rule. Once the carrier completes the collection of the required biometric information, and collection and verification of APIS data pursuant to other DHS regulations, the carrier may board the alien.

Information provided to the carrier by aliens will continue to be used by the carrier to compile the departure manifest. DHS anticipates that carriers will upgrade their existing systems to allow transmission of the biometric data to DHS through already existing connections the carrier uses to transmit other passenger screening information required under DHS regulations or procedures. Biometric data transmission will be considered to be an additional passenger manifest requirement for commercial air or vessel carriers for flights or vessels departing the United States for foreign destinations.

DHS is proposing that commercial air carriers submit biometric data to DHS no later than 24 hours after the flight is secured. DHS seeks to minimize additional technology development requirements and duplicative data submissions to comply with the requirements of these programs. DHS seeks comment on the potential efficiencies that can be gained by carriers in coordinating the collection and transmission of biometric information by carriers with their processes for complying with existing advance passenger manifest and passenger screening requirements such as APIS.

4. Vessel Carrier Departures

Nine vessel carriers use a total of 33 seaports for international departures. This point of contact between the vessel carrier and the alien passenger must be consistent with port security requirements imposed by CBP, the U.S. Coast Guard and TSA. *See* 19 CFR 4.64(b)(2)(i); 72 FR at 48342. The process for aliens departing from the United States by vessel is different from the process for departing by air. Unlike the air environment, vessel terminals do not have numerous gates from which travelers depart. Further, vessel carriers provide security screening, and TSA does not have a screening checkpoint in most sea environments.

Currently, at the vessel check-in counter, vessel carriers validate all international vessel passenger reservations; check travel documents; collect, verify and transmit APIS data, and issue on-board identification. CBP's APIS regulations, recognizing the differences from the air environment, require vessel carriers to transmit APIS data 60 minutes prior to the departure of the vessel. 72 FR at 48325. Accordingly, for international vessel carrier purposes, DHS proposes to require that the vessel owner or operator transmit the biometric data either along with the biographic data required by APIS or at any subsequent point up to 24 hours following the departure of the vessel. Aliens will be informed of these requirements by the vessel carrier. Vessel carriers may not transmit the data earlier than three hours from the time of the vessel's scheduled departure. DHS seeks comment as to whether this proposal will be effective in the sea environment.

5. Technical Requirements

a. Data Transfer

An alien's electronic fingerprint file is substantially larger than an alien's biographic (text) file of manifest information. For this reason, carriers may need to create or enhance systems to handle the larger amount of data inherent in biometric (image) transmissions. DHS proposes operational testing requirements to ensure that all biometric data transferred to DHS can be placed into IDENT.

Overall, the process outlined above is designed to complement CBP's and TSA's biographic data collection with the collection of biometric data, without interfering with existing APIS data collection and transmission processes. DHS believes that to the extent carriers can use the APIS departure manifest transmission system as a means of transmitting the biometric data to DHS, that would ease the cost burden on the carriers. DHS encourages carriers to adjust their systems currently to account for APIS, and US–VISIT exit simultaneously to minimize the later technical changes that will occur over time and maximize their efficiency.

b. Time of Transfer

DHS is proposing that carriers submit the biometric data to DHS not later than 24 hours after securing the aircraft doors for departure of the flight, or departure of the vessel, from the United States. DHS notes that the Department may reduce this period of time in which carriers must submit biometric data to DHS through subsequent rulemakings. As technology improves, DHS and the carriers will have increased capacity and ability to provide the biometric data to DHS at an earlier point in time, including up to the point in which APIS data is submitted prior to departure of the aircraft or vessel. The ability to submit biometric information to DHS before departure of the carrier, would provide DHS with additional security benefits by allowing DHS to compare the biometric information against government databases and terrorist watchlists prior to the departure of the aircraft or vessel.

c. Substantive Performance Standard for Biometrics

Air and vessel carriers collecting biometrics on behalf of DHS will be required to register their system with US–VISIT and receive certification of the quality and security of their transmission capabilities. The biometric departure manifest information data files must comply with the Federal Bureau of Investigation, Criminal Justice Information Services, *Electronic Fingerprint Transmission Specifications*, Appendix F, sections 2 and 3 (''IAFIS Image Quality Specifications'') (May 2, 2005). Data transmission standards and methods for transmitting biometric departure manifest information are expected to be the current standards for the transmission to DHS of other electronic manifest data for carriers.

Carriers must take steps to protect the privacy of the information collected and should only retain the biometrics collected on behalf of US–VISIT for a reasonable time. Carriers will be required to meet applicable technical standards for transmission of data in the Consolidated User's Guide (CUG).[9]

The proposed rule would establish a performance standard for carriers to provide biometric identification of alien passengers departing the United States, consistent with current Integrated Automotaed Fingerprint Identification System (IAFIS) technical standards within 24 hours of securing the aircraft doors on an international departure or the vessel's departure. This performance standard expresses carrier requirements in terms of outcomes rather than specifying the means by which the carrier must operate. DHS believes that this approach is superior to specific design, behavior, or manner of compliance standards because a performance standard permits the carriers the flexibility to achieve the required objective in the most cost-effective manner, given the diversity of

[9] The Consolidated User Guide was jointly developed by CBP and TSA to provide consistent guidance to airlines on information and other requirements, including biographic data collection and transfer under APIS. The CUG is SSI and, therefore, is not released to the public. The CUG has been provided to carriers. The CUG will be modified to include biometric data transfer and storage requirements in a similar manner.

their circumstances, including diverse airport layout. DHS believes that this approach permits carriers to achieve the greatest cost efficiency while assuring compliance through monitoring results and other means.

d. Enforcement and Penalties on Carrier Performance

The enforcement mechanisms for failure to meet the standards proposed in this rule are similar to those that currently apply to carriers who fail to provide APIS passenger data to DHS. *See* INA section 231(g), 8 U.S.C. 1221(g) (per passenger fines for failure to comply; limitations on departure clearance while determination of fines pending except on deposit of sufficient sums to cover penalties). For example, a carrier may face enforcement action for failing to create and transmit a biometric departure record for an alien. A carrier may also be penalized if their overall collection and transmission performance is inadequate. For example, if a carrier's biometric transmissions are of insufficient quality to be processed by US–VISIT and thereby degrades the performance of IDENT, in accordance with 8 CFR 217.6, the Secretary may terminate a carrier's authorization to transport aliens under the VWP. Carriers will also be subject to the data transmission requirements of the Consolidated User's Guide developed for carriers by CBP and TSA in developing the APIS Pre-Departure Final Rule. Finally, carriers will remain liable for civil penalties for improper carriage of aliens, as well as potential limitations on their clearance to depart the United States or engage in international commerce under existing law. *See* INA section 215, 231(g), 8 U.S.C. 1185, 1221(g).

This proposed rule would add one new enforcement provision to ensure security and compliance. The proposed rule would permit DHS to specifically require a carrier to collect biometrics under more restrictive requirements if the carrier fails to collect alien biometric data and transmit adequate data files in a timely fashion. The proposed rule would permit DHS to require a carrier to collect biometrics under supervision at a specified place, including the collection of biometrics before issuing boarding passes to alien passengers, thus restricting the carrier's discretion to manage biometric collection and transmission as is generally provided in the proposed rule. Central to this enforcement mechanism, which DHS considers to be a last resort if compliance and other enforcement mechanisms do not adequately ensure compliance, is the possibility that DHS will require the carrier to collect biometric information at a specific location to permit DHS to supervise the collection. DHS proposes this penalty provision to ensure that DHS will be able to comply with the requirements of the 9/11 Recommendations Act and other Congressional enactments discussed above.

6. Alternatives Considered

DHS considered several operational alternatives to meet the need of biometric data collection at air and sea exit locations. These alternatives only concentrated on the location of collection and the collecting entity. Specific technological solutions were not taken into account. The alternatives considered were:

Alternative A: At the Check-in Counter—Air/Vessel Carrier collection. An air/vessel carrier representative collects biometric data of the alien at the air/vessel carrier check-in counter.

Alternative B: At the Check-in Counter—DHS Collection. A DHS representative collects biometric data of the alien at the air/vessel carrier check-in counter.

Alternative C: At Security Check-Point—DHS Collection. A DHS representative collects biometric data of the alien at the security checkpoint.

Alternative D: At Gate-Air/Vessel Carrier Collection. An air/vessel carrier representative collects biometric data of the alien at the departure gate.

Alternative E: At Gate—DHS Collection. A DHS representative collects biometric data of the alien at the departure gate.

Alternative F: At Check-in Counter—Air/Vessel Carrier collection with verification at gate. An air/vessel carrier representative collects biometric data of the alien at the air/vessel carrier check-in counter, and a DHS representative randomly verifies the data at the departure gate.

Alternative G: At Check-in Counter—DHS collection with verification at gate. A DHS representative collects biometric data of the alien at the air/vessel carrier check-in counter and a DHS representative randomly verifies the data at the departure gate.

Alternative H: At Security Checkpoint—DHS collection with verification at gate. A DHS representative collects biometric data of the alien at the security checkpoint and a DHS representative randomly verifies the data at the departure gate.

Alternative I: Within Sterile Area—DHS collection based on Data from Carriers. A DHS representative collects biometric data of the alien within the airport's sterile area (and a similar area within seaports) based on the biographic information (e.g. passport number) provided by carriers on the departing alien.

DHS compared these possible alternatives using the following: confidence of departure; percentage of population captured; operational impacts to aliens, the carriers, and DHS; conceptual financial burden to the carriers and DHS; need for additional network/connectivity; information technology (IT) security concerns; privacy; and cost.

a. Confidence of Departure

Confidence of departure measures the perceived ability to provide a level of confidence that the alien subject to US–VISIT processing who submitted biometric information did, in fact, depart the United States. The departure gate alternatives provided a higher level of confidence of departure regardless of the collecting entity. For example, if biometric collection occurs at the departure point, the ability of an alien to submit biometrics and exit the airport, without actually leaving the United States, is very low, thus providing for a higher confidence of departure. In contrast, collection of biometrics at the check-in counter provides the lowest confidence of departure because the alien may exit the airport after submitting biometrics and without actual departure from the United States. The TSA security screening checkpoint has a confidence of departure that was in between the other two locations considered. In addition, random biometric verification of aliens at the departure gate, who were originally processed at the check-in counter, provided a higher level of confidence of departure.

Use of the APIS manifest data in concert with the US–VISIT biometric data is expected to add an extra layer of security and confidence that an alien did, in fact, depart the United States and is the same alien who originally entered the United States under that biographic identity. As explained above, the main purpose of APIS is for screening passengers before boarding the aircraft or departure of the vessel. APIS will continue to collect biographic departure information on passengers traveling internationally. The US–VISIT biometric data will, in turn, support this function by ensuring that an alien claiming an identity with biographic information is that person. The programs, therefore, support each other: US–VISIT exit ensures that an alien really is the person he or she claims to be when supplying their biographic data. Comparison of US–VISIT and

APIS will ensure that the same alien actually departs the United States and does not walk out of the airport after supplying DHS with only biometric or biographic data.

b. Percentage of Population Captured

Each alternative was measured for its ability to capture the biometric information from all affected aliens. Where the alternative relied on a collection location that is a mandatory location that the alien must encounter, the percentage of population collected increases. Since all aliens are processed at the departure gate and at TSA security screening, these alternatives were the most favorable regardless of collecting entity. Since not every alien currently checks in at the check-in counter, this alternative was less favorable.

c. Operational Impacts to the Alien, Carrier, and DHS

The alternatives were compared based on the expected additional time and/or additional process that the alien, carrier, or U.S. Government may experience for each implemented solution. The rankings for operational impacts varied not only with location, but also with the collecting entity as well. Overall, the alternatives where existing processes exist and that rely on staffed collection points that already exist were more favorable than locations where no current process or staffed collection point exists.

For international travel, most aliens currently interface with the carrier at the check-in counter. Therefore, operational impacts to the alien were more favorable for biometric collection by the carrier at the check-in counter. In most cases, the alien is already providing identification and other information at the check-in counter. A biometric collection can be taken in conjunction with these already existing processes at the check-in counter without the alien experiencing significant additional processing time. In addition, DHS expects that information collected through APIS will be verified primarily at the check-in counter, and so collection of biometrics at that location would minimize the impact to the carriers in trying to coordinate requirements from multiple DHS programs. DHS seeks comments and data from the carriers on these assumptions and conclusions.

The remaining alternatives were less favorable to the alien due to possible additional time for that collection. For example, although aliens already proceed through the security checkpoint and are processed by carriers at the departure gate, biometric collection at these locations would be an entirely separate process and could result in additional time. Likewise, DHS collection at the check-in counter or departure gate adds a DHS process where one currently does not exist.

Currently, carriers process aliens at check-in counters and at the departure gate. However, adding biometric collection at these locations will add a process and lengthen wait times for the carrier. Therefore, for carriers, the carrier collection alternatives rank less favorable to the DHS collection. If DHS collects the biometric information, the carrier experiences a much less significant change in current operations.

DHS has a presence at airports at the TSA security screening checkpoint and, at international arrival airports, at CBP's secure federal inspection service. However, adding biometric collection at the security screening checkpoint was determined to be unfavorable, as the processes at the security screening checkpoint are primarily concerned with the screening of individuals and luggage for prohibited items.

In addition, several security and operational reasons make DHS collection at TSA security screening a less workable solution. Biometric collection at the screening checkpoint could cause delays. In addition, many TSA locations have space limitations that make these areas infeasible for biometric collection. Biometric collection at the security screening checkpoint could not append to an existing process, but rather would add time as a new process for aliens subject to US–VISIT.

Furthermore, DHS biometric collection at the check-in counter or departure gate would also add a process (and time) where none currently exists, and would add also to existing airport space concerns as a government officer would be conducting biometric capture in the same space as airline employees conduct their business. All DHS alternatives were deemed unfavorable to DHS due to the additional DHS processes, while carrier alternatives were deemed more favorable.

Recognizing the need to identify and control aliens subject to US–VISIT departure biometric capture also leads to favoring use of existing system parameters (such as APIS) to generate applicable documentation of aliens to be fingerprinted by DHS, with the limitation that some documentation would need to be created to permit the carrier to board an alien. The alternative encompassing each of these parameters would minimize the burden on airlines and DHS, but would require close coordination of information flow within a short period of time.

d. Conceptual Financial Burden to the Carriers and DHS

The alternatives analysis assumed that the collecting entity would be responsible for the purchase, deployment, and maintenance of all biometric collection equipment and software needed. Therefore, each alternative was compared based on the conceptual financial burden for the collecting entity to develop, deliver, and implement the solution. Accordingly, financial burden on the carriers was most favorable when DHS collected the biometrics, and financial burden on DHS was most favorable when the carriers collected biometrics.

e. Need for Additional Network or Connectivity

Each alternative was analyzed for its potential need for the DHS-supplied local and wide area data communications infrastructure between the port and the IDENT system that is used to securely transport biometric information. The carrier alternatives were moderately more favorable than the other alternatives, since those locations have existing network and connectivity infrastructure, although biometric collection would have to be integrated into that process. Further, carriers will already be required to make significant efforts to transmit APIS data. DHS proposes similar testing of the transmission of biometric data in this proposal. DHS will attempt to ensure that carriers need not conduct multiple testing and submission requirements to comply with separate but related DHS programs.

f. IT Security Complexity

The alternatives were compared for the possibility that: (1) There would be unauthorized use or misuse of the equipment, data, or network; (2) equipment may be open to intentional or accidental compromise; (3) U.S. Government standards may not be implemented as specified; and/or (4) there would be an intentional compromise of equipment, data, software, or communications infrastructure that would endanger the integrity of the biometric data collected. The alternatives where carriers collected the biometric information were less favorable than the alternatives where DHS collected the biometric information, regardless of location. Information in the sole custody of an entity has less possibility of being breached than information passed from one entity's network to another entity's

network. The carrier collection alternatives require biometric information to pass between the carrier's network and DHS's network. Comparatively, DHS is in sole custody of the biometric information at all times for the DHS collection alternatives.

g. Privacy

The privacy criteria looked at the likelihood of satisfying US–VISIT responsibility for compliance with the Privacy Act, 5 U.S.C. 552a, the Homeland Security Act of 2002, Public Law No. 107–296, 116 Stat. 2135 (Nov. 25, 2002) (as amended, found at 6 U.S.C.), the E-Government Act, Public Law 107–347, 116 Stat. 2899 (Dec. 17, 2002) (codified or found in various sections of 40 and 44 U.S.C.), and applicable DHS and US–VISIT policies. Successful compliance requires limiting the collection of personally identifiable information (PII), and securing the PII against unauthorized access, use, disclosure, or retention, such as the use of the PII collected on behalf of the government for non-government purposes. Like the IT security complexity analysis, the carrier collection alternatives were less favorable than the DHS collection alternatives, regardless of location. When DHS does not maintain custody of PII throughout its lifecycle, there is a lower degree of confidence of compliance with privacy requirements than when DHS does maintain full custody over the PII.

h. Cost

US–VISIT has prepared a regulatory evaluation of the alternatives considered. See section V.A. The costs and benefits are more fully explained in the *Air/Sea Biometric Exit Project Regulatory Evaluation,* which has been placed on the docket and is available at *http://www.regulations.gov* docket DHS–2008–0039–0002.

i. Constraints

After comparing the alternatives based on the identified criteria, DHS further weighed the alternatives against a number of constraints based on DHS goals and the evaluations of the US–VISIT biometric exit program pilot. Crucial among the operating constraints was the need for the biometric exit solution to be, to the extent practical, consistent with, and not redundant of, existing information collection requirements and submission systems for carriers. An additional constraint was to minimize disruption of existing processes from the traveling public's perspective. By making biometric collection consistent with the APIS departure manifest data collection to the extent practical (such as using the same event, e.g. securing of aircraft doors, for time thresholds, even though the times must be different), DHS has attempted to streamline requirements and promote efficiency. US–VISIT exit requirements will be applicable only to a subset of departing passengers, i.e., departing aliens.

The US–VISIT air exit solution that records any departures by flight for all aliens participating in the VWP must be implemented by August 3, 2008 in order to meet the legislative deadline embodied in the 9/11 Recommendations Act. DHS is committed to meeting statutory mandates and preserving the Secretary's discretion to manage the VWP effectively.

Each airport in the United States has a unique design. No Federal or private infrastructure exists in all international airports specifically for the processing of departing aliens. CBP inspects arriving aliens [10] and TSA inspects all passengers for dangerous materials. Consequently, any implementation of biometric exit capabilities must be worked into existing airport and carrier infrastructure and processes. DHS must, accordingly consider the wide variation in the floor plans and terminal designs from one airport to another in developing an alien biometric exit solution.

Of the alternatives considered by DHS, the most promising alternatives were carrier collection of alien biometrics at the departure check-in counter or at the boarding gate. By offering carriers the alternative of using the check-in counter or the boarding gate, or both, DHS has provided carriers with the flexibility to implement biometric exit collection capabilities that are most convenient to carriers in consideration of airport design variation.

In addition, as recommended from the US–VISIT biometric exit pilot evaluations, integrating biometric collection into an existing process, such as the check-in counter or boarding gate process, improves compliance and provides consistency and integration that will ensure that each alien will have a record collected prior to departure.

The majority of aliens departing the United States by air must check baggage; all aliens must provide identification and present travel documents prior to departure. Concern that aliens could ''drop out'' of the travel process following collection of biometrics is mitigated by integration into the standard departure procedures and by the APIS biographic manifest program. The US–VISIT exit program and APIS are able to support each other. DHS will continue to review program integration in the future.

APIS pre-departure verification, additionally, based on biographic information, is applicable to direct departing international flights, not domestic flights. Approximately 27% of all international departing passengers arrive at the international departure airport on a connecting flight from a domestic airport. DHS accordingly scaled the exit program to those carriers and ports with direct international departure flights. This scaling reduces the number of air carriers from approximately 247 to 138, and airports from 450 to 73.

DHS is, therefore, proposing a rule that gives carriers the flexibility to implement biometric exit collection capabilities at the check-in counter, at the boarding gate, or to employ differing locations at differing airports. The proposed rule would not limit an air carrier's ability to collect biometrics at other locations within an airport.

As discussed above, and in the Regulatory Impact Assessment (RIA) accompanying this proposed rule, DHS has analyzed a significant number of alternatives to the performance standards proposed in this rule. DHS welcomes public comment on additional alternatives to the performance standards proposed under this rule, including any combination of alternatives analyzed in the rule and RIA, and the potential economic impacts of such alternatives. DHS may consider implementing a combination of alternatives, such as the use of kiosks operated by DHS to collect biometrics from aliens with concomitant requirements on carriers to verify that aliens have submitted biometrics before boarding a flight or vessel leaving a U.S. port of entry. The Department will take those comments into consideration in development of the final rule.

Similarly, vessel carriers may integrate the biometric collection process into their existing vessel boarding processes. All vessel passengers have their reservations validated, travel documents checked and collected by some carriers, APIS biographic data collected, verified, and transmitted, and on-board identification issued. DHS is proposing the same flexibility for vessel carriers in selection of a location for sea exit biometric collection.

[10] An airport must provide the physical infrastructure to support inspection of all arriving international passengers to be certified as an international airport. 8 CFR 234.4.

7. Non-Air/Vessel Carrier Departures

The proposed rule would apply only to certain commercial air and vessel carriers. The proposed rule would not apply to charters and other small carriers for hire. General aviation aircraft and privately owned and operated vessels are not included in this rule, but will be considered separately. Later consideration of general aviation aircraft and privately owned and operated vessels is consistent with the past development of security standards based on risk analysis. *See Advance Information on Private Aircraft Arriving or Departing the United States,* 72 FR 53394 (Sept. 18, 2007) (proposed rule). Similarly, ferry operators are exempt from this rule, as for DHS purposes these are considered as part of initiatives dealing with land ports-of-entry. *See Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere,* 73 FR 18384, 17404 (April 3, 2008) (final rule) (ferries treated as land border port of entry inspections).

8. Small Air/Vessel Carriers

In developing this proposed rule, DHS considered whether the rule could be effectively applied to small air and vessel carriers. Small air and vessel carriers appear to handle only a small percentage of alien departures.

After considering the risks relative to the costs of requiring small air and vessel carriers to undertake biometric exit data capture and transmission, DHS has determined to exempt small air and vessel carriers from the requirements of this proposed rule for the time being. Utilizing the definitions of the Small Business Administration (SBA), air carriers (whether scheduled passenger or charter air transportation) that employ fewer than 1,500 employees are exempted. 13 CFR 121.201 (NAICS codes 481111 (Scheduled Passenger Air Transportation) and 481211 (Nonscheduled Chartered Passenger Air Transportation)). Vessel owners or operators that employ fewer than 500 employees are small entities. 13 CFR 121.201 (NAICS code 483112 (Deep Sea Passenger Transportation)).

DHS has determined that the costs of equipment purchases and installation, infrastructure modification, and personnel support outweighs the risks to the United States of not obtaining the biometrics of this small population of aliens departing the United States or the benefits to DHS in requiring these costs to obtain the benefits of biometric acquisition (as compared to only biographic information) from this small population of aliens departing the United States. Ultimately, US–VISIT estimates that the percentage of biometrics not captured from aliens departing the United States by small air and vessel carriers to be substantially less than 1%. As with US–VISIT and other DHS programs, DHS's incremental development of US–VISIT may decide to remove exemption and apply these requirements to such small air and vessel carriers as necessary in a future rulemaking action.

9. Additional ''Kiosk'' Option

As noted above, DHS did not formally consider a ''kiosk'' option as part of its alternatives analysis. This was largely due to the conclusions of the exit pilot, as described in section III above, in which DHS concluded that the exit process needed to be made an integral part of the existing departure process to be feasible, and that such an option would face challenges that would make implementation very difficult. Kiosks, for example, require the installation of expensive cabling; negotiation of lease space with port authorities for the placement of kiosk in areas where aliens can have the most effective and efficient access; and the installation of signage instructing aliens as to the location of kiosks, how to use the kiosks, and their responsibilities for compliance with the exit requirements. The exit pilot encountered numerous problems with port authorities regarding space and signage. For example, US–VISIT was restricted in where it could place directional and educational signage. Some ports required that signage be coordinated with other types of signage in that port. This inconsistency in placement and visual appearance caused confusion when aliens attempted to comply.

DHS wishes to solicit comments on a potential kiosk option here and provides this analysis as a means of informing commenters. Additional documentation for this option can be found in the published docket for this rulemaking at *http://www.regulations.gov.*

a. Requirement for Carrier Participation

The kiosk scenario would require participation by the carriers at two specific points: As part of the boarding pass issuance (whether in-person and on-paper, or remote and electronic) and at the gate as the alien departs. Carriers would be responsible for determining that a specific alien is subject to US–VISIT procedures and also ensuring that those aliens have in fact complied with the law and provided those biometrics, thus providing the at-gate enforcement mechanism that the pilot lacked.

b. Air Processes

i. *Reservation:* When an international traveler makes the initial travel reservation, whether in person, on-line, at a travel agency, or by telephone, the carrier determines by means of a US–VISIT supplied decision tree if the traveler is subject to US–VISIT procedures upon departure from the United States. If so, the carrier notifies the passenger, when providing him or her with a boarding pass (whether paper or electronic), that they must proceed to a US–VISIT exit kiosk at the time of their departure from the United States.

ii. *Kiosk Location:* An alien originating at an international airport may have the option of using a kiosk located before the security-screening checkpoint or using a kiosk located within the sterile area of the terminal. Kiosks may also be located at domestic terminals of international airports or domestic terminals. Multiple locations allow for ease of compliance and reduce the cost of the system. For example, a system located only at the departure gate would require sufficient kiosks and attendants to enable the entire departing alien population to provide their biometrics within a limited window of time. By enabling aliens to provide their biometrics at multiple locations and over a longer time frame within the departure process, the number of kiosks/attendants required is less than a sole point of compliance solution would require. A connecting alien (*i.e.*, who originated at a domestic airport and is transferring to an international flight) may be able to use a kiosk located within the sterile area.

iii. *Kiosk Procedure.* The alien's boarding pass will have a two-dimension bar code printed on it. The kiosk will read the bar code. After the bar code is read, the alien submits the biometric fingerprints. The kiosk prints a receipt that the alien provides to the carrier upon departure. Carriers will be required to modify their reservations system so that when a boarding pass (either printed or electronic) is printed or sent to the alien, it will include a bar code containing the passenger's name, travel document number, airline code (*e.g.*, ''CO'' or ''UA''), flight number, and date and time of departure. This information is required to build the biometric manifest and to link the biometric with the APIS manifest.

iv. *Gate Procedure:* The alien will be required to provide, to the carrier agent at the gate, either a receipt from the kiosk or a separate boarding pass created by a kiosk that demonstrates the person has complied with the requirement to provide biometrics.

c. Vessel Processes

The vessel carrier context uses the preferred solution assumption of 33 seaports. The reservation system would be equivalent to the air carrier scenario described above. Because the business model for vessel carriers is slightly different from the business model for an air carrier, however, the kiosk location would be different. All vessel carrier passengers originate at the United States port-of-departure, there are no boarding passes *per se*, and the check-in agent is also the functional gate agent. Therefore, the scenario for vessel carriers would be that the alien provides the biometric at the time of check-in. Since vessel carriers do not provide their passengers a boarding pass, aliens would be required to insert the biographic page of their passport into a document reader. After the passport is read, the passenger provides the biometric fingerprints The kiosk would print a receipt that the alien would present to the vessel carrier's agent.

There is no equivalent gate procedure to the air scenario as the check-in area is the functional gate area.

d. Kiosk Scenario Assumptions

This scenario makes several assumptions about carriers and DHS operations that may require further modification:

- Carriers will be required to incorporate into their reservations system a US–VISIT provided ''decision tree'' to determine if a passenger is an alien subject to US–VISIT and will be required to develop a passenger notification process;
- Air carriers will be required to print a compliance advisement on paper boarding passes and include a compliance advisement on an electronic boarding pass;
- Air carriers will incorporate into their departure control systems a means to identify an alien subject to US–VISIT exit requirements to verify that the passenger has provided their biometric prior to boarding the international flight;
- DHS would be required to develop the software to collect and transmit the biographic and biometric information;
- DHS would use existing communication paths or develop a direct kiosk/US–VISIT communication path;
- DHS would develop new kiosks with a fingerprint scanner, a boarding pass reader, and a printer, and the kiosk would be compliant with the Americans with Disability Act;
- Carriers would be subject to penalties for boarding aliens subject to US–VISIT exit requirements who have not complied with the exit process;
- The APIS and biometric manifests will be compared by US–VISIT to identify non-compliant passengers;
- The carrier's gate agent would be able to identify the relevant aliens and would deny boarding to any alien who has not complied with US–VISIT exit requirements;
- Carriers would either collect the kiosk receipt and/or build a verification process into their departure control system;
- DHS would be required to negotiate with each individual port authority for kiosk and administrative space;
- DHS would be responsible for ''first level'' kiosk maintenance, which is defined as tasks such as cleaning the fingerprint platen, changing receipt paper rolls, and ink cartridges;
- DHS would be responsible for providing a kiosk attendant to assist aliens experiencing difficulty using the kiosk or to validate that an alien is physically unable to provide an exit biometric;
- DHS would provide one attendant per cluster of kiosks up to a ratio of one attendant for every three co-located kiosks;
- The attendants would be aligned with a DHS entity such as TSA or CBP for supervision, support, and interface with the port authority and carriers;
- The attendants would require office and storage space, uniforms, and clearance to enter the security area.

e. Cost of Kiosk Option

US–VISIT estimates that the costs for implementation of this option, to both government and private industry collectively, over a ten-year period, would be $3,132,900,000. A more detailed analysis, including a breakdown of costs, additional assumptions, and cost comparisons to the proposed option included in this rule, as well as cost breakdowns of the proposed option and other alternatives, can be found in the docket for this proposed rule at *http://www.regulations.gov.*

C. Statutory Authority To Require Air and Vessel Carriers to Collect Exit Biometrics

The proposed rule would impose on certain commercial air and vessel carriers additional manifest requirements for the collection and transmission of biometric identifiers relative to certain passengers, crew members, and non-crew departing the United States. The biometric manifest information required will depend upon whether an alien is required to satisfy the biometric exit requirements established under US–VISIT.

Commanding officers, masters, owners and others of any aircraft and vessel transporting any person out of the United States are required to file manifests:

> For each commercial vessel or aircraft taking passengers on board at any seaport or airport of the United States, who are destined to any place outside the United States, it shall be the duty of an appropriate official specified in subsection (d) of this section to provide any United States border officer (as defined in subsection (i) of this section) before departure from such port manifest information about each passenger, crew member, and other occupant to be transported.

INA section 231(b), as amended, 8 U.S.C. 1221(b). The contents of the passenger manifest are set forth with particularity in INA section 231(c)(1)–(9), but the Secretary is also delegated authority to add specific requirements in INA section 231(c)(10) to include:

> Such other information the [Secretary], in consultation with the Secretary of State, * * * determines as being necessary for the identification of the persons transported and for the enforcement of the immigration laws and to protect safety and national security.

INA section 231(c)(10), 8 U.S.C. 1221(c)(10). Other provisions of law have been historically used to require biographic manifest information. *See* 19 U.S.C. 1431, 1433 and 1644a; 46 U.S.C. 60105; 49 U.S.C. 44909. Currently, advance passenger manifest data for commercial flights and voyages to and from the United States are collected by CBP through APIS. To enforce these requirements, an aircraft or vessel may not be granted departure clearance until the manifest information is provided:

> No operator of any private or public carrier that is under a duty to provide manifest information under this section shall be granted clearance papers until the appropriate official specified in subsection (d) of this section has complied with the requirements of this subsection, except that, in the case of commercial vessels or aircraft that the [Secretary] determines are making regular trips to the United States, the [Secretary] may, when expedient, arrange for the provision of manifest information of persons departing the United States at a later date.

INA section 231(f), 8 U.S.C. 1221(f); *see also* 19 U.S.C. 1644a (customs law by which outbound clearance requirements under 46 U.S.C. 60105 are incorporated and made applicable to departing carriers). Additionally, civil penalties may be levied for failure to comply with manifest provisions. INA section 231(g), 8 U.S.C. 1221(g); *see also* 19 U.S.C. 1433, 1436 and 1644a.

The INA prohibits aliens boarding a vessel or aircraft from departing the United States, except as authorized by the Secretary:

Unless otherwise ordered by the President, it shall be unlawful—

(1) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe;

(2) For any person to transport or attempt to transport from or into the United States another person with knowledge or reasonable cause to believe that the departure or entry of such other person is forbidden by this section;

INA section 215(a), as amended, 8 U.S.C. 1185(a). The President has delegated his authority to prescribe regulations regarding aliens under this provision to the Secretary of Homeland Security. Executive Order 13323, Assignment of Functions Relating to Arrivals in and Departures from the United States, 69 FR 241 (Jan. 2, 2004).

Both the plain language and the history of these statutes supports the Secretary's authority to impose upon carriers the responsibility to positively identify arriving and departing aliens to protect the national security of the United States and the safety of U.S. citizens and aliens and to better enforce the immigration laws of the United States.[11] Positive identification can be achieved with most certainty, and most efficiently, through the use of biometrics. It is well within the Secretary's authority to require carriers to employ today's technology when he effectuates the objectives set forth in INA section 231(c)(10), 8 U.S.C. 1221(c)(10).

The collection of biometrics from departing aliens incident to their departure also supports DHS' missions in developing, analyzing, and sharing intelligence information, both within the U.S. Government and with our international allies. The location of an alien deemed to be a threat may profitably be learned upon a delayed basis and relayed to the appropriate international authority to support U.S. intelligence and criminal law enforcement functions. Accordingly, the rule is proposed under the Secretary's authority and responsibility to ensure the security of the homeland.

The rule is also proposed under the Secretary's authority to require air carrier security screening and manifesting. 49 U.S.C. 44909. Accordingly, the Secretary views his authority over homeland security as a whole, not as separate and distinct authorities.

The Secretary relies upon all of the authorities delegated to him and his subordinates under the Homeland Security Act of 2002 (HSA), Public Law No. 107–296, sections 101, 102, 116 Stat. 1135 (Nov. 26, 2002), 6 U.S.C. 111, 112, including his plenary regulatory authority over immigration under INA section 103(a), 8 U.S.C. 1103(a), as well as regulatory authority delegated by the customs and shipping laws. The Secretary exercises all of these authorities to fulfill the provisions of various enactments providing programmatic authority for a comprehensive entry—exit information management system, including biometric identifiers, to match an alien's available arrival data with the alien's available departure data (as authorized or required to be created or collected under law) in an electronic format to assist the United States to identify, through on-line searching procedures, lawfully admitted nonimmigrants who may have remained in the United States beyond the period authorized.

D. Impetus for Carrier Participation

The 9/11 Recommendations Act requires biometric exit processing by August 3, 2008. As discussed above, the Secretary's authority to waive limitations on the VWP will be suspended on July 1, 2009, unless the Secretary provides notification that the air exit system fully satisfies the biometric requirements of INA section 217(i), 8 U.S.C. 1187(i). A lapse in this waiver authority could be detrimental to air carriers if a significant number of aliens would be removed from VWP and be required to acquire visas to be admitted to the United States.

Biometric collection was required by IRTPA and was contemplated by Congress much earlier. The manner in which such processing can be successfully and efficiently accomplished by the U.S. Government alone, however, has been complicated by several practical constraints that were reinforced in the pilot programs. The chief constraints include the limited, privately owned, high-value space at air and vessel terminals needed to install equipment at optimal locations for exit processing; the apparent necessity for a concentrated (and potentially expensive) enforcement presence to assure compliance with exit requirements; and the addition of ''another separate process'' with which aliens and carriers will need to contend before boarding.

Space constraints for exit equipment forced many pilot sites to be located at a considerable distance from the appropriate gates, which worked against passenger participation and contributed to low compliance. The constraints revealed by the pilots are tied to the absence of statutes controlling, and national experience with, rigorous inspection upon departure and the attendant lack of facilities and space that, by contrast, are made available by carriers and authorities for inspection upon arrival.

These factors have led to the conclusion that integration of biometric exit capture into the existing departure process will best serve processing objectives and be least disruptive to the traveling public.

V. Summary of the Proposed Rule

DHS proposes to add a new 8 CFR 231.4 requiring the collection and transmission of biometric departure manifest information by carriers. This section provides for the collection of biometric departure manifest information from all aliens subject to US–VISIT requirements regardless of the specific commercial air or vessel carrier on which they depart the United States. Proposed section 231.4 specifies that biometrics for any alien who is required to provide biometrics under proposed 8 CFR 215.8 must be collected prior to boarding that alien on transportation for departure from the United States. Initially, the biometrics must be transmitted to DHS within 24 hours of securing the doors of the aircraft for departure from the United States or departure of the vessel from the United States, using existing manifest transmission standards. DHS recognizes that capacity will change over time and further amendment to reduce the time for transmission is likely. The biometrics collected must meet Federal Bureau of Investigation specifications. The carriers are required to use the biometrics for no other purpose except as designated in 8 CFR 231.4 and use the biometrics only pursuant to the CUG.

In addition, the rule updates 8 CFR 217.7, to include, in the last sentence concerning aliens departing the United States, a reference to 8 CFR 231.4. The proposed rule also corrects citation

[11] Vessel and air carriers often have extra responsibilities and obligations that have involved engagement of their own personnel in detailed questioning, and even physical inspections, of passengers. *See* 25 Ops. Atty. Gen. 336, 339 (1905) (as to the heavy burden on carriers); *McInerney* v. *United States*, 143 F. 729, 737 (1st Cir. 1906) (as to the quasi-public character of the responsibility of making a manifest and of the manifest itself—assisting the government to enforce its laws, imbuing it with a force it would not otherwise possess); *see, e.g., Oceanic Steam Navigation Company* v. *Stranahan*, 214 U.S. 320 (1909) (as to medical inspections applied in relation to the manifest under a 1903 law).

errors that currently exist in 8 CFR 235.1.

DHS proposes to revise 19 CFR 4.64, 122.75a, and 122.75b (pertaining to electronic departure manifests) to add paragraphs cross-referencing the proposed 8 CFR 231.4, which requires the biometric collection as an additional carrier manifest responsibility. Although the manifest information required by the APIS system is different from the biometric departure manifest information and its underlying system (US–VISIT), and the information has different uses and processing and retention requirements, the requirement for both derive from the same statutes, and the communications medium and transmission standards for the existing system are leveraged for the transmission of the biometric departure manifest information. DHS proposes to amend 8 CFR 215.8 to remove the reference to the number of pilots and the numerical limitation on the number of air or sea ports where aliens are required to provide biometric exit data and to reference new carrier responsibilities.

Finally, although DHS does not expect enforcement of these requirements to be problematic, DHS proposes to add a supplemental enforcement provision to the regulations. Upon making any of the determinations that would result in civil penalties or denial of departure clearance, DHS proposes to retain the authority to require a carrier to collect alien biometric data and transmit that data to DHS under a more restrictive system of DHS oversight, specifically including designating the location where the carrier must collect the biometric data.

VI. Statutory and Regulatory Requirements

A. Executive Order 12866

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), as amended, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. DHS has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f) because there is significant public interest in issues pertaining to national security and because this is an economically significant rule pursuant to this Executive Order. Accordingly, this proposed rule has been submitted to OMB for review and approval.

In order for DHS to maintain the integrity of the United States immigration system, immigration benefits should only be given to those that truly deserve those benefits. Accurate and timely information on an alien's departure can inform decision makers so correct decisions on visa renewal, re-admittance into the United States, and granting of permanent residence or citizenship can be made.

Biometric confirmation that an alien has departed the United States provides two key elements for immigration and border security management: (1) Certainty that the alien in question did, in fact, leave; and (2) an accurate identification of that alien.

Presently, DHS is able to match the vast majority of international aliens' entry and exit records with biographic information. Biographic (i.e. name, date of birth, etc.) information can sometimes be inaccurate, however, for a variety of reasons. For example, names and other biographic data are sometimes inadvertently changed when manually typed (if the machine-readable zone of the passport is worn or unreadable), or the data can differ from travel document to boarding pass. Other factors can make it difficult for DHS to match some sets of records. Consistent with the authorizing legislation, DHS proposes to require air and vessel carriers to collect alien fingerprints prior to departure and transmit that data to DHS. Biometric collection will increase the confidence that an alien did, in fact, depart, as opposed to carrier biographic manifest data, which are tied more to an alien's document than to the alien in question.

DHS has performed a preliminary analysis of the expected costs and benefits of this proposed rule.

1. Alternatives to the Proposed Rule Evaluated

This proposed rule would require air and vessel carriers to collect biometrics from aliens departing the United States. As discussed more fully in section III.B, there are four alternatives being evaluated for the regulatory evaluation of air and sea exit. Alternatives vary by the location of the biometric collection and the entity which pays for and operates the system:

Proposed Rule: At a Location at the Carrier's Discretion—Air and Vessel carriers implement and manage. An air or vessel carrier representative collects biometric data of the aliens at any international airport or seaport location selected at the discretion of the carrier based on airport or seaport terminal layout, current and future business practices and operational efficiency. Possible locations for collection include, but are not limited to, the ticket counter and the boarding gate.

Alternative 1: At Airline Check-in Counter—Air and Vessel carriers implement and manage. An air or vessel carrier representative collects biometric data of the aliens at the air or vessel check-in counter. No boarding pass or other vessel identification documentation may be issued prior to the collection of biometrics.

Alternative 2: At Security Check-Point—United States Government implements and manages. A U.S. Government representative collects biometric data of the alien traveler at the TSA security checkpoint. This is not applicable to vessel carriers because there are no TSA checkpoint at seaports.

Alternative 3: At a Location at the Carrier's Discretion—United States Government implements and manages. A U.S. Government representative collects biometric data from aliens at any airport or seaport location selected at the discretion of the carrier based on air or sea port terminal layout, current and future business practices and operational efficiency.

Alternative 4: At a Kiosk—United States Government implements and manages. An alien passenger will be instructed by the carrier to proceed to a US-VIST exit kiosk at the time of their departure. The carrier will be required to notate on the boarding pass (whether paper or electronic) that the person must provide biometrics before departure. The kiosk will be available before or after the security checkpoint. The carrier is subject to penalty for boarding an alien passenger who has not complied with exit requirements. A vessel carrier passenger provides biometrics at the time of check-in.

2. Costs

Table 1 shows that the proposed rule expenditure and delay costs for a ten-year period are estimated at $3.5 billion. That estimate is approximately $2.6 billion using a discount rate of 7% and $3.1 billion using a discount rate of 3%.

TABLE 1.—AIR/SEA BIOMETRIC EXIT COST SUMMARY

[$ millions, 2008 dollars]

Expenditure and delay costs estimates	Proposed Rule: carrier discretion	Alt 1: carrier check-in counter	Alt 2: TSA security checkpoint	Alt 3: carrier determined location	Alt 4: fixed kiosk
10 Year total Expenditure plus Delay Costs	$3,549.3	$6,404.4	$4,775.6	$3,696.3	$3,123.9
20 Year total Expenditure plus Delay Costs	7,457.0	13,330.2	10,079.0	7,960.3	6,772.5
10 Year Present Value 7% discounting	2,623.6	4,725.8	3,480.9	2,685.9	2,303.6
10 Year Present Value 3% discounting	3,096.3	5,583.2	4,142.9	3,202.0	2,722.5

The analysis incorporates risk analysis to estimate a range of costs to carriers resulting from the proposed rule.

Table 2 provides a summary of the costs to carriers. For the high end of each range, US–VISIT assumes that first year costs will be $379.2 million with an average recurring annual cost of $443.6 million. This would result in a 10 year present value total of $3,685.1 million at a 3% discount rate and $3,116.5 million at a 7% discount rate. For the low end of each range, US–VISIT assumes that first year costs will be $223.0 million with an average recurring annual cost of $206.1 million. This would result in a 10 year present value of $1,855.6 million at a 3% discount rate and $1,594.1 million at a 7% discount rate.

TABLE 2.—AIR/SEA BIOMETRIC EXIT COSTS TO CARRIERS SUMMARY

[$ millions, 2008 dollars]

	First year costs	Avg. recurring costs	10 year present value (3%)	10 year present value (7%)
Median Estimates:				
Large Airlines	229.1	270.4	2,301.8	1,955.5
Medium Airlines	7.1	8.4	71.2	60.5
Vessel Carriers	57.6	34.3	317.9	273.4
Total	282.7	313.1	2,690.9	2,289.4
High Estimates:				
Large Airlines	295.7	382.5	3,151.5	2,662.6
Medium Airlines	9.1	11.8	97.5	82.3
Vessel Carriers	74.4	49.2	436.1	371.5
Total	379.2	443.6	3,685.1	3,116.5
Low Estimates:				
Large Airlines	174.0	178.1	1,582.8	1,356.9
Medium Airlines	5.4	5.5	49.0	42.0
Vessel Carriers	43.6	22.5	223.8	195.2
Total	223.0	206.1	1,855.6	1,594.1

US–VISIT has assessed seven categories of economic impacts other than direct expenditures. Of these two are economic costs.

- Social costs resulting from increased traveler queue and processing time; and
- Social costs resulting from increased flight delays.

3. Benefits

Table 3 shows that the ten-year benefits are estimated at $1,093.6 million, which is about $771.7 million with a discount rate of 7% and $935.6 million with a discount rate of 3%.

TABLE 3.—AIR/SEA BIOMETRIC EXIT BENEFIT SUMMARY

[$ millions, 2008 dollars]

Benefits estimates	Proposed Rule: carrier discretion	Alt 1: carrier check-in counter	Alt 2: TSA security checkpoint	Alt 3: carrier determined location	Alt 4: fixed kiosk
10 Year total Economic Benefits	$1,093.3	$1,093.3	$1,093.3	$1,093.3	$1,093.3
20 Year total Economic Benefits	2,901.5	2,901.5	2,901.5	2,901.5	2,901.5
10 Year Present Value 7% discounting	771.7	771.7	771.7	771.7	771.7
10 Year Present Value 3% discounting	935.6	935.6	935.6	935.6	935.6

US–VISIT has assessed seven categories of economic impacts other than direct expenditures. Of these five are benefits, which include costs that could be avoided, for each alternative:

- Cost avoidance resulting from improved detection of aliens overstaying visas;

• Cost avoidance resulting from improved U.S. Immigrations and Customs Enforcement (ICE) efficiency attempting apprehension of overstays;
• Cost avoidance resulting from improved efficiency processing Exit/Entry data;
• Improved compliance with NSEERS requirements due to the improvement in ease of compliance; and
• Improved National Security Environment.

These benefits are measured quantitatively or qualitatively. For a more detailed assessment of the benefits, *see* section 5.3. of the Regulatory Evaluation.[12]

As DHS has noted in prior US–VISIT program rulemakings, the anticipated benefits of this proposed rule include:

Better Allocated Enforcement Resources. ICE is responsible for locating aliens who overstay their admission period. With a greater certainty of who has left the United States comes a greater certainty of who has not. With biometric exit, US–VISIT can more accurately tell if an alien has overstayed their admission period. If so, ICE will be notified. This improves the efficiency of ICE's allocation of scarce interior enforcement resources to track down ''confirmed'' overstays, as opposed to those that may have left, but due to biographic data inaccuracies appear to have overstayed.

Ability to Determine Eligibility for Future Immigration Benefits. A more accurate assessment of an individual alien's compliance with immigration law allows for a more accurate adjudication of subsequent immigration benefit applications, such as visa adjudication, re-admission to the United States, or adjustment to lawful permanent resident status. Biometric exit data will enhance the U.S. Government's ability to restrict those benefits to aliens who have complied with their previous admission periods.

Visa Waiver Program Eligibility. Biometric exit data will be used in the aggregate to assist in the calculation of overstay rates for nationals of countries designated in the VWP. Overstay rates are used to evaluate whether the designation of countries in the VWP are inconsistent with the interest of the United States in enforcing its immigration laws. *See, e.g., Attorney General's Evaluations of the Designations of Belgium, Italy, Portugal, and Uruguay as Participants Under the Visa Waiver Program,* 68 FR 10,954, 10,956 (2003) (terminating designation of Uruguay in part because of apparent overstay rate of 37%, more than twice the rate of average apparent overstay rate for all air arrival nonimmigrants); *see generally* INA section 217(c)(2)(C), 8 U.S.C. 1187(c)(2)(C). Finally, INA section 217(h)(1), 8 U.S.C. 1187(h)(1), requires DHS to calculate a VWP overstay rate and to include that rate as part of the annual report required by DMIA section 2, 8 U.S.C. 1365a(e)(1).

Improved Analysis Capabilities. Exit information will be analyzed in the aggregate to identify weak areas in our immigration and border management system where overstays are prevalent. This will require the development of new analytic capabilities within DHS and DOS. Comprehensive trend analysis will allow DHS and DOS to identify specific visa-issuing posts, visa categories, or other locations or factors reflecting an unacceptably high overstay rate, allowing opportunities for self-assessment and more focused enforcement, including increased areas for scrutiny when deciding on immigration benefit or visa renewal applications.

4. Accounting Statement

As required by OMB Circular A–4, US–VISIT has prepared an accounting statement indicating the classification of the expenditures associated with this proposed rule. Table 4 provides our best estimate of the dollar amount of these costs and benefits, expressed in 2008 dollars, at 3% and 7% discount rates. US–VISIT estimates that the cost of this rule will be approximately $366.9 million annualized (7% discount rate) and approximately $369.9 million annualized (3% discount rate). Quantified benefits are $99.9 million annualized (7% discount rate) and $103.5 million annualized (3% discount rate). The non-quantified benefits are enhanced security and enabling the expansion of the VWP.

TABLE 4.—ACCOUNTING STATEMENT: CLASSIFICATION OF EXPENDITURES, 2008 THROUGH 2017

	Estimates primary estimate	Low estimate	High estimate	Units year dollar	Discount rate (percent)	Period covered
Benefits Annualized	$99.9	$47.9	$164.4	2008	7	2008–2017
Monetized ($millions/year)	103.5	49.6	170.4	2008	3	2008–2017
	0	0	0	.....	7	.....
Annualized Quantified	0	0	0	.....	3	.....
Qualitative	Improvement to National Security; Enables Expansion of the VWP Program					
Costs Annualized	366.9	252.9	495.8	2008	7	2008–2017
Monetized ($millions/year)	369.9	254.5	500.6	2008	3	2008–2017
	0	0	0	.....	7	.....
Annualized Quantified	0	0	0	.....	3	.....
Qualitative						

DHS lacks data concerning several of the variables used in this analysis. Therefore, DHS made assumptions and calculated estimates in an environment of uncertainty and variance in industry and government operations. The key assumptions that drive the cost and benefit analyses are described in detail in the regulatory evaluation, which may be found on the docket, DHS–2008–0039–0002. DHS solicits comments to improve the analysis to the greatest extent possible. Comments may be submitted to the regulatory docket using any of the methods listed under **ADDRESSES** in the preamble to this proposed rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 604, as amended by the Small

[12] Some negative economic impacts, such as an increase in air and sea carrier personnel and government employee processing time have been addressed as direct costs, i.e., the financial value of additional resources needed to staff any new operational processes.

Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). A ''small entity'' is defined under the RFA to be the same as a ''small business concern'' as defined under the Small Business Act, 15 U.S.C. 632. Thus, a small entity (also referred to as a small business or small carrier) for RFA purposes is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria set forth under the SBA.

In accordance with provisions of the SBA, air carriers (scheduled passenger air transportation) that employ fewer than 1,500 employees are small entities. 13 CFR 121.201 (NAICS codes 481111 (Scheduled Passenger Air Transportation) and 481211 (Nonscheduled Chartered Passenger Air Transportation)). Vessel owners or operators that employ fewer than 500 employees are small entities. 13 CFR 121.201 (NAICS code 483112 (Deep Sea Passenger Transportation)).

As discussed in section IV.B.8, these carriers would be exempt from collecting biometric information for US–VISIT exit requirements under this proposed rule. Based on information obtained from CBP regarding current eAPIS users, DHS estimates that approximately 500 small U.S. air carriers could be affected by the proposed rule if the proposed rule did not contain the proposed exemption. DHS estimates that three small U.S. vessel carriers could be affected by the proposed rule if the proposed rule did not contain the proposed exemption. DHS continues to analyze the potential number of air and vessel carriers that would be directly affected by the proposed rule were it not for the exemption.

Additionally, costs to airports owned by small governmental jurisdictions must be considered. DHS estimates that 73 international airports would be directly affected by this proposed rule. These airports host primarily the large carriers that will be required to comply with the proposed rule. In addition to these 73 airports, an additional 40 smaller airports could be affected by this proposed rule because they service a small number of international flights. However, DHS does not believe that these airports will be affected because they service primarily chartered international flights by small air carriers that are exempted from the proposed rule. Finally, DHS estimates that 13 seaports are likely to be directly affected by this proposed rule.

The number of exempted small carriers is not known with certainty. Thousands of entities are registered to use CBP's eAPIS, a Web-based, no-fee transmission system that is used to transmit APIS data to CBP prior to an aircraft's departure. eAPIS users include not only small air passenger carriers but also large air passenger carriers, air ambulance providers, aircraft leasing companies, flight instruction schools, large and small air cargo carriers, large and small passenger vessel carriers, large and small cargo vessel carriers, and several bus and truck operators. CBP reviewed the eAPIS users (as of February 2007), and based on a representative sample of this database estimated that approximately 500 small air carriers would be affected by the proposed US–VISIT exit requirements except for the exemptions set forth in the proposed rule.[13] Additionally, CBP identified three small passenger vessel carriers that would be affected.

Additionally, some airports may need to work with the large air carriers to make modifications to accommodate the US–VISIT exit process. As presented in the analysis for Executive Order 12866 above, US–VISIT identified 73 airports where significant modifications would need to be made due to the large number of international passengers that these airports host. Additionally, US–VISIT identified 40 airports that service international passengers but because of the exemptions proposed are unlikely to be affected, as they host small air carriers.

Of the 73 airports included in the primary cost-benefit analysis, 24 are owned by a city, 17 are owned by a local airport authority, 17 are owned by a county, 11 are owned by a port authority, 12 are owned by a state or U.S. territory, and one is privately owned. Of those airports owned by cities, none are owned by small jurisdictions, i.e. a jurisdiction with a population 50,000 people or less based on 2006 Census data.[14] Of those airports owned by counties, none are owned by small jurisdictions. None of the airport authorities or port authorities, usually quasi-government organizations at the local, regional, or state level, serves a small jurisdiction. The one privately owned airport (in Kenmore, WA), is a small business based on the threshold for airport services (NAICS code 488119 (Other Airport Operations)) because it earns revenues of less than $6.5 million annually.

Of the 13 seaports included in the primary cost-benefit analysis, all are owned by a port authority serving a large jurisdiction.

Of the 40 airports not included in the primary cost-benefit analysis due to the proposed exemption of the small air carriers, 12 are owned by a city, eight are owned by a local airport authority, eight are owned by a county, eight are owned by a port authority, two are owned by the U.S. Government, and two are privately owned. Of those airports owned by cities, four are owned by small jurisdictions (Bangor, ME; Del Rio, TX; International Falls, MN; and Juneau, AK). Of those airports owned by counties, none are owned by small jurisdictions. One airport authority (Portsmouth, NH) serves a small jurisdiction. US–VISIT does not believe that these 40 smaller airports will be directly affected by the rule because they will not host carriers that must comply with US–VISIT exit requirements.

None of the seaport authorities serves a small jurisdiction.

The two privately owned airports (in Kenmore, WA; and Sandusky, OH) are both small businesses based on the threshold for airport services.

Based on this analysis, DHS does not believe the rule would have a significant economic impact on a substantial number of small entities. Individual aliens to whom this rule applies are not considered small entities as that term is defined in 5 U.S.C. 601(6). Indirect economic impacts are not considered within the scope of the Regulatory Flexibility Act. *See Mid-Tex Elect. Coop. Inc.* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985).

As discussed above, US–VISIT considered a host of regulatory alternatives. See section IV.B. The chosen alternative, the proposed rule, minimizes the burden to small entities to the extent possible because it specifically exempts small air and vessel carriers.

DHS has posted the assessment of the costs and benefits of the rule on the public docket at DHS–2008–0039–0002. DHS invites public comments from small entities on the impact of the proposed rule.

C. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA),

[13] The line of business and size of business for eAPIS users was determined using the Dun & Bradstreet Business Database (*http://www.dnb.com*) and ReferenceUSA's Business Database (*http://www.referenceusa.com*) accessed September 17 to September 20, 2007.

[14] ''Population Finder'' on *http://www.census.gov*, accessed September 17, 2007.

Public Law 104–4, 109 Stat. 48 (March 22, 1995), 2 U.S.C. 1531–1538, requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector of more than $100 million in any one year (adjusted for inflation with 1995 base year). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA requires DHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome option that achieves the objective of the rule. Section 205 allows DHS to adopt an alternative, other than the least costly, most cost-effective, or least burdensome option if DHS publishes an explanation with the final rule.

As summarized previously, DHS acknowledges that this proposed rule will have an impact of $100 million in any one year, and DHS has considered a number of regulatory options to achieve the objective of the rule. The economic impacts of the rule to air and vessel carriers and ports where these carriers operate were described above (see section on Executive Order 12866). Impacts to the private sector include costs to the affected air and vessel carriers. Additionally, DHS estimates that 73 airports and 13 seaports are likely to be affected by the proposed rule, as these ports will need to work with the large carriers to make modifications to accommodate the US–VISIT exit process.

Of the 73 airports included in the primary cost-benefit analysis, 23 are owned by a city, 17 are owned by a local airport authority, 15 are owned by a county, 11 are owned by a port authority, and seven are owned by a State or U.S. territory. Of the 13 seaports included in the primary cost-benefit analysis, all are owned by a port authority.

DHS has posted the assessment of the costs and benefits of the rule on the public docket at DHS–2008–0039–0002. DHS invites public comments from State, local or tribal governments on the impact of the proposed rule.

D. Executive Order 13132

Executive Order 13132 requires DHS to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Such policies are defined in the Executive Order to include rules 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.''

DHS has analyzed this proposed rule in accordance with the principles and criteria in the Executive Order and has determined that the provisions of the proposed rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, DHS has determined that this rule does not have federalism implications. This rule provides for the collection by international air carriers and vessel operators, for use by the U.S. Government, of biometric identifiers from a defined group of aliens seeking to exit and possibly re-enter the United States, for the purpose of improving the administration of federal immigration laws and for national security. States do not conduct activities with which the provisions of this specific rule would interfere.

E. Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988. That Executive Order requires agencies to conduct reviews, before proposing legislation or promulgating regulations, to determine the impact of those proposals on civil justice and potential issues for litigation. The Order requires that agencies make reasonable efforts to ensure the regulation clearly identifies preemptive effects, effects on existing federal laws and regulations, identifies any retroactive effects of the proposal, and other matters. DHS has determined that this regulation meets the requirements of Executive Order 12988 because it does not involve retroactive effects, preemptive effects, or other matters addressed in the Order.

F. Trade Impact Assessment

The Trade Impact Agreement Act of 1979, 19 U.S.C. 2531–2533, prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for United States standards. DHS has determined that this proposed rule will not create unnecessary obstacles to the foreign commerce of the United States and that any minimal impact on trade that may occur is legitimate in light of this rule's benefits for the national security and public safety interests of the United States. In addition, DHS notes that this effort considers and utilizes international standards concerning biometrics, and will continue to consider these standards when monitoring and modifying the program. Finally, implementation of biometric exit will permit the Secretary to waive the 3 percent nonimmigrant visa refusal rate requirements under INA section 217(c)(2)(A), 8 U.S.C. 1187(c)(2)(A), after June 30, 2009, pursuant to the 9/11 Recommendations Act, and thus enhance, rather than restrict, foreign trade.

G. National Environmental Policy Act

DHS is required to analyze the proposed rule for purposes of complying with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality (CEQ) regulations, 40 CFR parts 1501–1508, and DHS Management Directive 5100.1. 71 FR 16790 (April 4, 2006).

In April 2006, DHS analyzed potential changes to the immigration and border management processes in the US–VISIT Programmatic Environmental Assessment (PEA), which resulted in a Finding of No Significant Impact (FONSI). (US–VISIT Programmatic Environmental Assessment on Potential Changes to Immigration and Border Management, April 10, 2006; Finding of No Significant Impact on Potential Changes to Immigration and Border Management, April 11, 2006.) The PEA examined the environmental impacts of implementing strategic, high-level changes to the immigration and border management environment. The Proposed Action in the PEA examined implementation of a system for capturing the unique identity of aliens, including establishing a biometrically-based unique identity for aliens, such as finger scans. The PEA was available for public comment for a 30-day period prior to being published. The FONSI concluded that, unless extraordinary circumstances existed that could impact the environment (e.g., expansion of physical infrastructure), no further NEPA analysis is needed for implementation of the Proposed Action at air and sea ports of entry.

The implementation of the proposed rule will occur wholly within the previously analyzed air and sea port environment. Biometric collection will occur within the existing departure

process and is expected to not require expansion of existing physical infrastructure. These changes have been analyzed in the PEA, and will not require further NEPA analysis.

US–VISIT commits to monitoring the rulemaking process, as necessary, in accordance with NEPA, the White House Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), the DHS Management Directive 5100.1, and the US–VISIT PEA and FONSI.

H. Paperwork Reduction Act

This proposed rule will permit DHS to require aliens who exit the United States on commercial air carriers and vessels to provide biometric identifiers to the carrier or vessel owner or operator for transmission to DHS. These requirements constitute an information collection under the Paperwork Reduction Act (PRA), 44 U.S.C. 507 *et seq.* OMB, in accordance with the Paperwork Reduction Act, has previously approved this information collection for use. The OMB Control Number for this collection is 1600–0006.

This proposed rule would require air and vessel carriers to electronically provide biometric data on certain passengers and crew as manifest information for commercial vessels departing from the United States and crew members and non-crew members onboard commercial aircraft operating, serving on, and traveling on flights from within the United States. This requirement is considered an information collection requirement under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

The collection of information in this proposed rule, with respect to passenger manifests for commercial vessels and aircraft departing from the United States, had in part already been reviewed by OMB and assigned OMB Control Numbers 1651–0088 (Electronic manifest information required for passengers and crew on board commercial aircraft arriving in the United States) and 1651–0104 (Electronic manifest information required for passengers and crew on board commercial vessels and aircraft arriving in and departing from the United States). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. This final rule's collection of information is contained in 8 CFR 231.4 (some of which are referenced in 19 CFR part 4 and 19 CFR 122.75a and 122.75b). This information is necessary to ensure national security and the security of commercial vessel travel to and from the United States and commercial air travel to, from, continuing within (foreign air carriers only), the United States. The information will also enhance enforcement of the immigration and customs laws relating to passengers and crew members traveling to and from the United States on board commercial vessels and aircraft. The likely respondents and record keepers are commercial passenger and cargo air and vessel carriers. The fingerprint collection covered by 1600–0006 is unchanged from the previously published documentation.

I. Public Privacy Interests

This proposed rule would amend DHS regulations pertaining to the filing of commercial vessel and aircraft manifests for alien passengers and crew members. The amendments include expanding the number of ports of departure supporting the biometric collection from aliens covered by US-VISIT and requiring carriers to collect biometric information from alien passengers departing the United States in addition to their responsibilities to collect biographic passenger manifest information and terrorist watch-list matching information.

The primary privacy risk raised by the proposed rule includes unauthorized use, disclosure and retention of the biometrics collected by the carrier, in violation of this proposed rule and the duly published System of Records Notice (SORN) for IDENT. Furthermore, there is the risk of identity theft that often accompanies collections of PII. The addition of biometric data to biographic data already collected by the carrier represents a qualitative change to that risk, and may alter the threat posed by identity theft as operations and technologies develop. These privacy risks are mitigated with technical, physical, and administrative controls. Carriers will be required to ensure that their systems and transmission methods of biometric data would meet the standards of the CUG, which provides specific technical and other details regarding the collection, storage, and transmission of personally identifiable information. As part of the technical specifications, US–VISIT is soliciting comment on the use of encryption at the point of biometric collection to provide additional mitigation against the risk of carrier misuse, modification, or disclosure of biometrics. Furthermore, carriers will be prohibited from using the biometrics for purposes other than transmitting a biometric departure manifest to US–VISIT. Compliance with the system and data transmission requirements, to potentially include encryption upon collection, is subject to the penalties associated with performance failure.

Upon receipt of the aliens' biometric data from the carriers, US–VISIT secures the data in accordance with a robust privacy and security program. As discussed in the January 5 and August 31, 2004, interim rules, US–VISIT records will be protected consistent with all applicable privacy laws and regulations. Personal information on aliens will be kept secure and confidential and will not be discussed with, nor disclosed to, any person within or outside DHS other than as authorized by law and as required for the performance of official duties. In addition, careful safeguards, including appropriate security controls, will ensure that the data is not used or accessed improperly. Affected persons can seek redress through the DHS Traveler Redress Inquiry Program (TRIP), at *http://www.dhs.gov/trip,* if there is concern about the accuracy of information.

The DHS Privacy Office continues to exercise privacy oversight of US–VISIT to ensure that the information collected and stored in IDENT and other systems associated with US–VISIT is being properly protected under the privacy laws and guidance. US–VISIT also has a program-dedicated Privacy Officer to handle specific inquiries and to provide additional oversight of the program. A compilation of US–VISIT Privacy Impact Assessments is available online at *http://www.dhs.gov/us-visit,* and a complete discussion of the privacy implications of this proposed rule can be found in the US–VISIT Privacy Impact Assessment Update.

US–VISIT is committed to providing transparency about the US–VISIT Exit program. To inform covered individuals about the use of their PII, US–VISIT will publish on its Web site a privacy notice that explains why US–VISIT is collecting this information, how it will use the information, and the effect of not providing this information. US–VISIT is also soliciting comment on whether carriers should make a privacy notice available before the carrier collects the information potentially through their Web sites, through a link to US–VISIT's Web site, or through a posting at the point of collection.

Finally, DHS will continue to maintain secure computer systems that will ensure that the confidentiality of an individual's PII is maintained. In doing so, DHS and its information technology personnel will comply with all laws and

regulations applicable to government systems, such as the Federal Information Security Management Act of 2002, Title X, Public Law 107–296, 116 Stat. 2259–2273 (2002) (codified at various sections of 5, 6, 10, 15, 40, and 44 U.S.C.); Information Management Technology Reform Act (Clinger-Cohen Act), Public Law No. 104–106, Div. E, codified at 40 U.S.C. 11101 *et seq.;* Computer Security Act of 1987, Public Law 100–235, 40 U.S.C. 1441 *et seq.* (as amended); Government Paperwork Elimination Act, Title XVII, Public Law 105–277, 112 Stat. 2681–749—2681–751 (1998) (codified, as amended, at 44 U.S.C. 101; 3504 note); and Electronic Freedom of Information Act of 1996, 5 U.S.C. 552.

Individuals with further questions about how the US–VISIT program is applying the Privacy Act to enrollees may contact the US–VISIT Privacy Officer, by mail addressed to US–VISIT Privacy Officer, National Protection and Programs Directorate, Department of Homeland Security, 1616 North Ft. Myer Drive, 18th Floor, Arlington, VA 22209; by telephone at (202) 298–5200; or by e-mail at *USVISITPRIVACY@dhs.gov.*

List of Subjects

8 CFR Part 215

Administrative practice and procedure, Aliens, Travel restrictions.

8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

8 CFR Part 231

Arrival and Departure manifests.

8 CFR Part 235

Aliens, Immigration, Registration, Reporting and recordkeeping requirements.

19 CFR Part 4

Aliens, Customs duties and inspection, Immigration, Maritime carriers, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Commercial aircraft, Customs duties and inspection, Entry procedure, Reporting and recordkeeping requirements, Security measures.

Accordingly, for the reasons set forth in the preamble 8 CFR chapter I and 19 CFR chapter 1 are proposed to be amended as follows:

TITLE 8—ALIENS AND NATIONALITY

1. The authority citation for part 215 is revised to read as follows:

Authority: 8 U.S.C. 1104; 1184; 1185 (pursuant to E.O. 13323, published January 2, 2004), 1365a and note, 1365b, 1379, 1731–32.

2. Section 215.8 is amended by revising paragraph (a)(1) to read as follows:

§ 215.8 Requirements for biometric identifiers from aliens on departure from the United States.

(a)(1) An alien required to provide fingerprints, photograph(s) or other specified biometric identifiers upon application for admission to the United States is also required to provide biometric identifiers to an appropriate official of the air carrier or vessel owner or operator prior to departure from the United States. The collection of the biometric identifiers covered by this section for subsequent transmission to the Secretary is governed by 8 CFR 231.4. The Secretary of Homeland Security may also establish pilot programs for biometric collection at land border ports of entry through which the Secretary or his delegate may require any alien admitted to the United States to provide biometric identifiers or other evidence upon exiting the United States.

* * * * *

PART 217—VISA WAIVER PROGRAM

3. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

4. Paragraph (a) of § 217.7 is revised to read as follows:

§ 217.7 Electronic data transmission requirement.

(a) An alien who applies for admission under the provisions of section 217 of the Act after arriving via sea or air at a port of entry will not be admitted under the Visa Waiver Program unless an appropriate official of the carrier transporting the alien electronically transmits to Customs and Border Protection (CBP) the passenger arrival manifest data relative to that alien passenger in accordance with 19 CFR 4.7b or 19 CFR 122.49a. Upon departure from the United States by sea or air of an alien admitted under the Visa Waiver Program, an appropriate official of the transporting carrier must electronically transmit to CBP departure manifest data, including any biometric data required by 8 CFR 231.4, relative to that alien passenger in accordance with 19 CFR 4.64 and 19 CFR 122.75a.

* * * * *

PART 231—ARRIVAL AND DEPARTURE MANIFESTS

5. The authority citation for part 231 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1185, 1187, 1221, 1228, 1229; 8 CFR part 2; 19 U.S.C. 1431, 1433, 1434, 1644, 1644a; 46 U.S.C. 60105.

6. Paragraph (a) of § 231.2 is amended by adding, at the end, the following sentence:

§ 231.2 Electronic manifest and I–94 requirement for passengers and crew onboard arriving vessels and aircraft.

(a) * * * Additional provisions setting forth requirements applicable to commercial carriers regarding the collection and transmission of biometric information covering passengers and crew and non-crew members as part of their departure manifest responsibilities under section 231 of the Act are set forth in 8 CFR 231.4.

* * * * *

7. New § 231.4 is added to read as follows:

§ 231.4 Biometric manifest information for passengers, crew, and non-crew onboard departing aircraft and vessels.

(a) *Definitions.* (1) The definitions set forth in 19 CFR 122.49a(a) apply for purposes of this section except as provided in this section.

(2) *Biometric collection location,* for the purposes of this section, means a location within an airport or seaport, and within the path of the departing alien, such that they would not need to significantly deviate from that path to comply with biometric exit requirements at which air or vessel carrier employees, as applicable, either present or routinely available if an alien needs processing assistance; and which is equipped with a device with network connectivity for data collection and transmission of biometric departure manifest information to DHS in accordance with the standards established in the Consolidated User's Guide.

(b) *Biometric Departure Manifest Information*—(1) *Biometric collection requirement.* Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft or vessel departing from the United States to any port or place outside the United States must ensure transmission to Customs and Border Protection (CBP) biometric departure manifest information covering alien

passengers, crew, and non-crew to whom the requirements for biometric identifiers apply under 8 CFR 215.8. The biometric departure manifest information must be transmitted to CBP at the place and time specified in paragraph (b)(3) of this section by means approved by the Secretary and must set forth the information specified in paragraph (b)(4) of this section or as otherwise required by the Secretary.

(2) *Manner of collection.* Carriers boarding alien passengers, crew, and non-crew subject to US–VISIT processing shall collect biometric departure manifest information from each alien at a biometric collection location at the airport or seaport before boarding that alien on transportation for departure from the United States, no more than 3 hours prior to the originally scheduled departure of that passenger's aircraft or sea vessel.

(3) *Time and manner of submission.* The appropriate official specified in paragraph (b)(1) of this section must ensure transmission of the biometric departure manifest information required and collected under paragraphs (b)(1) and (2) of this section to the CBP Data Center, CBP Headquarters, or such other data center as may be designated by the Secretary, by not later than 24 hours after securing the aircraft for departure. The biometric departure manifest information may be transmitted to DHS over any means of communication authorized by the Secretary for the transmission of other electronic manifest information containing personally identifiable information and under transmission standards currently applicable to other electronic manifest information. Files containing the biometric departure manifest information may be sent with other electronic manifest data prior to departure or may be sent separately from any topically related electronic manifest data. Files containing the biometric departure manifest information may be sent in batch mode.

(4) *Information Required.* The biometric departure manifest information required under paragraphs (b)(1)–(b)(3) of this section for each covered passenger or crew member must contain an electronic scan of the fingers (not thumb) of one hand that complies with the technical standards in Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) *Electronic Fingerprint Transmission Specifications,* Appendix F (''IAFIS Image Quality Specifications''), sections 2 and 3 (May 2, 2005), or any subsequent standard adopted for IAFIS or subsequent system. Data transmission standards and methods for transmitting biometric departure manifest information must meet the current standards for the transmission of other electronic manifest data for air and vessel carriers.

(c) *Exception.* The biometric departure manifest information specified in this section is not required for any alien active duty military personnel traveling as passengers on board a departing Department of Defense commercial chartered aircraft.

(d) *Carrier Maintenance and Use of Biometric Departure Manifest Information.* Carrier use of biometric departure manifest information for purposes other than as described in standards set by DHS in the Consolidated User's Guide (CUG) is prohibited. Carriers shall immediately notify the Chief Privacy Officer of US–VISIT in writing in event of unauthorized use or access, or breach, of biometric departure manifest information.

(e) *Limitation on Air and Vessel Carriers Affected.* This section does not apply to an air or vessel carrier that is a small entity as defined in 13 CFR 121.201 (NAIC Codes 481111, 481212, 483112), or such other category as may be determined by the Secretary.

(f) *Additional Requirements.* If the Secretary determines that an air or vessel carrier has not adequately complied with the provisions of this section, and imposes any penalty or fine under section 215 or 231 of the Act or denies departure clearance, the Secretary may, in his discretion, require the air or vessel carrier to collect biometric departure manifest information at a specific location prior to the issuance of a boarding pass or other document on the international departure, or the boarding of crew, in any port through which it boards aliens for international departure under the supervision of the Department of Homeland Security for such period as the Secretary considers appropriate to ensure the adequate collection and transmission of biometric departure manifest information.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

8. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323 published on January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32.

§ 235.1 [Amended]

9. Section 235.1 is amended in paragraphs (f)(1)(iii), (1)(iv), and (1)(iv)(B) by removing the citation to ''(d)(1)(ii)'', whenever that term appears, and adding in its place ''(f)(1)(ii)''.

TITLE 19—CUSTOMS DUTIES

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

10. The general authority citation for part 4 and the specific authority for section 4.64 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 2071 note; 46 U.S.C. 60105.

* * * * *

Section 4.64 also issued under 8 U.S.C. 1221;

* * * * *

11. Section 4.64 is amended by adding paragraph (b)(4) to read as follows:

§ 4.64 Electric passenger and crew member departure manifests.

* * * * *

(b) * * *

(4) *Biometric Information.* Biometric manifest information is governed by 8 CFR 231.4.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

12. The general authority citation for part 122 and the specific authority for section 122.75a and 122.75b continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

Section 122.75a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114. Section 122.75b also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114.

* * * * *

13. Section 122.75a is amended by adding a paragraph (b)(2)(iv) and paragraph (b)(4) to read as follows:

§ 122.75a Electric manifest requirement for passengers onboard commercial aircraft departing from the United States.

* * * * *

(b) * * *

(2) * * *

(iv) For biometric portions of the manifest pursuant to 8 CFR 231.4, within 24 hours of the departure of the aircraft from the United States.

* * * * *

(4) *Biometric Information.* Biometric manifest information is governed by 8 CFR 231.4.

* * * * *

14. Section 122.75b is amended by revising adding paragraph (b)(2)(iv) and

adding paragraph (b)(4) to read as follows:

§ 122.75b Electronic manifest requirement for crew members and non-crew members onboard commercial aircraft departing from the United States.

* * * * *

(b) * * *

(2) * * *

(iv) For biometric portions of the manifest pursuant to 8 CFR 231.4, within 24 hours of the departure of the aircraft from the United States.

* * * * *

(4) *Biometric Information.* Biometric manifest information is governed by 8 CFR 231.4.

* * * * *

Michael Chertoff,

Secretary.

[FR Doc. E8–8956 Filed 4–23–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0412; Directorate Identifier 2007–NM–346–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to all Boeing Model 737–300, –400, and –500 series airplanes. The existing AD currently requires repetitive inspections for discrepancies of the fuselage skin under the dorsal fin assembly, and repairing if necessary. This proposed AD would require an inspection for any chafing or crack in the fuselage skin and abrasion resistant coating at the dorsal fin landing, an inspection for damage to the dorsal fin seals, attach clip, and seal retainer, and other specified and corrective actions as necessary. The new proposed requirements would end the need for the existing repetitive inspections. This proposed AD results from a report of an 18-inch crack found in the fuselage skin area under the blade seals of the nose cap of the dorsal fin due to previous wear damage, and additional reports of fuselage skin wear. We are proposing this AD to prevent discrepancies of the fuselage skin, which could result in fatigue cracking due to cabin pressurization and consequent rapid in-flight decompression of the airplane fuselage.

DATES: We must receive comments on this proposed AD by June 9, 2008.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0412; Directorate Identifier 2007–NM–346–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On October 18, 2004, we issued AD 2004–22–05, amendment 39–13833 (69 FR 62567, October 27, 2004), for all Boeing Model 737–300, –400, and –500 series airplanes. That AD requires inspecting for discrepancies of the fuselage skin under the dorsal fin assembly, and repairing if necessary. That AD resulted from a report of an 18-inch crack found in the fuselage skin area under the blade seals of the nose cap of the dorsal fin due to previous wear damage. We issued that AD to find and fix discrepancies of the fuselage skin, which could result in fatigue cracking due to cabin pressurization, and consequent rapid in-flight decompression of the airplane fuselage.

Actions Since Existing AD Was Issued

Since we issued AD 2004–22–05, we have received additional reports of fuselage skin wear found during routine maintenance inspections and accomplishment of Boeing Service Bulletin 737–55–1057, dated December 12, 1996, and Revision 1, dated July 22, 1999. (Revision 1 of Boeing Service Bulletin 737–55–1057 was cited as an additional source of service information for inspecting for discrepancies of the fuselage skin under the dorsal fin assembly.) As a result, the manufacturer has developed a new corrective action and terminating action to adequately address the unsafe condition.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007. The service bulletin describes procedures for doing a detailed inspection for any chafing or crack in the fuselage skin and abrasion resistant coating at the dorsal fin landing and a detailed inspection for damage to the dorsal fin seals, attach clip, and seal retainer.

The service bulletin also describes procedures for doing other specified and corrective actions as necessary. The other specified action is to install wear strips if no skin wear is found during the inspection. The corrective actions include (1) replacing the dorsal fin seals with new seals if any damaged seal is found, (2) replacing the seal retainers

and attach clip with new parts, if any damaged retainers or clips are found, or if they have not been installed in accordance with Boeing Service Bulletin 737–55–1057, and (3) repairing the fuselage skin if any crack or damage is found. For certain airplanes, the repair includes contacting Boeing for repair instructions, installing wear strips, or repairing as given in the structural repair manual, as applicable. For certain other airplanes, the repair includes removing any previously installed repair doubler and repairing as given in the applicable structural repair manual, ensuring that the previous repairs did not have countersunk fasteners that knife edged the skin, doing a high frequency eddy current inspection of the outer row fasteners for any eye-brow or hole crack and repairing as applicable, ensuring that fastener spacing and size are within the acceptable limits, and extending the new repair doubler a minimum of two fastener rows beyond the critical row of the outer fastener row of the previous repair. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The service bulletin specifies that the detailed inspection and other specified action be done within 18,000 flight cycles or 72 months, whichever occurs later. For certain airplanes, the service bulletin specifies that the removal of the previously installed repair doubler and the repair be done within 18,000 flight cycles or 72 months, whichever occurs later. The service bulletin also specifies that the corrective actions be done before further flight.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2004–22–05 and would retain the requirements of the existing AD. This proposed AD would also require accomplishing the actions specified in service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Bulletin.'' The new proposed requirements would end the need for the existing repetitive inspections.

Difference Between the Proposed AD and Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Change to Existing AD

Boeing Commercial Airplanes has received a Delegation Option Authorization (DOA). We have revised paragraph (g) of this AD to delegate the authority to approve an alternative method of compliance for any repair required by this AD to an Authorized Representative for the Boeing Commercial Airplanes DOA rather than a Designated Engineering Representative (DER).

Costs of Compliance

There are about 1,963 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 627 airplanes of U.S. registry.

The actions that are required by AD 2004–22–05 and retained in this proposed AD take about 2 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions for U.S. operators is $100,320, or $160 per airplane, per inspection cycle.

The new proposed actions would take about 15 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $801 per airplane. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $1,254,627, or $2,001 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13833 (69 FR 62567, October 27, 2004) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2008–0412; Directorate Identifier 2007–NM–346–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by June 9, 2008.

Affected ADs

(b) This AD supersedes AD 2004–22–05.

Applicability

(c) This AD applies to all Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of an 18-inch crack found in the fuselage skin area under the blade seals of the nose cap of the dorsal fin due to previous wear damage, and additional reports of fuselage skin wear. We are issuing this AD to prevent discrepancies of the fuselage skin, which could result in fatigue cracking due to cabin pressurization and consequent rapid in-flight decompression of the airplane fuselage.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2004–22–05

Repetitive Detailed Inspections

(f) For airplanes specified in either paragraph (f)(1), (f)(2), (f)(3), or (f)(4) of this AD: Accomplish a detailed inspection for discrepancies (wear or cracking) of the fuselage skin under the dorsal fin assembly by doing all the actions specified in Boeing Message Number 1–QXO35, dated October 13, 2004. Repeat the inspection thereafter at intervals not to exceed 9,000 flight cycles. Accomplishing all of the applicable actions specified in paragraph (i) of this AD terminates the repetitive inspections required by this paragraph.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(1) For airplanes with line numbers 1001 through 2828 inclusive that have not been inspected as of November 12, 2004 (the effective date of AD 2004–22–05), in accordance with Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect before the accumulation of 18,000 total flight cycles, or within 90 days after November 12, 2004, whichever is later.

(2) For airplanes with line numbers 2829 through 3132 inclusive that are not included in the effectivity of Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect before the accumulation of 18,000 total flight cycles, or within 90 days after November 12, 2004, whichever is later.

(3) For airplanes with line numbers 1001 through 2828 inclusive that have been inspected, but not repaired or modified as of the effective date of this AD, in accordance with Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect within 9,000 flight cycles after accomplishing the inspection, or within 90 days after November 12, 2004, whichever is later.

(4) For airplanes with line numbers 1001 through 2828 inclusive that have been inspected and repaired or modified as of the effective date of this AD, in accordance with Boeing Service Bulletin 737–55–1057, dated December 12, 1996; or Revision 1, dated July 22, 1999: Inspect within 18,000 flight cycles after accomplishing the repair or modification, or within 90 days after November 12, 2004, whichever is later; and if a repair doubler is installed, before further flight, inspect the repair doubler for discrepancies (wear or cracking).

Note 2: Boeing Message Number 1–QXO35, dated October 13, 2004, references Part I of Boeing Service Bulletin 737–55–1057, Revision 1, dated July 22, 1999, as an additional source of service information for accomplishing the actions required by paragraph (f) of this AD.

Repair

(g) If any discrepancy (wear or cracking) is found during any inspection required by paragraph (f) of this AD, before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or using a method approved in accordance with the procedures specified in paragraph (1) of this AD.

Reporting Not Required

(h) Although Boeing Message Number 1–QXO35, dated October 13, 2004, specifies to report any fuselage skin cracking found during the detailed inspections, this AD does not include that requirement.

New Requirements of This AD

New Inspections and Other Specified and Corrective Actions

(i) At the applicable compliance times specified in paragraph 1.E. of Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007, except as provided by paragraph (j) of this AD: Do a detailed inspection for any chafing or crack in the fuselage skin of the dorsal fin landing and abrasion resistant coating, do a detailed inspection for damage to dorsal fin seals, attach clip, and seal retainer, and do all the applicable other specified and corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (k) of this AD. Accomplishing all of the applicable actions specified in this paragraph terminates the repetitive inspections required by paragraph (f) of this AD.

Exception to Compliance Times

(j) Where Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007, specifies counting the compliance time from ''* * * the date on the service bulletin,'' this AD requires counting the compliance time from the effective date of this AD.

Exception to Corrective Actions

(k) If any damage is found aft of body station 908 during any inspection required by this AD, and Boeing Alert Service Bulletin 737–53A1266, dated August 30, 2007, specifies to contact Boeing for appropriate action: Before further flight, repair the fuselage skin using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle Aircraft Certification Office, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved previously in accordance with AD 2004–22–05 are approved as AMOCs for the corresponding provisions of paragraphs (f) and (g) of this AD.

Issued in Renton, Washington, on April 15, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8913 Filed 4–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0413; Directorate Identifier 2008–NM–003–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, –900, and 900ER Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800, –900, and 900ER series airplanes. This proposed AD would require

replacing the pushrods for the left and right elevator tab control mechanisms with new, improved pushrods. This proposed AD results from a report of a rod end fracture on a rudder Power Control Unit (PCU) control rod, which is similar to the ones used for the elevator tab pushrods. Analysis revealed that the fractured rod end had an incorrect hardness, which had probably occurred during the manufacture of the control rod. We are proposing this AD to prevent fracture of the elevator tab pushrod ends, which could result in excessive in-flight vibrations of the elevator tab, possible loss of the elevator tab, and consequent loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by June 9, 2008.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0413; Directorate Identifier 2008–NM–003–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report of a rod end fracture on a rudder Power Control Unit (PCU) control rod, which is similar to the ones used for the elevator tab pushrods. An operator found a broken rudder PCU control rod during heavy maintenance of a Model 737–800 airplane. Analysis revealed that the fractured rod end had an incorrect hardness, which had probably occurred during the manufacture of the control rod. During the manufacturing process, specific areas of the control rods are to be masked off to prevent the application of the heat treatment/carburization process in those areas. But at different site locations of the supplier, the heat treatment/carburization process was done differently, which resulted in the application of the heat treatment/carburization process of some control rods in incorrect areas. This caused an incorrect hardness of the hollow shanks of the rod ends, and resulted in the occurrence of cracks at the time of manufacture. Further analysis revealed that all control rods made by the supplier were also affected by the incorrect manufacturing procedure. Subsequently, an improved design of the control rod was developed to change from hollow shank rod ends to solid shank rod ends, which would prevent the problems with the heat treatment/carburization process during manufacture. Fracture of the elevator tab pushrod ends could result in excessive in-flight vibrations of the elevator tab, possible loss of the elevator tab, and consequent loss of controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–27–1284, dated November 28, 2007. The service bulletin describes procedures for replacing the pushrods for the left and right elevator tab control mechanism with new, improved pushrods. The service bulletin specifies doing the replacement within 4 years after the date on the service bulletin.

Other Related Rulemaking

On January 29, 2003, the FAA issued AD 2003–03–22, amendment 39–13047 (68 FR 5819, February 5, 2003), which applies to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. AD 2003–03–22 requires accomplishing the modification in accordance with Boeing Alert Service Bulletin 737–55A1080, dated September 19, 2002, and Service Bulletin 737–27–1284 specifies prior or concurrent accomplishment of Service Bulletin 737–55A1080. AD 2003–03–22 requires installing speedbrake limitation placards in the flight compartment, and revising the Limitations Section of the Airplane Flight Manual to ensure the flightcrew is advised not to extend the speedbrake lever beyond the flight detent. For Model 737–600, –700, –700C, –800 series airplanes having line numbers 1 through 1174 inclusive, AD 2003–03–22 requires modifying the elevator and elevator tab assembly before the accumulation of 18,000 total flight cycles, or within 2 years after March 12, 2003, whichever occurs first.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 715 airplanes of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $8,036 per product. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $5,974,540, or $8,356 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Boeing: Docket No. FAA–2008–0413; Directorate Identifier 2008–NM–003–AD.

Comments Due Date

(a) We must receive comments by June 9, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800, –900, and 900ER series airplanes, certificated in any category; line numbers 1 through 2196 inclusive.

Unsafe Condition

(d) This AD results from a report of a rod end fracture on rudder Power Control Unit (PCU) control rod, which is similar to the ones used for the elevator tab pushrods. Analysis revealed that the fractured rod end had an incorrect hardness, which had probably occurred during the manufacture of the control rod. We are issuing this AD to prevent fracture of the elevator tab pushrod ends, which could result in excessive in-flight vibrations of the elevator tab, possible loss of the elevator tab, and consequent loss of controllability of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Pushrod Replacement

(f) At the time specified in paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–27–1284, dated November 28, 2007; except, where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD: Replace the pushrods for the left and right elevator tab control mechanisms with new, improved pushrods by doing all the actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–27–1284, dated November 28, 2007.

Parts Installation

(g) As of the effective date of this AD, no person may install a pushrod assembly, part number 65–45166–24, on any airplane.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

Issued in Renton, Washington, on April 15, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–8911 Filed 4–23–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 924

[FHWA Docket No. FHWA–2008–0009]

RIN 2125–AF25

Highway Safety Improvement Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rule making (NPRM); request for comments.

SUMMARY: The purpose of this notice of proposed amendments is to revise Part 924 to incorporate changes to the Highway Safety Improvement Program (HSIP) that resulted from the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), as well as to reflect changes in the overall program that have evolved since 23 CFR part 924 was originally written.

DATES: Comments must be received on or before June 23, 2008.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at *http://www.regulations.gov* or fax comments to (202) 493–2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments

electronically. 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*.

FOR FURTHER INFORMATION CONTACT: Ms. Erin Kenley, Office of Safety, (202) 366–8556; or Raymond Cuprill, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or access all comments received by the DOT online through *http://www.regulations.gov*. Electronic submission and retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara*.

Background

On August 10, 2005, the President signed into law the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (known in short as SAFETEA–LU). SAFETEA–LU established a new core Highway Safety Improvement Program (HSIP) structured and funded to make significant progress in reducing highway fatalities. Apportionments for the program are made in accordance with 23 U.S.C. 104(b)(5), with the statutory requirements for the program established in section 148 of the same title. Following the adoption of SAFETEA–LU, FHWA issued several guidance documents [1] to provide States with information regarding the new legislation. The FHWA proposes to amend the regulations at 23 CFR part 924 Highway Safety Improvement Program to incorporate the new statutory requirements and to provide State and local safety partners with information on the purpose, definitions, policy, program structure, planning, implementation, evaluation, and reporting of HSIP. The proposed language follows the same format and section titles as the existing provisions in part 924, however, the following amendments are proposed.

Section 924.1 Purpose

The FHWA proposes to add evaluation to the list of components of a comprehensive HSIP. While evaluation has always been a requirement of the HSIP, the FHWA proposes this change to emphasize that evaluation is a critical element of the program and the results of the evaluation shall be used as inputs into the development of new projects. Evaluation is a requirement of the program per 23 U.S.C. 148(c)(1)(C) including evaluation of the State's strategic highway safety plan (SHSP) on a regular basis.

Section 924.3 Definitions

The FHWA proposes to add 17 definitions. The FHWA proposes to add definitions for ''highway safety improvement program,'' ''highway safety improvement project,'' ''high risk rural road,'' ''safety projects under any other section,'' and ''strategic highway safety plan'' using the definitions in 23 U.S.C. 148(a) as a basis for the proposed definitions. The FHWA also proposes to add definitions for the following terms: ''highway-rail grade crossing protective devices,'' ''integrated interoperable emergency communication equipment,'' ''interoperable emergency communications system,'' ''operational improvements,'' ''public road,'' ''hazard index formula,'' ''public grade crossing,'' ''road safety audit,'' ''safety data,'' ''safety stakeholder,'' ''serious injury,'' and ''transparency report.'' These terms are used in the text of the proposed regulations.

Section 924.5 Policy

The FHWA proposes to revise this section to indicate that in addition to developing and implementing a HSIP, each State shall evaluate the program on a continuing basis. The FHWA believes that evaluation is a critical component of the policy because it enables States to determine the success of their programs. The FHWA proposes to amend the section to indicate that the overall objective of the HSIP shall be to decrease the potential for crashes and to significantly reduce fatalities and serious injuries from crashes on all public roads. The FHWA proposes to include the word ''significantly'' to correspond with statutory language in 23 U.S.C. 148(b)(2). The FHWA proposes adding the phrase ''fatalities and serious injuries resulting from crashes'' to also correspond to the statutory language describing the program purpose and also to explicitly emphasize that the goal is to reduce fatalities and serious injuries, rather than merely the ''number and severity of accidents'' referenced in existing part 924.

The FHWA also proposes adding two additional paragraphs (b and c) to this section to provide information about the funding mechanisms available for highway safety improvement projects, as well as to indicate the period of availability for the funds. The FHWA proposes to add paragraph (b) to emphasize that States shall consider safety projects and activities that maximize opportunities to advance safety by addressing locations and treatments with the highest potential for future crash reduction. The FHWA recommends that States use their funds to maximize the safety benefits, such as making low-cost safety improvements in areas yielding relatively high safety impacts. The FHWA proposes to add paragraph (c) to clarify that improvements to safety features that are routinely provided as part of broader Federal-aid projects should be funded by the same source as the broader project. States should integrate safety elements into all roadway projects, regardless of the funding source. States should consider using HSIP for low-cost, high-impact projects in order to use available funding as efficiently and effectively as possible.

The purpose of this policy section is to promote the adoption by the States of proactive and aggressive measures, as well as reactive activities, in their safety programs.

Section 924.7 Program Structure

The FHWA proposes to add a paragraph requiring that the HSIP in each State include a data-driven SHSP and a resulting implementation through all roadway improvement projects, in addition to highway safety improvement projects. The proposed language would require that the HSIP include projects for construction and operational improvements on high risk rural roads and the elimination of hazards at railway-highway grade crossings. The FHWA proposes these changes to clarify that a SHSP is to be data-driven, and

[1] The following guidance documents: ''HSIP Funds 10 Percent Flexibility Implementation Guidance,'' ''Strategic Highway Safety Plans: A Champions Guide to Saving Lives,'' ''High Risk Rural Roads Program (HRRRP) Guidance,'' ''Guidance Highway Safety Improvement Program 23 U.S.C. 148(c)(1)(D) '5 Percent Report,' '' ''Guidance on 23 U.S.C. 130 Annual Reporting Requirements for Railway-Highway Crossings,'' and ''Highway Safety Improvement Program Reporting Requirements 23 U.S.C. 148(g)'' can be found on FHWA's Web site at *http://safety.fhwa.dot.gov*.

that SHSPs and the high risk rural roads program are a new part of the HSIP in 23 U.S.C. 148.

The FHWA also proposes to modify the existing language in this section to require that each State's HSIP include processes for the evaluation of the SHSP, HSIP, and highway safety improvement projects. While evaluation has always been a requirement of the HSIP, FHWA proposes this change to be consistent with other proposed changes that strengthen the requirement for evaluation of highway safety plans, programs, and projects, such as the evaluation requirement of the SHSP.

Section 924.9 Planning

The FHWA proposes to revise much of this section in order to provide more information to States regarding the planning process of HSIPs. The FHWA proposes to reorganize this section and add more detail regarding individual elements of the planning process.

The FHWA proposes the following five main elements that the planning process of the HSIP shall incorporate:

(1) A process for collecting and maintaining a record of crash, roadway, traffic, vehicle, case or citation adjudication, and injury data on all public roads, including the characteristics of both highway and train traffic for railway-highway grade crossings;

(2) A process for advancing the State's capabilities for safety data collection and analysis;

(3) A process for analyzing available safety data;

(4) A process for conducting engineering studies (such as road safety audits) of hazardous locations, sections, and elements to develop highway safety improvement projects; and

(5) A process for establishing priorities for implementing a schedule of highway safety improvement projects.

While the first element resembles the one in existing part 924, FHWA proposes to expand it to include collecting and maintaining a record of crash, roadway, traffic, vehicle, case or citation adjudication, and injury data on all public roads. The FHWA proposes this change to bring additional data sources into the planning process and to encourage States to make their databases more comprehensive. The requirement for comprehensive databases is also consistent with 23 U.S.C. 408.

The FHWA proposes to add paragraph (2) to advance States' improvement of capabilities for data collection and analysis, including the improvement of the timeliness, accuracy, completeness, uniformity, integration, and accessibility of safety data or traffic records. The FHWA proposes this language to be consistent with 23 U.S.C. 148 and 408.

The FHWA proposes to expand paragraph (3) [formerly paragraph (2)] to provide more detailed information regarding the processes involved in developing a data-driven program. The proposed revision to this section also provides four paragraphs with additional information on the components of a data-driven program that States must develop. These components include:

(i) Developing an HSIP in accordance with 23 U.S.C. 148(c)(2) that identifies highway safety improvement projects on the basis of crash experience or crash potential and establishes the relative severity of those locations, and that analyzes the results achieved by highway safety improvement projects in setting priorities for future projects. The FHWA proposes this item to require that the States develop a data-driven program where projects and priorities are based on crash data, crash severity, and other relevant safety information. The proposal also requires that the States use information from their evaluation process to set priorities for future projects.

(ii) Developing and maintaining a data-driven SHSP in consultation with safety stakeholders that makes effective use of crash data, addresses engineering, management, operation, education, enforcement, and emergency services, and considers safety needs on all public roads. In addition, the SHSP should identify key emphasis areas, adopt performance-based goals, establish priorities for implementation and process for evaluation, and obtain approval by the Governor of the State, or a responsible State agency that is delegated by the Governor of the State. The process by which the State develops the SHSP shall be approved by the FHWA Division Administrator for that State. The proposed elements in this section implement the statutory requirements of 23 U.S.C. 148.

(iii) Developing a High Risk Rural Roads program using safety data that identifies eligible locations on State and non-State owned roads, and analyzes the highway safety problem to diagnose safety concerns, identify potential countermeasures, make project selections, and prioritize high risk rural roads projects. The proposed elements in this section also implement the statutory requirements of 23 U.S.C. 148.

(iv) Developing a Railway-Highway Grade Crossing Program. This item is contained in existing part 924; however, FHWA proposes minor edits to clarify the content.

The FHWA proposes to expand paragraph (4) [formerly paragraph (3)] to include road safety audits of hazardous locations as processes that may be used to develop highway safety improvement projects. The FHWA proposes this change because road safety audits are a valuable tool that has been developed and used over the past 10 years in the United States to aid practitioners in enhancing highway/road safety.

The FHWA proposes to expand paragraph (5) [formerly paragraph (4)] to indicate that the process for establishing priorities for implementing highway safety improvement projects shall also include a schedule of highway safety improvement projects for hazard correction and hazard prevention. The FHWA also proposes to relocate the last three sentences of former paragraph (4) to paragraph (3)(iv), because they relate to Railway-Highway Grade Crossings. The FHWA also proposes to include additional language to this item to expand the process for establishing priorities for implementing a schedule of highway safety improvement projects to include consideration of the strategies in the SHSP, correction and prevention of hazardous conditions, and integration of safety in the transportation planning process, under 23 CFR part 450, including the statewide, and metropolitan where applicable, long-range plans, the Statewide Transportation Planning Improvement Program and the Metropolitan Transportation Improvement Program where applicable. This proposed additional information incorporates more key elements into the planning process and is designed to tie project planning to the SHSP and to reflect the proactive qualities of section 148. Referencing 23 U.S.C. 134 and 135 would reinforce the link between transportation planning and safety. This safety requirement was introduced in the Transportation Equity Act for the 21st Century (TEA–21) and is included in 23 U.S.C. 135(c)(1)(B).

The FHWA also proposes to relocate existing paragraph (b) regarding Railway-Highway grade crossings to paragraph (a)(3)(iv)(D) in order to place all Railway-Highway Grade Crossing planning items in one area.

The FHWA proposes to expand paragraph (b) [formerly paragraph (c)] to include references to 23 U.S.C. 130, 133, 148, and 505. As part of this change, the FHWA proposes to clarify that funds made available through 23 U.S.C. 104(f) may be used to fund safety planning in metropolitan areas.

The FHWA proposes to add a new paragraph (c) to specify that highway safety improvement projects shall be

carried out as part of the Statewide and Metropolitan Transportation Improvement Planning Processes consistent with the requirements of 23 U.S.C. 134 and 135 and 23 CFR part 450. The FHWA proposes this new item to incorporate the statutory requirements of section 148 and to link safety to the transportation planning process.

Section 924.11 Implementation

The FHWA proposes to expand this section to provide more detailed explanations regarding the implementation requirements for HSIPs.

The FHWA proposes an editorial change to paragraph (a) to relocate the reference to procedures set forth in 23 CFR part 630, subpart A to be a new paragraph (j). The FHWA proposes to correct the reference to 23 CFR part 630 Subpart A to include its correct title: Preconstruction Procedures: Project Authorization and Agreements.

The FHWA proposes to delete existing paragraph (b) regarding funds apportioned under 23 U.S.C. 152, Hazard Elimination Program, which was repealed by SAFETEA–LU. Funds for those programs are now apportioned under 23 U.S.C. 104(b)(5).

To incorporate the provisions in 23 U.S.C. 148, the FHWA proposes to add paragraph (b) that describes that a State is eligible to use up to 10 percent of the amount apportioned under 23 U.S.C. 104(b)(5) for a fiscal year to carry out safety projects under any other section of Title 23, United States Code, consistent with the SHSP and as defined in 23 U.S.C. 148(a)(4), if the State can certify that it has met infrastructure safety needs relating to railway-highway grade crossings and highway safety improvement projects for a given fiscal year. The proposed changes also establish the approval process with which States must comply, including the submission of written requests to the FHWA Division Administrator.

A new paragraph (c) is also proposed which describes funding set asides from 23 U.S.C. 104(b)(5) for construction and operational improvements on high risk rural roads, as defined in 23 U.S.C. 148(a)(1). It includes descriptions of how high risk rural roads funds are to be used.

The FHWA proposes to modify paragraph (d) [formerly paragraph (c)] to clarify the requirements for the use of funds set aside pursuant to 23 U.S.C. 130(e) for railway-highway grade crossings. The FHWA proposes to include the United States Code reference to 23 U.S.C. 130(f) for funds that must be made available for the installation of grade crossing protective devices. In addition, FHWA proposes to include a reference to 23 U.S.C. 130(k), which specifies that no more than 2 percent of these apportioned funds may be used by the State for compilation and analysis of safety data in support of the annual report to the FHWA Division Administrator required by section 924.15(a)(2) of this part.

The FHWA proposes to revise paragraph (e) [formerly paragraph (d)] to delete outdated references to section 104(b)(1) of the Federal-Aid Highway Act of 1978 and section 103(a) of the Highway Improvement Act of 1982. The FHWA also proposes to delete existing paragraph (e), which references 23 U.S.C. 219, Safer Off-System Roads, which was repealed by Public Law 100–17, title I, Sec. 133(e)(1), Apr. 2, 1987, 101 Stat. 173.

The FHWA proposes to delete existing paragraph (f), which references 23 CFR part 650, subpart D (Special Bridge Replacement Program) as a source of funding for major safety defects on bridges. The FHWA believes that because this item describes funding eligibility for a very specific activity in the context of the Special Bridge Replacement Program, it should only be described and addressed within subpart D of part 650, rather than as part of the HSIP.

The FHWA proposes to add two new paragraphs regarding funding. Proposed paragraph (g) describes that all safety projects funded under 23 U.S.C. 104(b)(5), including safety projects under any other section of title 23, shall be accounted for in the statewide transportation improvement program and reported on annually, in accordance with section 924.15. Proposed paragraph (h) describes that the Federal share of the cost for most highway safety improvement projects carried out with funds apportioned to a State under 23 U.S.C. 104(b)(5) shall be 90 percent. In accordance with 23 U.S.C. 120(a) or (b), the Federal share may be increased to a maximum of 95 percent by the sliding scale rates for States with a large percentage of Federal lands. Projects such as roundabouts, traffic control signalization, safety rest areas, pavement markings, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier end treatments, breakaway utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may be funded at up to 100 percent Federal share, except not more than 10 percent of the sums apportioned under 23 U.S.C. 104 for any fiscal year shall be used at this Federal share rate. In addition, for railway-highway grade crossings, the Federal share may amount up to 100 percent for projects for signing, pavement markings, active warning devices and crossing closures, subject to the 10 percent limitation for funds apportioned under 23 U.S.C. 104 in a fiscal year.

Section 924.13 Evaluation

The FHWA proposes to revise this section to clearly describe the evaluation process of the HSIP, the information that is to be used, and the mechanisms to be used for financing evaluations.

The FHWA proposes to expand paragraph (a) regarding the evaluation process to require the State to evaluate the overall HSIP, the individual highway safety improvement projects, and the SHSP. Within paragraph (a), FHWA proposes to restructure the existing paragraphs (a)(1) through (a)(3) into two paragraphs. Proposed paragraph (a)(1) would require that the evaluation include a process to analyze and assess the results achieved by the highway safety improvement projects, including determining the effect that the projects have had in reducing the number of crashes, fatalities and serious injuries, or potential crashes, including: (i) A record of the number of crashes, serious injuries, and fatalities before and after the implementation of a project; (ii) A comparison of the number of crashes, serious injuries, and fatalities after the implementation of a project with the number expected if the improvement had not been made; and (iii) For projects developed to address crash potential, the safety benefits derived from the various means and methods used to mitigate or eliminate hazards. The FHWA also proposes a new paragraph (a)(2) to require that the States have a process to evaluate the overall SHSP on a regular basis as determined by the State and in consultation with FHWA to: (i) Ensure the accuracy and currency of the safety data; (ii) identify factors that affect the priority of emphasis areas, strategies, and proposed improvements; and (iii) identify issues that demonstrate a need to revise or otherwise update the SHSP. The FHWA proposes this evaluation of the SHSP because it believes that the strategies in the SHSP must be periodically assessed to ensure continued progress in reducing fatalities and serious injuries. In addition, evaluation of the SHSP is a requirement in 23 U.S.C. 148(c).

The FHWA proposes to expand existing paragraph (b) to require that the information resulting from the processes developed in proposed section 924.13(a)(1) be used for setting priorities for highway safety improvement projects, for assessing the overall

effectiveness of the HSIP, and for the reporting required by section 924.15. The FHWA proposes this additional language to provide synergy between the evaluation process and the setting of priorities for projects, the assessment of the effectiveness of the program, and the requirement for reporting the results. It also emphasizes the iterative nature of the planning, implementation, and evaluation process.

The FHWA proposes to revise the funding sources for the evaluation process in paragraph (c) to reflect the current applicable funding sections within Title 23, United States Code, which are 104(b)(1), (3), and (5), 105, 402, 505, and for metropolitan planning areas, 23 U.S.C. 104(f).

Section 924.15 Reporting

The FHWA proposes to expand paragraph (a) of this section in order to specify the requirements for States to submit annual reports. These reports would: (1) Describe progress in implementing the HSIP and the effectiveness of the program including its projects; (2) describe progress in implementing railway-highway grade crossing improvements and assess their effectiveness; and (3) identify not less than 5 percent of a State's highway locations exhibiting the most severe safety needs (termed the transparency report) that (i) emphasizes fatality and serious injury data; (ii) uses the most recent 3 to 5 years of crash data; (iii) identifies the data years used and describes the extent of coverage of all public roads included in the data analysis; (iv) identifies the methodology used to determine how the locations were selected; and (v) is provided in a format compliant with the requirements of 29 U.S.C. 794(d), section 508 of the Rehabilitation Act. The FHWA proposes to require that the States submit their transparency reports in a manner that is Section 508 complaint so that such reports are accessible to all members of the public, including those with disabilities.

The FHWA proposes to revise the funding sources for the reporting process in paragraph (b) to reflect the current applicable funding sections within Title 23, United States Code, which are 104(b)(1), (3), and (5), 105, 402, 505, and for metropolitan planning areas, 23 U.S.C. 104(f).

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this proposed action would not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation regulatory policies and procedures. These changes are not anticipated to adversely affect, in any material way, any sector of the economy. The proposed changes in Part 924 incorporate provisions outlined in 23 U.S.C. 148 and provide additional information regarding the purpose, definitions, policy, program structure, planning, implementation, evaluation, and reporting of HSIPs. The FHWA believes that this policy for the development, implementation, and evaluation of a comprehensive HSIP in each State will greatly improve roadway safety. These changes would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of these changes on small entities and has determined that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, March 22, 1995). To the extent the proposed revisions would require expenditures by the State and local governments for the planning, implementation, evaluation, and reporting of the HSIPs and Federal-aid projects, these activities would not be Unfunded Mandates because these activities are reimbursable. This proposed action would not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128.1 million or more in any one year (2 U.S.C. 1532) period to comply with these changes.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and FHWA has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Since this proposed action does require States to write reports, the FHWA requested approval from OMB under the provisions of the PRA. The FHWA received approval from OMB through March 31, 2010. The OMB control number is 2125–0025.

Executive Order 12988 (Civil Justice Reform)

This proposed action 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.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 924

Highway safety, Highways and roads, Motor vehicles, Railroads, Railroad safety, Safety, Transportation.

Issued on: April 15, 2008.

James D. Ray,

Acting Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to revise part 924 to read as follows:

PART 924—HIGHWAY SAFETY IMPROVEMENT PROGRAM

Sec.
924.1 Purpose.
924.3 Definitions.
924.5 Policy.
924.7 Program structure.
924.9 Planning.
924.11 Implementation.
924.13 Evaluation.
924.15 Reporting.

Authority: 23 U.S.C. 104(b)5, 130, 148, 315, and 402; 49 CFR 1.48(b).

§ 924.1 Purpose.

The purpose of this regulation is to set forth policy for the development, implementation, and evaluation of a comprehensive highway safety improvement program (HSIP) in each State.

§ 924.3 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. In addition, the following definitions apply:

Hazard index formula means any safety or crash prediction formula used for determining the relative likelihood of hazardous conditions at railway-highway grade crossings, taking into consideration weighted factors, and severity of crashes.

High risk rural road means any roadway functionally classified as a rural major or minor collector or a rural local road—

(1) On which the crash rate for fatalities and incapacitating injuries exceeds the statewide average for those functional classes of roadway; or

(2) That will likely have increases in traffic volume that are likely to create a crash rate for fatalities and incapacitating injuries that exceeds the statewide average for those functional classes of roadway.

Highway means, in addition to those items listed in 23 U.S.C. 101(a), those facilities specifically provided for the accommodation and protection of pedestrians and bicyclists.

Highway-rail grade crossing protective devices means those traffic control devices in the Manual on Uniform Traffic Control Devices[1] specified for use at such crossings; and system components associated with such traffic control devices, such as track circuit improvements and interconnections with highway traffic signals.

Highway safety improvement program means the program carried out under 23 U.S.C. 130 and 148.

Highway safety improvement project means a project described in the State strategic highway safety plan (SHSP) that corrects or improves a hazardous road location or feature, or addresses a highway safety problem. Projects include, but are not limited to, the following:

(1) An intersection safety improvement.

(2) Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).

(3) Installation of rumble strips or another warning device, if the rumble strips or other warning devices do not adversely affect the safety or mobility of bicyclists, pedestrians or the disabled.

(4) Installation of a skid-resistant surface at an intersection or other location with a high frequency of crashes.

(5) An improvement for pedestrian or bicyclist safety or safety of the disabled.

(6) Construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under 23 U.S.C. 130, including the separation or protection of grades at railway-highway crossings.

(7) Construction of a railway-highway crossing safety feature, including installation of highway-rail grade crossing protective devices.

(8) The conduct of an effective traffic enforcement activity at a railway-highway crossing.

(9) Construction of a traffic calming feature.

(10) Elimination of a roadside obstacle.

(11) Improvement of highway signage and pavement markings.

(12) Installation of a priority control system for emergency vehicles at signalized intersections.

(13) Installation of a traffic control or other warning device at a location with high crash potential.

(14) Transportation safety planning.

(15) Improvement in the collection and analysis of crash data.

(16) Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including law enforcement assistance) relating to work zone safety.

(17) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of road users and workers), and crash attenuators.

(18) The addition or retrofitting of structures or other measures to eliminate or reduce crashes involving vehicles and wildlife.

(19) Installation and maintenance of signs (including fluorescent yellow-green signs) at pedestrian-bicycle crossings and in school zones.

(20) Construction, installation, and operational improvements on high risk rural roads.

(21) Conducting road safety audits.

Integrated interoperable emergency communication equipment means equipment that supports an interoperable emergency communications system.

[1] The MUTCD is approved by the FHWA and recognized as the national standard for traffic control on all public roads. It is incorporated by reference into the Code of Federal Regulations at 23 CFR part 655. It is available on the FHWA's Web site at *http://mutcd.fhwa.dot.gov* and is available for inspection and copying at the FHWA Washington, DC Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

Interoperable emergency communications system means a network of hardware and software that allows emergency response providers and relevant Federal, State, and local government agencies to communicate with each other as necessary through a dedicated public safety network utilizing information technology systems and radio communications systems, and to exchange voice, data, or video with one another on demand, in real time, as necessary.

Operational improvements mean capital improvements for installation of traffic surveillance and control equipment; computerized signal systems; motorist information systems; integrated traffic control systems; incident management programs; transportation demand management facilities; strategies and programs; and such other capital improvements to public roads as the Secretary may designate by regulation.

Public grade crossing means a railway-highway grade crossing where the roadway is under the jurisdiction of and maintained by a public authority and open to public travel. All roadway approaches must be under the jurisdiction of the public roadway authority, and no roadway approach may be on private property.

Public road means any highway, road, or street under the jurisdiction of and maintained by a public authority and open to public travel.

Road Safety Audit means a formal safety performance examination of an existing or future road or intersection by an independent audit team.

Safety data includes, but is not limited to, crash, roadway, traffic, vehicle, case or citation adjudication, and injury data on all public roads including, for railway-highway grade crossings, the characteristics of both highway and train traffic.

Safety projects under any other section means safety projects eligible for funding under Title 23, United States Code, including projects to promote safety awareness, public education, and projects to enforce highway safety laws.

Safety stakeholder means agencies, organizations, or parties described in 23 U.S.C. 148(a)(6)(A), and includes, but is not limited to, local, State, and Federal transportation agencies and tribal governments.

Serious injury means an incapacitating injury or any injury, other than a fatal injury, which prevents the injured person from walking, driving, or normally continuing the activities the person was capable of performing before the injury occurred.

State means any one of the 50 States and the District of Columbia.

Strategic highway safety plan means a comprehensive, data-driven safety plan developed, implemented, and evaluated in accordance with 23 U.S.C. 148.

Transparency report means the report required annually under 23 U.S.C. 148(c)(1)(D) and in accordance with § 924.15 of this part that describes not less than 5 percent of a State's highway locations exhibiting the most severe safety needs.

§ 924.5 Policy.

(a) Each State shall develop, implement, and evaluate on a continuing basis a HSIP that has the overall objective of significantly decreasing the potential for crashes and reducing fatalities and serious injuries resulting from crashes on all public roads.

(b) Under 23 U.S.C. 148(a)(3), a variety of highway safety improvement projects are eligible for funding through the HSIP. In order for an eligible improvement to be funded with HSIP funds, States shall first consider whether the activity maximizes opportunities to advance safety by addressing locations and treatments with the highest potential for future crash reduction. States shall fund safety projects or activities that are most likely to reduce the number of, or potential for, fatalities and serious injuries. Safety projects under any other section of Title 23, United States Code, and funded with 23 U.S.C. 148 funds, are only eligible activities when a State is eligible to use up to 10 percent of the amount apportioned under 23 U.S.C. 104(b)(5) for a fiscal year in accordance with 23 U.S.C. 148(e). This excludes minor activities that are incidental to a specific highway safety improvement project.

(c) Other Federal-aid funds are eligible to support and leverage the safety program. Improvements to safety features that are routinely provided as part of a broader Federal-aid project should be funded from the same source as the broader project. States should address the full scope of their safety needs and opportunities on all roadway categories by using other funding sources such as Interstate Maintenance (IM), Surface Transportation Program (STP), National Highway System (NHS), and Equity Bonus (EB) funds in addition to HSIP funds.

§ 924.7 Program structure.

(a) The HSIP in each State shall include a data-driven SHSP and the resulting implementation through highway safety improvement projects. The HSIP includes construction and operational improvements on high risk rural roads, and elimination of hazards at railway-highway grade crossings.

(b) Each State's HSIP shall include processes for the planning, implementation, and evaluation of the SHSP, HSIP, and highway safety improvement projects. These processes shall be developed by the States and approved by the FHWA Division Administrator in accordance with this section. Where appropriate, the processes shall be developed cooperatively with officials of the various units of local governments. The processes may incorporate a range of procedures appropriate for the administration of an effective HSIP on individual highway systems, portions of highway systems, and in local political subdivisions, and when combined, shall cover all public roads in the State.

§ 924.9 Planning.

(a) The planning process of the HSIP shall incorporate:

(1) A process for collecting and maintaining a record of crash, roadway, traffic, vehicle, case or citation adjudication, and injury data on all public roads including for railway-highway grade crossings inventory data that includes, but is not limited to, the characteristics of both highway and train traffic.

(2) A process for advancing the State's capabilities for safety data collection and analysis by improving the timeliness, accuracy, completeness, uniformity, integration, and accessibility of the State's safety data or traffic records.

(3) A process for analyzing available safety data to:

(i) Develop a HSIP in accordance with 23 U.S.C. 148(c)(2) that:

(A) Identifies highway safety improvement projects on the basis of crash experience or crash potential and establishes the relative severity of those locations;

(B) Considers the relative hazard of public railway-highway grade crossings based on a hazard index formula; and

(C) Establishes an evaluation process to analyze and assess results achieved by highway safety improvement projects and uses this information in setting priorities for future projects.

(ii) Develop and maintain a data-driven SHSP that:

(A) Is developed after consultation with safety stakeholders;

(B) Makes effective use of State, regional, and local crash data and determines priorities through crash data analysis;

(C) Addresses engineering, management, operation, education, enforcement, and emergency services;

(D) Considers safety needs of all public roads;

(E) Adopts a strategic safety goal;

(F) Identifies key emphasis areas and describes a program of projects, technologies, or strategies to reduce or eliminate highway safety hazards;

(G) Adopts performance-based goals, coordinated with other State highway safety programs, that address behavioral and infrastructure safety problems and opportunities on all public roads and all users, and focuses resources on areas of greatest need and the potential for the highest rate of return on the investment of HSIP funds;

(H) Identifies strategies, technologies, and countermeasures that significantly reduce highway fatalities and serious injuries in the key emphasis areas giving high priority to low-cost and proven countermeasures;

(I) Determines priorities for implementation;

(J) Is consistent, as appropriate, with safety-related goals, priorities, and projects in the long-range statewide transportation plan and the statewide transportation improvement program and the relevant metropolitan long-range transportation plans and transportation improvement programs that are developed as specified in 23 U.S.C. 134, 135 and 402; and 23 CFR part 450;

(K) Documents the process used to develop the plan;

(L) Proposes a process for implementation and evaluation of the plan;

(M) Is approved by the Governor of the State or a responsible State agency official that is delegated by the Governor of the State; and

(N) Has been developed using a process that was approved by the FHWA Division Administrator.

(iii) Develop a High Risk Rural Roads program using safety data that identifies eligible locations on State and non-State owned roads as defined in § 924.3, and analyzes the highway safety problem to identify safety concerns, identify potential countermeasures, make project selections, and prioritize high risk rural roads projects on all public roads.

(iv) Develop a Railway-Highway Grade Crossing program that:

(A) Considers the relative hazard of public railway-highway grade crossings based on a hazard index formula;

(B) Includes onsite inspection of public grade crossings;

(C) Considers the potential danger to large numbers of people at public grade crossings used on a regular basis by passenger trains, school buses, transit buses, pedestrians, bicyclists, or by trains and/or motor vehicles carrying hazardous materials; and

(D) Results in a program of safety improvement projects at railway-highway grade crossings giving special emphasis to the legislative requirement that all public crossings be provided with standard signing and markings.

(4) A process for conducting engineering studies (such as roadway safety audits) of hazardous locations, sections, and elements to develop highway safety improvement projects.

(5) A process for establishing priorities for implementing a schedule of highway safety improvement projects considering:

(i) The potential reduction in the number of fatalities and serious injuries;

(ii) The cost of the projects and the resources available;

(iii) The strategies in the SHSP;

(iv) The correction and prevention of hazardous conditions;

(v) Other safety data-driven criteria as appropriate in each State; and

(vi) Integration with the statewide transportation planning process and statewide transportation improvement program, and metropolitan transportation planning process and transportation improvement program where applicable, in 23 CFR part 450.

(b) The planning process of the HSIP may be financed with funds made available through 23 U.S.C. 130, 133, 148, 402, and 505 and, where applicable in metropolitan planning areas, through 23 U.S.C. 104(f).

(c) Highway safety improvement projects shall be carried out as part of the Statewide and Metropolitan Transportation Planning Process consistent with the requirements of 23 U.S.C. 134 and 135 and 23 CFR part 450.

§ 924.11 Implementation.

(a) The implementation of the HSIP in each State shall include a process for scheduling and implementing highway safety improvement projects in accordance with the priorities developed in accordance with § 924.9 of this part.

(b) A State is eligible to use up to 10 percent of the amount apportioned under 23 U.S.C. 104(b)(5) for each fiscal year to carry out safety projects under any other section, consistent with the SHSP and as defined in 23 U.S.C. 148(a)(4), if the State can certify that it has met infrastructure safety needs relating to railway-highway grade crossings and highway safety improvement projects for a given fiscal year. In order for a State to obtain approval:

(1) A State must submit a written request for approval to the FHWA Division Administrator for each year that a State certifies that the requirements have been met before a State may use these funds to carry out safety projects under any other section;

(2) A State must submit a written request that describes how the certification was made, the Title 23, United States Code activities that will be funded, how the activities are consistent with the SHSP, and the dollar amount the State estimates will be used; and

(c) If a State has funds set aside from 23 U.S.C. 104(b)(5) for construction and operational improvements on high risk rural roads, in accordance with 23 U.S.C. 148(a)(1), such funds:

(1) Shall be used for safety projects that address priority high risk rural roads as determined by the State.

(2) Shall only be used for construction and operational improvements on high risk rural roads and the planning, preliminary engineering, and roadway safety audits related to specific high risk rural roads improvements.

(3) May also be used for other highway safety improvement projects if the State certifies that it has met all infrastructure safety needs for construction and operational improvements on high risk rural roads for a given fiscal year.

(d) Funds set-aside pursuant to 23 U.S.C. 148 for apportionment under the 23 U.S.C. 130(f) Railway-Highway Grade Crossing Program, are to be used to implement railway-highway grade crossing safety projects on any public road. At least 50 percent of the funds apportioned under 23 U.S.C. 130(f) must be made available for the installation of highway-rail grade crossing protective devices. The railroad share, if any, of the cost of grade crossing improvements shall be determined in accordance with 23 CFR part 646, Subpart B (Railroad-Highway Projects). In addition, up to 2 percent of the section 130 funds apportioned to a State may be used for compilation and analysis of safety data for the annual report to the FHWA Division Administrator required under § 924.15(a)(2) on the progress being made to implement the railway-highway grade crossing program.

(e) Highway safety improvement projects may also be implemented with other funds apportioned under 23 U.S.C. 104(b) subject to the eligibility requirements applicable to each program.

(f) Award of contracts for highway safety improvement projects shall be in accordance with 23 CFR part 635 and part 636, where applicable, for highway construction projects, 23 CFR part 172 for engineering and design services

contracts related to highway construction projects, or 49 CFR part 18 for non-highway construction projects.

(g) All safety projects funded under 23 U.S.C. 104(b)(5), including safety projects under any other section, shall be accounted for in the statewide transportation improvement program and reported on annually in accordance with § 924.15.

(h) The Federal share of the cost for most highway safety improvement projects carried out with funds apportioned to a State under 23 U.S.C. 104(b)(5) shall be 90 percent. In accordance with 23 U.S.C. 120(a) or (b), the Federal share may be increased to a maximum of 95 percent by the sliding scale rates for States with a large percentage of Federal lands. In accordance with 23 U.S.C. 120(c), projects such as roundabouts, traffic control signalization, safety rest areas, pavement markings, or installation of traffic signs, traffic lights, guardrails, impact attenuators, concrete barrier end treatments, breakaway utility poles, or priority control systems for emergency vehicles or transit vehicles at signalized intersections may be funded at up to 100 percent Federal share, except not more than 10 percent of the sums apportioned under 23 U.S.C. 104 for any fiscal year shall be used at this federal share rate. In addition, for railway-highway grade crossings, the Federal share may amount up to 100 percent for projects for signing, pavement markings, active warning devices, and crossing closures, subject to the 10 percent limitation for funds apportioned under 23 U.S.C. 104 in a fiscal year.

(i) The implementation of the HSIP in each State shall include a process for scheduling and implementing highway safety improvement projects in accordance with the procedures set forth in 23 CFR part 630, Subpart A (Preconstruction Procedures: Project Authorization and Agreements).

§ 924.13 Evaluation.

(a) The evaluation process of the HSIP in each State shall include the evaluation of the overall HSIP, individual highway safety improvement projects, and the SHSP. It shall:

(1) Include a process to analyze and assess the results achieved by the highway safety improvement projects, including determining the effect that the projects have had in reducing the number and severity of crashes, fatalities and serious injuries, or potential crashes, and in reaching the performance goals identified in section 924.9(a)(3)(ii)(G), including:

(i) A record of the number of crashes, fatalities and serious injuries before and after the implementation of a project;

(ii) A comparison of the number of crashes, fatalities and serious injuries after the implementation of a project to the number expected if the improvement had not been made; and

(iii) For projects developed to address crash potential, the safety benefits derived from the various means and methods used to mitigate or eliminate hazards.

(2) Include a process to evaluate the overall SHSP on a regular basis as determined by the State and in consultation with the FHWA to:

(i) Ensure the accuracy and currency of the safety data;

(ii) Identify factors that affect the priority of emphasis areas, strategies, and proposed improvements; and

(iii) Identify issues that demonstrate a need to revise or otherwise update the SHSP.

(b) The information resulting from the process developed in § 924.13(a)(1) shall be used:

(1) For developing basic source data in the planning process as outlined in § 924.9(a) in accordance with paragraph (a)(1);

(2) For setting priorities for highway safety improvement projects;

(3) For assessing the overall effectiveness of the HSIP; and

(4) For reporting required by § 924.15.

(c) The evaluation process may be financed with funds made available under 23 U.S.C. 104(b)(1), (3), and (5), 105, 402, and 505, and for metropolitan planning areas, 23 U.S.C. 104(f).

§ 924.15 Reporting.

(a) For the period of the previous July 1 through June 30, each State shall submit to the FHWA Division Administrator no later than August 31 of each year the following reports related to the HSIP in accordance with 23 U.S.C. 148(g):

(1) A report describing the progress being made to implement the State HSIP that:

(i) Describes the progress in implementing the projects, including the funds available, and the number and general listing of the type of projects initiated. The general listing of the projects initiated shall be structured to identify how the projects relate to the State SHSP or the State's safety goals and objectives and shall provide a clear description of project selection;

(ii) Assesses the effectiveness of the improvements. This section shall provide a demonstration of the overall effectiveness of the HSIP and shall include figures showing the general highway safety trends in the State by number and by rate;

(iii) Describes the extent to which improvements contributed to specific performance goals and provides evaluation data for specific safety improvement projects that have been implemented. The evaluation data shall include basic information on the roadway such as where the project occurred, the type of improvement, the cost of improvement, and ''before'' and ''after'' crash results, and shall demonstrate whether the project achieved its purpose using benefit-cost or other methodology developed by the State; and

(iv) Describes the High Risk Rural Roads program, providing basic program implementation information, methods used to identify high risk rural roads, information assessing the High Risk Rural Roads program projects, and a summary of the overall High Risk Rural Roads program effectiveness.

(2) A report describing progress being made to implement railway-highway grade crossing improvements in accordance with 23 U.S.C. 130(g), and the effectiveness of these improvements.

(3) A transparency report describing not less than 5 percent of a State's highway locations exhibiting the most severe safety needs that:

(i) Emphasizes fatality and serious injury data;

(ii) Uses the most recent three to five years of crash data;

(iii) Identifies the data years used and describes the extent of coverage of all public roads included in the data analysis;

(iv) Identifies the methodology used to determine how the locations were selected; and

(v) Is compatible with the requirements of 29 U.S.C. 794(d), Section 508 of the Rehabilitation Act.

(b) The preparation of the State's annual reports may be financed with funds made available through 23 U.S.C. 104(b)(1), (3), and (5), 105, 402, and 505, and for metropolitan planning areas, 23 U.S.C. 104(f).

[FR Doc. E8–8742 Filed 4–23–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA90

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations—Exemptions From the Requirement To Report Transactions in Currency; Comment Request

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Department of the Treasury.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: FinCEN is proposing to amend the Bank Secrecy Act (BSA) regulation that allows depository institutions to exempt transactions of certain persons from the requirement to report transactions in currency in excess of $10,000. Modification of the currency transaction report exemption procedures is a part of the Department of the Treasury's continuing effort to increase the efficiency and effectiveness of its anti-money laundering and counter-terrorist financing policies.

DATES: Written comments are welcome and must be received on or before June 23, 2008.

ADDRESSES: Those submitting comments are encouraged to do so via the Internet. Comments submitted via the Internet may be submitted at *http://www.regulations.gov/search/index.jsp* with the caption in the body of the text, ''Attention: Currency Transaction Report Exemptions Rule and Form Amendments.'' Comments may also be submitted by written mail to: Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183, Attention: Currency Transaction Report Exemptions Rule and Form Amendments. Please submit comments by one method only. All comments submitted in response to this notice of proposed rulemaking will become a matter of public record, therefore, you should submit only information that you wish to make available publicly.

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (Not a toll free call). In general, FinCEN will make all comments publicly available by posting them on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 3.

SUPPLEMENTARY INFORMATION:

I. Introduction

Currency transaction reports (CTRs) provide unique, objective, and timely information that is highly useful to a growing number of federal, state, and local law enforcement agencies. For example, CTRs provide information that is often unavailable from other sources, such as information on a non-account holder who conducts a transaction in currency for more than $10,000. Criminal investigators have found CTR data particularly useful in identifying leads for further investigation and corroborating already gathered information. Law enforcement officials have noted that no other source of information enables them to ''map'' the financial links between members of a criminal organization as well as the CTR.[1] Finally, recent advances in technology have enhanced law enforcement's ability to use CTR data in the development of pattern and trend analyses.

While FinCEN values the broad utility that CTR data provides to law enforcement, FinCEN also is committed to improving the effectiveness and efficiency with which the BSA's regulatory regime is administered. FinCEN, therefore, welcomed a study of the current CTR exemption regime by the United States Government Accountability Office (GAO). FinCEN found the GAO's report entitled ''Bank Secrecy Act: Increased Use of Exemption Provisions Could Reduce Currency Transaction Reporting While Maintaining Usefulness to Law Enforcement Efforts'' (''the GAO Report'') helpful in identifying ways the CTR exemption requirements can be improved, thereby encouraging depository institutions to make full use of CTR exemptions.

II. Background

A. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, authorizes the Secretary of the Treasury (Secretary), among other things, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement anti-money laundering programs and compliance procedures. The regulations implementing the BSA appear at 31 CFR Part 103. The Secretary's authority to administer the BSA has been delegated to the Director of FinCEN.

The reporting by financial institutions of transactions in currency in excess of $10,000 has long been a major component of the Department of the Treasury's implementation of the BSA. The reporting requirement is promulgated pursuant to 31 U.S.C. 5313(a) requiring reports of domestic coin and currency transactions.

The Money Laundering Suppression Act of 1994 (MLSA) amended the BSA by establishing a statutory system for exempting transactions by certain customers of depository institutions from currency transaction reporting.[2] In general, the statutory exemption system, 31 U.S.C. 5313(d) through (g), creates two types of exemptions. Under 31 U.S.C. 5313(d) (sometimes called the ''mandatory exemption'' provision), the Secretary is required to provide depository institutions with the ability to exempt from the currency transaction reporting requirement transactions in currency between the depository institution and four specified categories of customers. The four specified categories of customers in the mandatory exemption provision are: (1) Another depository institution; (2) a department or agency of the United States, any State, or any political subdivision of any State; (3) any entity established under the laws of the United States, any State, or any political subdivision of any State, or under an interstate compact between two or more States, which exercises governmental authority on behalf of the United States or any such State or political subdivision; and (4) any business or category of business the reports on which have little or no value for law enforcement purposes.

Under 31 U.S.C. 5313(e) (sometimes called the ''discretionary exemption''

[1] *Bank Secrecy Act: Increased Use of Exemption Provisions Could Reduce Currency Transaction Reporting While Maintaining Usefulness to Law Enforcement Efforts,* GAO–08–355 (GAO: Washington, D.C.: February 21, 2008).

[2] *See* section 402 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (September 23, 1994). The Money Laundering Suppression Act sought to reduce, within a reasonable period of time, the number of reports required to be filed in the aggregate by depository institutions pursuant to section 5313(a) of title 31. The enactment of 31 U.S.C. 5313(d) through (g) reflected congressional intent to ''reform * * * the procedures for exempting transactions between depository institutions and their customers.'' *See* H.R. Rep. 103–652, 103d Cong., 2d Sess. 186 (August 2, 1994).

provision) the Secretary is authorized, but not required, to allow depository institutions to exempt from the currency transaction reporting requirement transactions in currency between it and a qualified business customer.[3] A ''qualified business customer,'' for purposes of the discretionary exemption provision, is a business that:

(A) Maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act) at the depository institution; (B) frequently engages in transactions with the depository institution which are subject to the reporting requirements of subsection (a); and (C) meets criteria which the Secretary determines are sufficient to ensure that the purposes of [the BSA] are carried out without requiring a report with respect to such transactions.[4]

The Secretary was required to establish by regulation the criteria for granting and maintaining an exemption for qualified business customers,[5] as well as guidelines for depository institutions to follow in selecting customers for exemption.[6] The guidelines may include a description of the type of businesses for which no exemption will be granted under the discretionary exemption provision. The Secretary also was required to prescribe regulations that require an annual review of qualified business customers and require depository institutions to resubmit information about those customers with modifications if appropriate.[7]

B. Overview of the Current Regulatory Provisions To Exempt Certain Persons From Currency Transaction Reporting

The current exemption procedures, which are codified at 31 CFR 103.22(d), were the result of a five-part rulemaking.[8] The current exemption procedures apply to depository institution customers that fall within one of the classes of exempt persons described in 31 CFR 103.22(d)(2)(i)–(vii), commonly referred to as ''Phase I'' and ''Phase II'' exemptions.

Phase I eligible customers include: (i) Other banks[9] operating in the United States; (ii) Government departments and agencies; (iii) Certain entities that exercise governmental authority; (iv) Entities whose equity interests are listed on one of the major national stock exchanges; and (v) Certain subsidiaries of entities whose equity interests are listed on one of the major national stock exchanges.[10] Phase II eligible customers include: (i) ''Non-listed businesses'' and (ii) ''Payroll customers.''

Phase II Eligible Customers: Non-Listed Businesses and Payroll Customers

A ''non-listed business'' is any other commercial enterprise that is not ineligible for exemption[11] and that:

(A) Has maintained a transaction account at the bank for at least 12 months;

(B) Frequently engages in transactions in currency with the bank in excess of $10,000; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.[12]

Such an enterprise is an exempt person only ''[t]o the extent of its domestic operations.''[13] The addition of non-listed businesses as a category of exempt person was intended to make transactions of all established depository institution customers (other than ineligible companies) not otherwise included within the scope of the mandatory exemption provision, including sole proprietorships, eligible for the current exemption procedures.

A ''payroll customer,'' under 31 CFR 103.22(d)(2)(vii), is any other person (*i.e.*, a person not otherwise covered under the exempt person definitions) that:

(A) Has maintained a transaction account at the bank for at least 12 months;

(B) Operates a firm that regularly withdraws more than $10,000 in order to pay its United States employees in currency; and

(C) Is incorporated or organized under the laws of the United States or a State, or is registered as and eligible to do business within the United States or a State.[14]

A payroll customer is an exempt person ''[w]ith respect solely to withdrawals for payroll purposes.''[15]

Designating an Eligible Customer as Exempt and Other Requirements

Currently, a depository institution exempting a customer must file a FinCEN Form 110, Designation of Exempt Person (DOEP) (''FinCEN Form 110'') within 30 days after the first transaction which the bank wishes to exempt with respect to the customer.[16] For a Phase I customer, a depository institution must file the form only once and must conduct an annual review of the customer. For a Phase II customer, a depository institution must also conduct an annual review of the customer, and must biennially renew the customer's exemption by refiling the form, certifying that it has applied its system of monitoring the customer's transactions in currency for suspicious activity, and reporting any change in control of the customer.

C. Objectives of Proposed Changes

It is FinCEN's intent to simplify the current requirements for depository institutions to exempt their eligible customers from CTR reporting by proposing changes to the current regulatory requirements to comport with the GAO Report recommendations.

GAO Report Findings and Recommendations

The GAO in its report found that CTRs provide federal, state, and local law enforcement officials with ''unique and reliable information essential to a variety of efforts.''[17] Advances in technology have made information reported through CTRs that much more useful. Further, in discussing the usefulness of CTRs, the GAO Report contrasted the CTR, which captures information based on objective facts that determine its filing, with the SAR, which requires a financial institution to make a subjective determination of what is suspicious prior to its filing.[18] The information gleaned from those two types of reports is very different in nature and is useful to law enforcement in complementary ways. For example, the GAO Report noted that law enforcement agencies often consult CTR

[3] For additional information about the terms of 31 U.S.C. 5313(e)–(g), *see* 63 Fed. Reg. 50147, 50148 (September 21, 1998).

[4] 31 U.S.C. 5313(e)(2).

[5] *See* 31 U.S.C. 5313(e)(3).

[6] *See* 31 U.S.C. 5313(e)(4)(A).

[7] *See* 31 U.S.C. 5313(e)(5).

[8] *See* 61 FR 18204 (April 24, 1996), 62 FR 47141, 47156 (September 8, 1997), 62 FR 63298 (November 28, 1997), 63 FR 50147 (September 21, 1998), and 65 FR 46356 (July 28, 2000) (the rulemakings that comprise the current CTR exemption system).

[9] *See* 31 CFR 103.22 (definition of a bank, which includes other depository institutions).

[10] *See* 31 CFR 103.22(d)(2)(v) (definition of a subsidiary).

[11] Non-listed businesses that are ineligible for exemption are businesses engaged primarily in one or more of the following activities: Serving as financial institutions or agents of financial institutions of any type; purchasing or selling to customers motor vehicles of any kind, vessels, aircraft, farm equipment or mobile homes; practicing law, accountancy, or medicine; auctioning of goods; chartering or operating ships, buses, or aircraft; gaming of any kind (other than licensed pari-mutuel betting at race tracks); investment advisory services or investment banking services; real estate brokerage; pawn brokerage; title insurance and real estate closing; trade union activities; and any other activities that may be specified by FinCEN. *See* 31 CFR 103.22(d)(6)(vii).

[12] 31 CFR 103.22(d)(2)(vi).

[13] Id.

[14] 31 CFR 103.22(d)(2)(vii).

[15] Id.

[16] See 31 CFR 103.22(d)(3)(i). FinCEN Form 110 replaced the previous designation form, Treasury Form TD F 90–22.53.

[17] *Supra* note 1, at 2.

[18] *See supra* note 1, at 17.

data to obtain more detailed information after reviewing SARs.[19]

CTR requirements are also useful to law enforcement because they force criminals to act in ways that increase chances of detection as they attempt to avoid conducting reportable transactions.[20] While the GAO Report found that it can be difficult for law enforcement to link CTRs to specific outcomes, it also is generally difficult for depository institutions to quantify the costs of meeting CTR requirements, in large part because the same processes and staff are used to fulfill other responsibilities of the financial institution.

Recognizing both the value of CTR data and the need to improve the current CTR exemption regulatory requirements, the GAO Report made three main recommendations that FinCEN proposes in this Notice: (1) Remove the regulatory requirement that depository institutions biennially renew Phase II exemptions; (2) remove the regulatory requirement that depository institutions file exemption forms, and annually review the supporting information, for banks, federal, state, and local government agencies, and entities exercising federal, state or local governmental authority; and (3) permit depository institutions to exempt otherwise eligible non-listed customers who frequently engage in large cash transactions within a period of time shorter than 12 months.

III. Section-by-Section Analysis

The proposed rule would implement the GAO Report's recommendations by eliminating the biennial filing requirement; eliminating the requirement to file exemptions forms on, and annually review the supporting information for, exempt customers that are depository institutions, Federal, State and local government agencies, and entities exercising governmental authority; and eliminating the 12-month time period for which customers may be exempted as Phase II customers, in favor of a risk-based approach. In addition, the proposed rule would eliminate the transitional rule in the current regulations as no longer necessary, renumber the paragraphs under § 103.22(d) accordingly, and make other technical corrections as noted below.

A. § 103.22(d)(1)—General

FinCEN proposes to amend 31 CFR 103.22(d)(1) to change the cross references in this paragraph to reflect proposals in this notice that if adopted would result in the paragraphs of section 103.22(d) being re-numbered.

B. § 103.22(d)(2)(iv) Exempt Person—Listed Entities

FinCEN proposes to amend 31 CFR 103.22(d)(2)(iv) by correcting the name of a NASDAQ Stock Market listing referenced in the regulation from its prior name, the NASDAQ Small Cap Issues, to its current name, the NASDAQ Capital Markets Companies listing.

C. § 103.22(d)(2)(vi) Exempt Person—Non-Listed Entities

FinCEN proposes to amend 31 CFR 103.22(d)(2)(vi) by changing a cross reference in this paragraph to reflect proposals in this notice that if adopted would result in the paragraphs of section 103.22(d) being re-numbered.

D. §§ 103.22(d)(2)(vi)(A) and (vii)(A) Exempt Person—Length of Time Required To Consider Phase II Entities for Exemption

FinCEN proposes to amend 31 CFR 103.22(d)(2)(vi)(A) and (vii)(A) by removing any prescribed amount of time before a depository institution may consider a non-listed business or payroll customer for exemption, and instead enabling a depository institution to make a risk-based determination as to when it has a sufficient history with such customers before treating them as an exempt person. FinCEN solicits comment on an alternative proposal in which, instead of adopting a risk-based approach, FinCEN would maintain a reference to the length of time required to consider Phase II entities for exemption, but reduce it from twelve months to two months.

The GAO Report recommended that FinCEN permit depository institutions to exempt otherwise eligible Phase II customers who frequently[21] engage in large cash transactions without having to wait for the current 12-month period because many depository institution respondents surveyed for the GAO Report indicated that the time-consuming nature of the biennial renewal, along with the costs associated with biennial renewals, made using the Phase II exemptions less advantageous. FinCEN supports changing the current regulatory requirements to conform to this recommendation.

In 1998, FinCEN specified a twelve month waiting period for Phase II exemptions largely in response to law enforcement concerns about establishing an overly lax exemption system.[22] The exemption requirements in place prior to 1998 had allowed the designation of eligible non-listed and payroll customers after only two months, though other complex requirements also had to be met.[23] At that time, FinCEN concurred with law enforcement that requiring a twelve month time period was not unreasonable, given that it was greatly simplifying the exemption requirements then in place.[24]

Much has changed in the regulatory landscape articulated in the BSA and its implementing regulations since 1998 when almost all of what constitutes the current CTR exemption regime became effective. With the enactment of the USA PATRIOT Act and subsequent, related changes to the implementing regulations of the BSA, depository institutions became subject to additional requirements, like the customer identification program (CIP) requirements,[25] which must include risk-based procedures for verifying the identity of a customer. As a result, depository institutions have had to gather more information about their customers at account opening and have become increasingly adept at applying a risk-based analysis as they comply with BSA requirements.

Taking into consideration all of the changes that have been made to the BSA and its implementing regulations, FinCEN believes adopting a risk-based approach to the amount of time that is needed before an initial designation of exemption may be filed for Phase II eligible customers is now appropriate. FinCEN also proposes for comment, in the alternative, an amendment that would require depository institutions to wait two months before making the initial designation.

[19] Id. at 19.

[20] Id.

[21] *See* FinCEN's ''Guidance on Interpreting 'Frequently' Found in the Criteria for Exempting a 'Non-Listed Business' Under 31 CFR 103.22(d)(2)(vi)(B)'' (November 2002).

[22] *See* 31 CFR 103(d)(2)(vi)(A). *See also* 62 FR 47161 (September 8, 1997) (''The need for some 'counterweight' in the liberalized system was raised forcefully with FinCEN by federal law enforcement officials during formulation of the proposed rule. Enforcement officials are concerned that necessary easing of the burdens of unnecessary currency transaction reporting not have the unintended effect of opening up avenues for more efficient money laundering.'').

[23] *See* Id. Some requirements under the administrative exemption system included: only transactions falling within certain ''permitted'' ranges could be exempted, banks were required to prepare and submit signed exemption statements, or banks were required to maintain mandatory exemption lists.

[24] *See* 63 FR 50151 (September 21, 1998) (''As stated in the Notice, the ten-month difference in time periods is justified by the elimination of virtually all of the other requirements of the prior administrative exemption system.'').

[25] 31 CFR 103.121(b)(2).

E. § 103.22(d)(3)(i)—General

FinCEN proposes to amend 31 CFR 103.22(d)(3)(i) by making specific reference to a depository institution's need to use FinCEN Form 110 [26] when designating an exempt person, removing text that references the exemption requirements that existed prior to 1998, and re-stating that a designation must be made within 30 calendar days of the reportable transaction in currency.

F. § 103.22(d)(3)(ii)—Special Rules

FinCEN proposes to amend 31 CFR 103.22(d)(3)(ii) by removing the requirement that depository institutions file an initial designation of exempt persons by using FinCEN Form 110 for Phase I eligible customers that are depository institutions, federal, state, or local governments, or entities exercising governmental authority.[27]

The GAO Report recommended that FinCEN eliminate the requirement for depository institutions to file an exemption form for those Phase I customers described above because CTRs filed on those entities would be of little value to law enforcement. The GAO report noted that the GAO's analysis of FinCEN data showed that in 2006 alone, almost 87,000 CTRs were filed on over 2,900 depository institutions and nearly 24,000 CTRs were filed on 2,000 government entities.[28]

FinCEN supports the GAO Report recommendation and agrees that CTRs filed on depository institutions, government agencies, and entities exercising governmental authority, are not likely to be highly useful to law enforcement. In addition, depository institutions would still be required to comply with their SAR reporting obligations should any of their Phase I customers engage in suspicious activity. It is FinCEN's intent to continue to simplify the CTR exemption process while ensuring that law enforcement receives information that is highly useful to its efforts. Proposing this change to the regulatory requirements to eliminate the requirement to file exemption forms on these Phase I customers is in line with both of these goals.[29]

FinCEN also proposes to amend 31 CFR 103.22(d)(3)(ii) to reflect that transactions in currency with any of the twelve Federal Reserve Banks would continue to be exempt from the requirement to file an exemption form.

G. § 103.22(d)(3)(iii)—Special Procedures

FinCEN proposes to add 31 CFR 103.22(d)(3)(iii). That new paragraph would add a requirement that when designating an eligible non-listed or payroll customer for exemption, the depository institution conduct a risk-based assessment of the transactional activity of that customer. Under a risk-based approach, the amount of time an account has been opened would be one of many factors that a depository institution might consider when forming a reasonable belief that the customer it seeks to designate for exemption has a legitimate business purpose for conducting frequent transactions in currency. Other factors might possibly include, but are not limited to: Whether the depository institution had a past relationship with the customer; certain specific characteristics of the customer's business model that may be pertinent, the types of business in which the customer engages, and where the business is operating.

The risk-based analysis requirement proposed in this notice should be read as a separate, specific rule of paragraph (d), and is not meant to supersede the operating rules of existing 31 CFR 103.22(d)(6)(i) subject to paragraph (d).

H. § 103.22(d)(4)—Annual Review

FinCEN proposes to amend 31 CFR 103.22(d)(4) by removing the requirement that depository institutions conduct an annual review of the information supporting certain exempt Phase I eligible customers, namely banks, government agencies, and entities exercising governmental authority. The GAO Report recommended removing the regulatory requirement that depository institutions conduct an annual review of certain exempt Phase I eligible customers because these entities are unlikely to change the characteristics that made them eligible for exemption at their initial designation. The GAO Report also contrasted these Phase I eligible customers to other Phase I and Phase II customers, such as public companies, which are more likely to reorganize or enter new lines of business. Accordingly, FinCEN proposes changing the current regulatory requirements for exempting the Phase I eligible customers identified by the GAO report that are unlikely to change their characteristics that made them eligible for initial designation, but notes that depository institutions must still review and verify exempt status for Phase II customers annually, as is required by the BSA and its implementing regulations.[30] Further, while they are separate and distinct requirements, conducting the annual review required for Phase II customers will likely provide depository institutions with important information helpful to complying with the SAR reporting obligation and the AML program requirement.

FinCEN also proposes to amend 31 CFR 103.22(d)(4) by requiring depository institutions to notify FinCEN of any change in control of a Phase II customer that it knows of, or should know of on the basis of its records. Notification would occur through the filing of an amended FinCEN Form 110 by March 15 of the calendar year following every second year in which the bank knew or should have known of the change in control. Complying with the requirement to annually review and verify the exempt status of a Phase II customer should help depository institutions determine whether they must file information regarding a change in control of an exempt person. The requirement to file change of control information is a requirement articulated in FinCEN's regulations that interpret the BSA, and is not a new requirement.[31] This proposal is made in concert with other proposals in this notice that conform to the GAO Report recommendation that FinCEN remove the regulatory requirement that depository institutions biennially renew Phase II exemptions. Accordingly, FinCEN is proposing that depository institutions only need file a renewal form in the event that there has been a change in control for an exempted Phase II customer during recurring two year reporting periods. FinCEN also solicits comment on whether information about change in control of a Phase II customer should be reported within 30 days of any change in control that the

[26] FinCEN intends to make changes to Form 110 and its instructions as necessary to reflect the changes proposed to 31 CFR 103.22(d) after the proposal is finalized.

[27] *See* 31 CFR 103.22(d)(6)(ii) (Operating rules that illustrate what types of entities normally exercise governmental authority).

[28] *Supra* note 1, at 50.

[29] Even though FinCEN Form 110 would not be required to be filed for these Phase I customers, a depository institution will continue to be required to take such steps to assure itself that the Phase I customer is an exempt person and to document the basis of its conclusions that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status. *See* 31 CFR 103.22(d)(6)(i).

[30] 31 U.S.C. § 5313(5)(A). *See also* 31 CFR § 103.22(d)(4).

[31] U.S.C. 5313(e)(5)(B) (requiring depository institutions to resubmit information on customers pertaining to modifications of those customers). *See also* 31 CFR 103.22(d)(5)(ii).

depository institution knows of, or should know of, based on its records.

I. Current § 103.22(d)(5) Biennial Filing

FinCEN proposes removing paragraph § 103.22(d)(5) to eliminate the requirement that depository institutions biennially file a designation of exempt person for non-listed and payroll customers. The GAO Report recommended removing the regulatory requirement that depository institutions biennially file a designation of exempt person for Phase II customers because it did not appear to provide any additional benefit and because eliminating the requirement might encourage institutions that had not exempted Phase II customers to do so. FinCEN, as part of its efforts to improve the efficiency and effectiveness of the BSA regime, encourages depository institutions to avail themselves of Phase II exemptions, and as a result, is proposing to adopt this recommendation. If the requirement to biennially file a designation for Phase II customers is removed, depository institutions would no longer need to certify that the bank's system of monitoring the transactions in currency of an exempt person for suspicious activity had been applied as necessary in order to continue treating a Phase II customer as exempt. FinCEN notes that this is in no way meant to modify the suspicious activity reporting requirement, but recognizes that removing this requirement may encourage more depository institutions to exempt Phase II eligible customers. Finally, as discussed above, depository institutions must still file change of control information with FinCEN on exempt persons as is required by the BSA implementing regulations.[32]

J. Redesignated § 103.22(d)(5)(i), (iii) and (viii) Operating Rules—Cross References & Stock Exchange Listings

FinCEN proposes to amend redesignated 31 CFR 103.22(d)(5)(i) and (viii) to change cross references in these paragraphs to reflect proposals in this notice that if adopted would result in the paragraphs of section103.22 being re-numbered.

FinCEN also proposes amending redesignated 31 CFR 103.22(d)(5)(iii) by changing a reference to the National Association of Securities Dealers to the NASDAQ, to reflect correctly the name of the entity that contains information on its Web site that is useful to complying with Phase I exemption requirements. FinCEN also proposes making other minor technical edits, like changing ''Edgar'' to ''EDGAR'' and ''Nasdaq'' to ''NASDAQ'', to reflect correctly that those names are acronyms.

K. Redesignated § 103.22(d)(7)(i) and (ii)—Limitation on Liability

FinCEN proposes to amend redesignated 31 CFR 103.22(d)(7)(ii) to change a cross reference in this paragraph to reflect proposals in this notice that if adopted would result in the paragraphs of section 103.22 being re-numbered, and to correspond to changes made in another section of this proposed rule that remove the requirement that depository institutions conduct an annual review of certain exempt customers.

L. Redesignated § 103.22(d)(8)—Obligations To File Suspicious Activity Reports and Maintain a Monitoring System

FinCEN proposes to amend redesignated 31 CFR 103.22(d)(8)(i) and (ii) to correct cross references made in those paragraphs to the suspicious activity reporting rule in 31 CFR Part 103 applicable to banks.

M. Redesignated § 103.22(d)(9)—Revocation

FinCEN proposes to amend redesignated 31 CFR 103.22(d)(9) to require that depository institutions report to FinCEN a decision to no longer treat a previously exempted, and an otherwise eligible customer for exemption, for continued treatment as an exempt person. Currently, it is voluntary for depository institutions to file a revocation of exemption with FinCEN. Notice of revocation would be filed with FinCEN by the close of the 30 calendar day period beginning after the day of the first transaction in currency with that person that has been reported.

FinCEN also proposes to amend redesignated 31 CFR 103.22(d)(9) to change a cross reference in this paragraph to reflect proposals in this notice that if adopted would result in the paragraphs of section 103.22 being re-numbered.

IV. Request for Comment

All comments submitted in response to this notice will become a matter of public record. FinCEN welcomes written comment on all aspects of the proposed rule, and we especially encourage comments on the following issues:

A. Removing the Regulatory Requirement That Depository Institutions File Exemption Forms, and Annually Review the Supporting Information for Banks, Federal, State, and Local Government Agencies, and Entities Exercising Federal, State, or Local Governmental Authority

- Will this proposal encourage depository institutions to avail themselves of Phase I exemptions for customers who are depository institutions, federal, state, and local government agencies, and entities exercising federal, state or local governmental authority, and if not, why?

B. Removing the Regulatory Requirement That Depository Institutions Biennially Renew Phase II Exemptions

- With the removal of the biennial requirement to renew a designation for certain eligible Phase I and Phase II customers, should depository institutions be required to file a revocation of exemption if they choose to no longer exempt an otherwise eligible customer?
- Should depository institutions be required to renew information regarding a change of control of a Phase II exempt customer once every two years, or should the requirement be that modified and updated change of control information must be filed within 30 days of the depository institution becoming aware of the change?
- Will this proposal encourage depository institutions to avail themselves of Phase II exemptions, and if not, why?

C. Permitting Depository Institutions To Exempt Otherwise Eligible Phase II Customers Who Frequently Engage in Large Cash Transactions Within a Period of Time Shorter Than 12 Months

FinCEN has proposed two alternatives to simplify the current requirement that depository institutions have a customer for at least 12 months before that customer becomes eligible for a Phase II exemption.

- Is it preferable to adopt a regulatory requirement that depository institutions only conduct a risk-based analysis of an otherwise eligible Phase II customer with no prescribed amount of time before a depository institution would be permitted to file an initial designation of exemption? Or, is it preferable to adopt a generally recommended minimum amount of time before an initial designation of exemption could be filed?
- If those commenting prefer that FinCEN state a generally recommended

[32] *Id.*

minimum amount of time that should pass before a depository institution exempts a Phase II customer, is two months an appropriate amount of time? Why?

• FinCEN currently defines ''frequently'' as eight or more reportable transactions per annum in guidance that interprets the regulatory requirements for Phase II exemption procedures. Given the proposed changes in this notice, is eight still an appropriate number of reportable transactions to deem a customer eligible for exemption?

• Will this proposal encourage depository institutions to avail themselves of Phase II exemptions, and if not, why?

V. Regulatory Matters

A. Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

B. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance the proposals in the Notice of Proposed Rulemaking provide the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), FinCEN certifies that this proposed regulation would not have a significant economic impact on a substantial number of small entities. The proposals in this notice of proposed rulemaking would reduce the requirements for exempting certain persons from the currency transaction reporting requirements of the BSA and should reduce the obligations associated with complying with those regulatory requirements for financial institutions of all sizes. Accordingly, a regulatory flexibility analysis is not required.

D. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1506–0012. Comments on the collection of information should be sent (preferably by fax (202–395–6974)) to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by e-mail to *Alexander_T._Hunt@omb.eop.gov*), with a copy to FinCEN by mail or by Internet submission at the addresses previously specified. Comments on the collection of information should be received by June 23, 2008. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information as required by 31 CFR 103.22 is presented to assist those persons wishing to comment on the information collection. The collection of information in this proposed rule is in 31 CFR 103.22.

Description of Affected Financial Institutions: Banks as defined in 31 CFR 103.11(c).

Estimated Number of Affected Financial Institutions: 19,000.

Estimated Average Annual Burden Hours per Affected Financial Institution: The estimated average burden associated with the collection of information in this proposed rule is one hour recordkeeping and 30 minutes per response per affected financial institution.

Estimated Total Annual Burden: 97,500 hours.

FinCEN specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, 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 maintain the information.

The information collection in 31 CFR 103.22(d)(5)(i) has previously been reviewed and approved by OMB under control number 1506–0009. Under the Paperwork Reduction Act, 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 OMB control number.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Amendment

For the reasons set forth above in the preamble, 31 CFR part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307.

2. Section 103.22 is amended by

a. Revising paragraph (d)(1);

b. Revising paragraph (d)(2)(iv);

c. Revising the introductory text of paragraph (d)(2)(vi);

d. Revising paragraph (d)(2)(vi)(A);

e. Revising paragraph (d)(2)(vii)(A);

f. Revising paragraph (d)(3);

g. Revising paragraph (d)(4);

h. Removing paragraphs (d)(5) and (d)(11);

i. Redesignating paragraph (d)(6) as (d)(5); (d)(7) as (d)(6); (d)(8) as (d)(7); (d)(9) as (d)(8); and (d)(10) as (d)(9).

j. Revising redesignated paragraph (d)(5)(i);

k. Revising redesignated paragraph (d)(5)(iii);

l. Revising the last sentence of redesignated paragraph (d)(5)(viii);

m. Revising redesignated paragraph (d)(7)(ii);

n. Revising redesignated paragraph (d)(8)(i);

o. Revising the last sentence of redesignated paragraph (d)(8)(ii); and

p. Revising the introductory text of redesignated paragraph (d)(9).

The revisions read as follows:

§ 103.22 Reports of transactions in currency.

* * * * *

(d) * * *

(1) *General.* No bank is required to file a report otherwise required by paragraph (b) of this section with respect to any transaction in currency between an exempt person and such bank, or, to the extent provided in paragraph (d)(5)(vi) of this section, between such exempt person and other banks affiliated with such bank. In addition, a non-bank financial institution is not required to file a report otherwise required by paragraph (b) of this section with respect to a transaction in currency between the institution and a commercial bank. (A limitation on the exemption described in this paragraph (d)(1) is set forth in paragraph (d)(6) of this section.)

* * * * *

(2) * * *

(iv) Any entity, other than a bank, whose common stock or analogous equity interests are listed on the New York Stock Exchange or the American Stock Exchange or whose common stock or analogous equity interests have been designated as a NASDAQ National Market Security listed on the NASDAQ Stock Market (except stock or interests listed under the separate ''NASDAQ Capital Markets Companies'' heading), provided that, for purposes of this paragraph (d)(2)(iv), a person that is a financial institution, other than a bank, is an exempt person only to the extent of its domestic operations;

* * * * *

(vi) To the extent of its domestic operations and only with respect to transactions conducted through its exemptible accounts, any other commercial enterprise (for purposes of this paragraph (d), a ''non-listed business''), other than an enterprise specified in paragraph (d)(5)(viii) of this section, that:

(A) Maintains a transaction account, as defined in paragraph (d)(5)(ix) of this section, at the bank;

* * * * *

(vii) * * *

(A) Maintains a transaction account, as defined in paragraph (d)(5)(ix) of this section, at the bank;

* * * * *

(3) *Designation of certain exempt persons*—(i) *General.* Except as provided in paragraph (d)(3)(ii) of this section, a bank must designate an exempt person by filing a FinCEN Form 110. Such designation must occur by the close of the 30-calendar day period beginning after the day of the first reportable transaction in currency with that person sought to be exempted from reporting under the terms of this paragraph (d). The designation must be made separately by each bank that treats the customer as an exempt person, except as provided in paragraph (d)(5)(vi) of this section.

(ii) *Special rules.* A bank is not required to file a FinCEN Form 110 with respect to the transfer of currency to or from:

(A) Any of the twelve Federal Reserve Banks; or

(B) Any exempt person as described in paragraphs (d)(2)(i) to (iii) of this section.

(iii) *Special procedures.* A bank must base a decision to designate a non-listed business or a payroll customer, as described in paragraphs (d)(2)(vi) and (vii), as an exempt person on its own risk-based assessment of the customer and its pattern of currency transaction activity. The bank must form a reasonable belief that the non-listed business or payroll customer it seeks to designate for exemption has a legitimate business purpose for conducting frequent transactions in currency.

(4) *Annual review.* The information supporting each designation of an exempt person described in paragraphs (d)(2)(iv) to (vii), and the application of the monitoring system required to be maintained by paragraph (d)(8)(ii) of this section to each account of an exempt person described in paragraphs (d)(2)(vi) or (d)(2)(vii) of this section, must be reviewed and verified at least once each year. Information about any change in control of an exempt person as described in paragraphs (d)(2)(vi) or (vii) of this section that the bank knows, or should know on the basis of its records, must be reported on FinCEN Form 110 by March 15 of the second calendar year following the year in which the bank knew or should have known of the change in control.

* * * * *

(5) *Operating rules*—(i) *General rule.* Subject to the specific rules of this paragraph (d), a bank must take such steps to assure itself that a person is an exempt person (within the meaning of the applicable provision of paragraph (d)(2) of this section), to document the basis for its conclusions, and document its compliance, with the terms of this paragraph (d), that a reasonable and prudent bank would take and document to protect itself from loan or other fraud or loss based on misidentification of a person's status, and in the case of the monitoring system requirement set forth in paragraph (d)(8)(ii) of this section, such steps that a reasonable and prudent bank would take and document to identify suspicious transactions as required by paragraph (d)(8)(ii) of this section.

* * * * *

(iii) *Stock exchange listings.* In determining whether a person is described in paragraph (d)(2)(iv) of this section, a bank may rely on any New York, American or NASDAQ Stock Market listing published in a newspaper of general circulation, on any commonly accepted or published stock symbol guide, on any information contained in the Securities and Exchange Commission ''EDGAR'' System, or on any information contained on an Internet site or sites maintained by the New York Stock Exchange, the American Stock Exchange, or the NASDAQ.

* * * * *

(viii) * * * A business that engages in multiple business activities may be treated as a non-listed business so long as no more than 50% of its gross revenues is derived from one or more of the ineligible business activities listed in this paragraph (d)(5)(viii).

* * * * *

(7) * * *

(ii) Subject to the specific terms of this paragraph (d), and absent any specific knowledge of information indicating that a customer no longer meets the requirements of an exempt person, a bank satisfies the requirements of this paragraph (d) to the extent it continues to treat that customer as an exempt person until the date of that customer's next required periodic review, which as required by paragraph (d)(4) of this section for an exempt person described in paragraph (d)(2)(iv) to (vii) of this section, shall occur no less than once each year.

* * * * *

(8) *Obligations to file suspicious activity reports and maintain system for monitoring transactions in currency.* (i) Nothing in this paragraph (d) relieves a bank of the obligation, or reduces in any way such bank's obligation, to file a report required by § 103.18 with respect to any transaction, including any transaction in currency that a bank knows, suspects, or has reason to suspect is a transaction or attempted transaction that is described in § 103.18(a)(2)(i), (ii), or (iii), or relieves a bank or any reporting obligation or recordkeeping obligation imposed by this part (except the obligation to report transactions in currency pursuant to this section to the extent provided in this paragraph (d)). Thus, for example, a sharp increase from one year to the next in the gross total of currency transactions made by an exempt customer, or similarly anomalous

transactions trends or patterns, may trigger the obligation of a bank under § 103.18.

(ii) * * * The statement in the preceding sentence with respect to accounts of non-listed business and payroll customers does not limit the obligation of banks generally to take the steps necessary to satisfy the terms of paragraph (d)(8)(i) of this section and section 103.18 with respect to all exempt persons.

(9) *Revocation.* A depository institution must notify FinCEN of its decision to no longer treat the transactions of an otherwise eligible customer as exempt from the currency transaction reporting requirement by filing FinCEN Form 110 by the close of the 30 calendar day period beginning after the day of the first transaction in currency with that person that has been reported. Without any action on the part of the Treasury Department and subject to the limitation on liability contained in paragraph (d)(7)(ii) of this section:

* * * * *

Dated: April 21, 2008.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E8–8955 Filed 4–23–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0159]

RIN 1625–AA00

Safety Zone: Langley Air Force Base Air Show, Willoughby Point, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the Back River in the vicinity of Hampton, VA in support of the Air Power over Hampton Roads Air show. This action is intended to restrict vessel traffic movement on the Back River to protect mariners from the hazards associated with the air show.

DATES: Comments and related material must reach the Coast Guard on or before May 27, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0159 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 Lieutenant Candice Casavant, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. 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–2008–0159), 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, click on ''Search for Dockets,'' and enter the docket number for this rulemaking (USCG–2008–0159) in the Docket ID box, and click enter. 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 Commander, Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor between 9 a.m. and 3 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 June 20–22, 2008 Langley Air Force Base will sponsor an air show at Langley Air Force Base in the vicinity of Willoughby Point within the area bounded by 37°–05′–35″ N/076°–20′–47″ W, 37°–05′–46″ N/076°–20′–04″ W, 37°–05′–12″ N/076°–19′–59″ W, 37°–05′–12″ N/076°–20′–18″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the air show, access to the area

described above will be temporarily restricted.

Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone on the Back River in the vicinity of Willoughby Point in Hampton, VA within waters bounded by 37°–05′–35″ N/076°–20′–47″ W, 37°–05′–46″ N/076°–20′–04″ W, 37°–05′–12″ N/076°–19′–59″ W, 37°–05′–12″ N/076°–20′–18″ W (NAD 1983). This safety zone will be established in the interest of public safety during the Air Power over Hampton Air show and will be enforced from 3 p.m. to 11:30 p.m. on June 20, 2008, 9 a.m. to 5 p.m. on June 21, 2008 and 9 a.m. to 5 p.m. on June 22, 2008. Access to the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone.

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.

Executive Order 12866

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 regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly; and (iii) the COTP may periodically authorize transiting vessels access through the safety zone.

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 because the zone will only be in place for a limited duration and maritime advisories will be issued allowing the mariners to adjust their plans accordingly. However, this rule may affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in that portion of the Back River from 3 p.m. to 11:30 p.m. on June 20, 2008, 9 a.m. to 5 p.m. on June 21, 2008 and 9 a.m. to 5 p.m. on June 22, 2008.

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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Candice Casavant, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. 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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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. A preliminary ''Environmental Analysis Check List'' supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. 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 165

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

Words of Issuance and Proposed Regulatory Text

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T05–015 to read as follows:

§ 165.T05–015 Safety Zone: Langley Air Force Base Air Show, Willoughby Point, Back River, Hampton, VA.

(a) *Location:* The following area is a safety zone: All waters in the vicinity of Willoughby Point on the Back River within the area bounded by 37°–05′–35″ N./076°–20′–47″ W., 37°–05′–46″ N./076°–20′–04″ W., 37°–05′–12″ N./076°–19′–59″ W., 37°–05′–12″ N./076°–20′–18″ W. (NAD 1983).

(b) *Definition:* Captain of the Port Representative: Means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Hampton Roads, to act on his behalf.

(c) *Regulation:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone Number (757) 668–5555 or (757) 484–8192.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM 13 and 16.

(d) *Effective Period:* This regulation will be in effect from 3 p.m. on June 20, 2008, until 5 p.m. on June 22, 2008.

Dated: April 1, 2008.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E8–8467 Filed 4–23–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–0367; FRL–8552–3]

Approval and Promulgation of Air Quality Implementation Plans; Whitefish PM_{10} Nonattainment Area Control Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Governor of Montana on June 26, 1997, and June 13, 2000. (Portions of the June 26, 1997 submittal were withdrawn by the Governor of Montana on February 8, 1999). These revisions contain an inventory of emissions for Whitefish and establish and require continuation of all control measures adopted and implemented for reductions of particulate aerodynamic diameter less than or equal to 10 micrometers (PM_{10}) in order to attain the PM_{10} National Ambient Air Quality Standards (NAAQS) in Whitefish. Using the PM_{10} clean data areas approach, we are proposing to approve the control measures and the emissions inventory that were submitted as part of the PM_{10} nonattainment area SIP for Whitefish. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must 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.

DATES: Written comments must be received on or before May 27, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–

OAR–2007–0367, by one of the following methods:

• *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *E-mail: dygowski.laurel@epa.gov.*

• *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

• *Mail:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, EPA Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129; (303) 312–6144; *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: March 27, 2008.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E8–8860 Filed 4–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–R09–OW–2007–0248; FRL–8556–9]

Navajo Nation; Underground Injection Control (UIC) Program; Proposed Primacy Approval and Minor Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve an application from the Navajo Nation (''Tribe'') under Section 1425 of the Safe Drinking Water Act (SDWA) for primary enforcement responsibility (or ''primacy'') for the underground injection control (UIC) program for Class II (oil and gas-related) injection wells located: within the exterior boundaries of the formal Navajo Reservation, including the three satellite reservations (Alamo, Canoncito and Ramah), but excluding the former Bennett Freeze Area, the Four Corners Power Plant and the Navajo Generating Station; and on Navajo Nation tribal trust and allotted lands outside the exterior boundaries of the formal Navajo Reservation. (These areas are collectively referred to hereinafter as ''areas covered by the Tribe's Primacy Application.'') EPA would continue to administer its SDWA UIC program for any Class I, III, IV, and V wells on Navajo Indian lands (defined as Indian country in EPA UIC regulations; see definition of ''Indian lands''). EPA is also proposing minor revisions to regulations that are not specific to the Navajo Nation's application. EPA requests public comment on this proposed rule, the Navajo Nation's application, and EPA's supporting documentation, and will consider all comments received within the public comment period before taking final action.

DATES: The public may submit written comments to the EPA through the end of the comment period on May 27, 2008. EPA will schedule a public hearing, unless insufficient interest is expressed during the public comment period. Any such public hearing will be held no earlier than 30 days after EPA provides notice of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OW–2007–0248, by one of the following methods:

• *www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *E-mail: rao.kate@epa.gov*

• *Fax:* 415–947–3549

• *Mail:* Environmental Protection Agency, Ground Water Office (WTR–9), 75 Hawthorne Street, San Francisco, CA 94105–3920

• *Hand Delivery:* Deliver your comments to Kate Rao, Environmental Protection Agency, Ground Water Office (WTR–9), 75 Hawthorne Street, San Francisco, CA 94105–3920, Attention Docket ID No. EPA–R09–OW–2007–0248. Such deliveries are only accepted during the Docket's normal hours of operation: Monday through Friday, between 8:00 am and 4:00 p.m., Pacific time, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R09–OW–2007–0248. 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 the disclosure of which is restricted by statute. Do not submit information through *www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected by statute. 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 or any form of encryption, and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the docket index, some information is not publicly available, e.g., CBI or other information the disclosure of which 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 U.S. Environmental Protection Agency, Ground Water Office (WTR–9), 75 Hawthorne Street, San Francisco, CA 94105–3920. This Docket Facility is open Monday through Friday, between 8:00 am and 4:00 p.m., Pacific time excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Kate Rao, U.S. Environmental Protection Agency, Ground Water Office (WTR–9), 75 Hawthorne Street, San Francisco, CA 94105–3920. Phone number: 415–972–3533. E-mail: *rao.kate@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Category	Examples of potentially regulated entities	North American Industry Classification System
State, Local, and Tribal Governments	State, local, and tribal governments that own and operate Class II injection wells in the areas covered by the Tribe's Primacy Application.	924110
Industry	Private owners and operators of Class II injection wells in the areas covered by the Tribe's Primacy Application.	221310
Municipalities	Municipal owners and operators of Class II injection wells in the areas covered by the Tribe's Primacy Application.	924110

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and provide substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Introduction

The Navajo Nation has applied to the EPA under Section 1425 of the SDWA, 42 U.S.C. Section 300h–4, for primary enforcement responsibility for the SDWA Class II (oil and gas-related) UIC program in the areas covered by the Tribe's Primacy Application. EPA's proposal is based on a careful and extensive legal and technical review of the Tribe's application. As a result of this review, EPA is issuing a proposed determination that the Tribe meets all requirements of Section 1451 of the SDWA, including the requirement that the Tribe demonstrate adequate jurisdictional authority over all Class II injection activities in the areas covered by the Tribe's Primacy Application, including those activities conducted by nonmembers. EPA has also determined that the Tribe's program meets all applicable requirements for approval under SDWA Section 1425, and that the Tribe is capable of administering an effective Class II UIC program in a manner consistent with the terms and purposes of the SDWA and all applicable regulations.

III. Legal Authorities

These regulations are being proposed under authority of Sections 1422, 1425, 1450 and 1451 of the SDWA, 42 U.S.C. 300h–1, 300h–4, 300j–9 and 300j–11.

A. Requirements for State UIC Programs

Section 1421 of the SDWA requires the Administrator of EPA to promulgate minimum requirements for effective State UIC programs to prevent underground injection activities that endanger underground sources of drinking water (USDWs). Sections 1422 and 1425 of the SDWA establish requirements for States seeking EPA approval of State UIC programs.

For States that seek primacy for UIC programs under Section 1422 of the SDWA, EPA has promulgated regulations setting forth the applicable procedures and substantive requirements. These regulations are codified in the Code of Federal Regulations (40 CFR part 145). They include requirements for State permitting programs (by reference to certain provisions of 40 CFR parts 124 and 144), compliance evaluation programs, enforcement authority, and information sharing.

Section 1425 of the SDWA describes alternative requirements for States to obtain primacy for UIC programs that relate solely to Class II wells. Section 1425 allows a State, in lieu of the showing required under SDWA Section 1422(b)(1)(A), to demonstrate that its proposed Class II UIC program meets the minimum requirements of SDWA Sections 1421(b)(1)(A)–(D), and represents an ''effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.'' EPA published interim guidance entitled ''Guidance for State Submissions Under Section 1425 of the Safe Drinking Water Act, Ground Water Program Guidance #19'' (Guidance 19) in the **Federal Register** (46 FR 27333–27339, May 19, 1981) which sets forth the criteria EPA generally considers in evaluating applications under SDWA Section 1425.

B. Tribal UIC Programs—Tribal Eligibility Requirements

Section 1451 of the SDWA and 40 CFR 145.52 authorize the Administrator of EPA to treat an Indian Tribe in the same manner as a State for purposes of delegating primary enforcement responsibility for the UIC program if the Tribe demonstrates that: (1) It is recognized by the Secretary of the Interior; (2) it has a governing body carrying out substantial governmental duties and powers over a defined area; (3) the functions to be exercised by the Tribe are within an area of the tribal

government's jurisdiction; and (4) the Tribe is reasonably expected to be capable, in the EPA Administrator's judgment, of implementing a program consistent with the terms and purposes of the SDWA and applicable regulations.

Tribes may apply for primacy under either or both Sections 1422 and 1425 of the SDWA, and the references in 40 CFR part 145 and the EPA's May 19, 1981 interim guidance to ''State'' programs are also construed to include eligible ''tribal'' programs. (See also 40 CFR Section 145.1(h), which provides that all requirements of parts 124, 144, 145, and 146 that apply to States with UIC primacy also apply to Indian Tribes except where specifically noted.)

IV. The Navajo Nation's Application

A. Background

On October 18, 2001, the Navajo Nation submitted an initial application for primacy for its UIC program for Class II wells. On January 30, 2002, the EPA notified the Navajo Nation that its application required revision, clarification and additional documentation. The Tribe has provided various supplemental application materials to EPA. In February 2004, the Navajo Nation sent EPA a letter clarifying that it was requesting primacy under Section 1425 of the SDWA. The Tribe amended its underground injection control regulations, and, in 2006, submitted the final outstanding components of its primacy application to EPA. Subsequently, in 2007, as an addendum to its primacy application, the Tribe submitted several Navajo Nation Class II UIC permits that it had issued pursuant to its authority under tribal laws and regulations. The materials described above are collectively referred to hereinafter as the Tribe's ''Primacy Application,'' and are described in detail in EPA's Proposed Decision Document for this action.

B. Public Comments Received by the Navajo Nation

Pursuant to 40 CFR Section 145.31, on August 16, 2001, the Navajo Nation published a public notice of its intent to apply for primacy for the UIC program for Class II wells in both the Farmington Daily Times and the Navajo Times and, on September 17, 2001, the Tribe held a public hearing in Shiprock, New Mexico. The Tribe received two requests for copies of its primacy application and received one comment.

The one comment received was from the Arizona Public Service (APS) Company, which stated that the Navajo Nation's assertion of jurisdiction in the primacy application did not contain any exclusion for the Four Corners Power Plant. APS requested that the jurisdictional statement be revised to clarify that the Navajo Nation is not intending to address or resolve in its UIC primacy application the question of whether the Tribe may regulate any aspect of operations at the Four Corners Power Plant. The Navajo Nation agreed with the comment and added the following phrase to the jurisdictional statement: *The Navajo Nation also requests EPA to refrain from making a jurisdictional finding regarding the Four Corners Power Plant and the Navajo Generating Station, since the Navajo Nation and the owners and operators of the power plants are in the middle of negotiations to address jurisdictional issues regarding the plants.* EPA believes that this revision to the jurisdictional statement fully addresses the comment received. Because the Tribe has requested that EPA exclude these two facilities from its determination at this time, EPA is not proposing to make a jurisdictional finding with respect to these two facilities at this time, and EPA will continue to administer the Class II UIC program for these two facilities as it does for other areas for which it retains primacy for the Class II program.

Additionally in July 2006, the Navajo Nation ran a public notice in the Farmington Daily Times and on the Navajo/English radio station announcing its proposed revisions to the Navajo Nation Class II UIC Regulations. No comments were received.

V. EPA's Proposed Action

A. Overview of EPA's Proposed Action

EPA is proposing to approve the Navajo Nation's application for primacy for the SDWA Class II UIC program in the areas covered by the Tribe's Primacy Application. If EPA approves the Navajo Nation's application, the Navajo Nation would assume primary enforcement authority for regulating all Class II injection activities in the areas covered by the Tribe's Primacy Application. Indian Tribes are precluded under Federal Indian law, however, from pursuing criminal enforcement as follows: (1) Against non-Indians; and (2) against Indians where the potential fine required is greater than $5,000 or where the penalty would require imprisonment for more than one year (in accordance with 25 U.S.C. Section 1302). For this reason, EPA has entered into a Criminal Enforcement Memorandum of Agreement with the Tribe (signed by EPA on October 30, 2006) whereby the Tribe will notify EPA of potential criminal violations of its SDWA Class II UIC program. See 40 CFR 145.13(e).

EPA has prepared a Proposed Decision Document in support of its action. This document is part of the public record and is now available for public review and comment. The Proposed Decision Document includes findings that the Navajo Nation meets all eligibility requirements of Section 1451 of the SDWA and its implementing regulations at 40 CFR part 145, Subpart E. The Proposed Decision Document also finds that the Navajo Nation's Class II UIC program meets all applicable requirements for approval under Section 1425 of the SDWA.

If approved as proposed, the Navajo Nation would administer and enforce its Class II UIC program with respect to all Class II injection wells in the areas covered by the Tribe's Primacy Application. Upon approving the Navajo Nation's Class II program, EPA would amend 40 CFR part 147 as proposed in this notice to revise the references to the EPA-administered program for Class II injection wells in the areas covered by the Tribe's Primacy Application to refer to the Navajo Nation's Class II UIC program. EPA would continue to administer its SDWA UIC program for any Class I, III, IV, and V wells on Navajo Indian lands (defined as Indian country in EPA UIC regulations; see definition of ''Indian lands'' at 40 CFR 144.3). (Although the Navajo Nation UIC Regulations prohibit injection in Class I and IV wells, these prohibitions are separate from, and not within the scope of, the Class II UIC program for which EPA today proposes to approve the Tribe's application for primacy.) As noted above, EPA also maintains criminal enforcement authority for violations of Class II UIC requirements, including violations by non-Indians on Navajo Indian lands, and by Indians on Navajo Indian lands where the potential fine required is greater than $5,000 or where the penalty would require imprisonment for more than one year.

EPA would oversee the Navajo Nation's administration of the SDWA Class II UIC program in the areas covered by the Tribe's Primacy Application. Part of EPA's oversight responsibility would include requiring quarterly reports of non-compliance and annual UIC program performance reports pursuant to 40 CFR 144.8. The Memorandum of Agreement between EPA and the Navajo Nation (signed by EPA on August 21, 2001) provides EPA with the opportunity to review and

comment on all permits and, where applicable, object.

B. Permit Transfer

As part of this proposed program approval, EPA evaluated the existing Federal and Tribal UIC Class II permitting matrix in the areas covered by the Tribe's Primacy Application, which can be summarized into four categories: (1) Wells with both Navajo Nation- and EPA-issued permits; (2) wells with EPA-issued permits only; (3) wells with Navajo Nation-issued permits only (Federally authorized by rule); and (4) wells without permits (authorized by rule). Below is a discussion on how each category of wells would be affected if EPA were to grant primacy to the Navajo Nation for its SDWA Class II UIC program.

Wells with both Navajo Nation- and EPA-issued permits: The Navajo Nation UIC Program has issued 18 Navajo Nation UIC permits to date for Class II UIC wells pursuant to its authority under Tribal laws and regulations. A number of these facilities are also subject to EPA-issued Class II UIC permits. EPA conducted a thorough review of each of the existing Navajo Nation-issued UIC permits and verified that each meets the substantive permitting requirements of the Navajo Nation's proposed program and that those requirements are at least as stringent as Federal permitting requirements. EPA also confirmed that each of the Navajo Nation's permits was issued pursuant to the Tribe's procedural regulations for permit issuance and that those procedural regulations are at least as stringent as the provisions of 40 CFR part 124. EPA considers these Navajo Nation-issued permits to be part of the existing Navajo Nation UIC program for which the Navajo Nation is seeking primacy. EPA is proposing that, after authorization of primacy, the pre-existing Navajo Nation-issued UIC permits would remain in effect as the federally-enforceable UIC permits under the SDWA. Descriptions of the 18 permits are available for review and comment in the Decision Document, Appendix B, which can be accessed in EPA's Docket No. EPA–R09–OW–2007–0248.

In contrast, the EPA-issued permits include provisions stating that the permits ''will expire upon authorization of primary enforcement responsibility'' to the Navajo Nation, unless the Navajo Nation ''has the appropriate authority and chooses to adopt and enforce this permit as a Tribal permit.'' Although the Navajo Nation has this authority, it has not chosen to adopt and enforce EPA-issued permits for wells which the Navajo Nation has also permitted. Thus, the EPA-issued permits for wells in this category would expire upon authorization of primacy.

EPA-issued permits only: Pursuant to its authority, the Navajo Nation chose to adopt and enforce these EPA-issued permits as Tribal permits. The Navajo Nation would administer EPA's permits for wells in this category until Navajo Nation UIC permits are issued.

Navajo Nation-issued permits only: As with the wells with both Navajo Nation- and EPA-issued permits, these pre-existing Tribal UIC permits would remain in effect as the Federally-enforceable UIC permits under the SDWA.

Wells not currently permitted by EPA or the Tribe: These wells are currently authorized to operate by rule. The Navajo Nation, in its UIC Regulations, has adopted by reference the Federal authorization by rule regulations that will apply until the Tribe issues UIC permits for these wells. After the authorization of primacy to the Navajo Nation, these wells would continue to operate by rule authorization. A more in-depth discussion of the proposed permit transfer process is contained in the Proposed Decision Document available in the EPA docket.

C. EPA's Proposed Findings Regarding Tribal Eligibility

Under Section 1451 of SDWA and 40 CFR part 145, Subpart E, EPA is authorized to treat Indian Tribes similarly to States and may approve a Tribe's application for primary enforcement authority for the UIC Program. EPA's proposed decision to approve the Navajo Nation's application for primacy for the Class II UIC program incorporates findings that the Tribe meets all the requirements of Section 1451 of the SDWA, including the proposed finding that the Tribe has demonstrated adequate jurisdictional authority over all Class II injection activities in the areas covered by the Tribe's Primacy Application. EPA's Proposed Decision Document describes in detail EPA's analysis supporting its findings and decision.

D. EPA's Determination Regarding SDWA Section 1425 and Guidance 19

As described above, the Navajo Nation has requested primacy for the Class II UIC program authorized under Section 1425 of the SDWA, which allows States and eligible Tribes, in lieu of the showing required under SDWA Section 1422(b)(1)(A), to demonstrate that their Class II UIC programs meet the requirements of SDWA Sections 1421(b)(1)(A)–(D), and represent an ''effective program [including adequate recordkeeping and reporting] to prevent underground injection which endangers drinking water sources.'' EPA has evaluated the Tribe's SDWA Section 1425 primacy application pursuant to the criteria in Guidance 19 (see discussion of Guidance 19 in Section III.A).

As explained in detail in EPA's Proposed Decision Document, EPA has determined that the Navajo Nation's SDWA Class II UIC program meets the requirements of SDWA Section 1425 and represents an effective program to prevent underground injection which endangers drinking water sources. The Tribe's program is ''effective'' as that term is discussed in Guidance 19, and has many of the same (or somewhat more stringent) components as the Federal UIC regulations at 40 CFR parts 124, 144, 145, 146 and 147. In addition, Navajo Nation UIC program personnel currently issue UIC permits which are reviewed by EPA staff, support EPA annual reporting, participate in enforcement actions, and conduct various inspections for verification of compliance with UIC requirements. In sum, EPA believes that the Navajo Nation's Primacy Application and the Tribe's current administration of the Navajo Nation Class II UIC program demonstrates that the Tribe has the legal authority, as well as the technical and administrative capacity, to administer an effective UIC Program that prevents underground injection from endangering drinking water sources, consistent with the requirements of SDWA Section 1425.

VI. Generalized Findings

As described earlier, EPA's proposed decision to approve the Navajo Nation to implement a Class II UIC program includes findings that the Tribe meets all requirements of Section 1451 of the SDWA, including that the Tribe has demonstrated adequate jurisdictional authority over all Class II injection activities in the areas covered by the Tribe's Primacy Application, including those conducted by nonmembers. With regard to authority over nonmember activities on nonmember-owned fee lands, EPA is proposing to find that the Tribe has demonstrated such authority under the test established by the United States Supreme Court in *Montana* v. *United States*, 450 U.S. 544 (1981) (*Montana* test). Under the *Montana* test, the Supreme Court held that absent a Federal grant of authority, Tribes generally lack inherent jurisdiction over the activities of nonmembers on nonmember-owned fee lands. However, the Court also found that Indian Tribes

retain inherent sovereign power to exercise civil jurisdiction over nonmember activities on nonmember-owned fee lands within the reservation where: (1) Nonmembers enter into ''consensual relationships with the Tribe or its members, through commercial dealing, contracts, leases, or other arrangements'' or (2) ''* * * [nonmember] conduct threatens or has some direct effect on the political integrity, the economic security or the health or welfare of the Tribe.'' *Id.* at 565–66. In analyzing Tribal assertions of inherent authority over nonmember activities on Indian reservations, the Supreme Court has reiterated that the *Montana* test remains the relevant standard. See, e.g., *Strate* v. *A–1 Contractors*, 520 U.S. 438, 445 (1997) (describing *Montana* as ''the pathmarking case concerning Tribal civil authority over nonmembers''); *Nevada* v. *Hicks*, 533 U.S. 353, 358 (2001) (''Indian Tribes'' regulatory authority over nonmembers is governed by the principles set forth in [*Montana*]'').

As part of the public record available for review and comment in EPA's Docket, EPA's Proposed Decision Document, and Appendix A thereto, sets forth the Agency's specific factual findings relating to the Tribe's demonstration of inherent authority over the UIC Class II activities of nonmembers under the *Montana* test and, in particular, the potential for direct effects of nonmember UIC activities on the Tribe's health, welfare, political integrity, and economic security. In addition, EPA is proposing the general findings set forth below regarding the effects of underground injection activities. These general findings provide a foundation for EPA's analysis of the Tribe's assertion of authority under the *Montana* test and, in effect, supplement the Agency's factual findings specific to the Tribe and to the areas covered by the Tribe's Primacy Application.

A. General Finding on Political, Economic and Human Health and Welfare Impacts

In enacting part C of the SDWA, Congress generally recognized that if left unregulated or improperly managed, underground injection wells have the potential to cause serious and substantial, harmful impacts on political and economic interests and human health and welfare. Specifically, as stated in legislative history of the SDWA:

> [U]nderground injection of contaminants is clearly an increasing problem. Municipalities are increasingly engaging in underground injection of sewage, sludge, and other wastes. Industries are injecting chemicals, byproducts, and wastes. Energy production companies are using injection techniques to increase production and to dispose of unwanted brines brought to the surface during production. Even government agencies, including the military, are getting rid of difficult to manage waste problems by underground disposal methods. Part C is intended to deal with all of the foregoing situations insofar as they may endanger underground sources of drinking water (USDWs).[1]

In response to the problem of the substantial risks inherent in underground injection activities, Congress enacted Section 1421 of the SDWA ''to assure that drinking water sources, actual and potential, are not rendered unfit for such use by underground injection of contaminants.'' [2]

In enacting part C of the SDWA, Congress more specifically found that mismanaged underground injection activities could have serious and substantial, harmful impacts on the public's economic and political interests, as well as its health and welfare. For example, Congress found that:

> Federal air and water pollution control legislation have increased the pressure to dispose of waste materials on or below land, frequently in ways, such as subsurface injection, which endanger drinking water quality. Moreover, the national economy may be expected to be harmed by unhealthy drinking water and the illnesses which may result therefrom.[3]

Congress specifically noted several economic and political consequences that can result from the degradation of good quality drinking water supplies, including: (1) Inhibition of interstate tourism and travel; (2) loss of economic productivity because of absence from employment due to illness; (3) limited ability of a town or region to attract workers; and (4) impaired economic growth of a town or region, and, ultimately, the nation.[4]

As the Agency charged by Congress with implementing part C of the SDWA and assuring implementation of effective UIC programs throughout the United States, EPA agrees with these Congressional findings. EPA finds that underground injection activities, if not effectively regulated, can have serious and substantial, harmful impacts on human health, welfare, economic, and political interests. In making this finding, EPA recognizes that: (1) The underground injection activities, currently regulated as five distinct classes of injection wells as defined in the UIC regulations, typically emplace a variety of potentially harmful organic and inorganic contaminants (e.g., brines and hazardous wastes) into the ground; (2) these injected contaminants have the potential to enter USDWs through a variety of migratory pathways if injection wells are not properly managed; and (3) once present in USDWs, these injected contaminants can have harmful impacts on human health and welfare, and political and economic interests, that are both serious and substantial.

In 1980, EPA issued a document entitled, ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' which provides the rationale for the Agency in proposing specific regulatory controls for a variety of underground injection activities. These controls, or technical requirements (e.g., testing to ensure the mechanical integrity of an injection well), were promulgated to prevent release of pollutants through the six primary ''pathways of contamination,'' or well-established and recognized ''ways in which fluids can escape the well or injection horizon and enter USDWs.'' [5] EPA has found that USDW contamination from one or more of these pathways can occur from underground injection activity of all classes (I—V) of injection wells.

The six pathways are:

1. Migration of fluids through a leak in the casing of an injection well and directly into a USDW;
2. Vertical migration of fluids through improperly abandoned and improperly completed wells in the vicinity of injection well operations;
3. Direct injection of fluids into or above a USDW;
4. Upward migration of fluids through the annulus, which is the space located between the injection well's casing and the well bore. This can occur if there is sufficient injection pressure to push such fluid into an overlying USDW;
5. Migration of fluids from an injection zone through the confining strata over or underlying a USDW. This can occur if there is sufficient injection pressure to push fluid through a stratum, which is either fractured or permeable, and into the adjacent USDW; and

[1] *See* H.R. Report No. 93–1185, 93rd Congress, 2nd Session (1974), *reprinted in* ''A Legislative History of the Safe Drinking Water Act,'' February, 1982, by the Government Printing Office, Serial No. 97–9, page 561.

[2] *Id.*, page 560.

[3] *Id.*, page 540.

[4] *Id.*, page 540.

[5] ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' EPA, (May, 1980) page 7.

6. Lateral migration of fluids from within an injection zone into a portion of that stratum considered to be a USDW. In this scenario, there may be no impermeable layer or other barrier to prevent migration of such fluids.[6]

Moreover, consistent with EPA's findings, the U.S. Department of the Interior has recognized the ability of injection wells to contaminate surface waters that are hydrogeologically connected to contaminated ground water.[7] Such contamination of surface waters could further cause negative impacts on human health and welfare, and economic and political interests.

In sum, EPA finds that, given the common presence of contaminants in injected fluids, serious and substantial contamination of ground water and surface water resources can result from improperly regulated underground injection activities. Moreover, such contamination has the potential to cause correspondingly serious and substantial harm to human health and welfare, and political and economic interests. EPA also has determined that Congress reached a similar finding when it enacted part C of the SDWA, directing EPA to establish minimum requirements for effective UIC programs to mitigate and prevent such harm through the proper regulation of underground injection activities.

B. General Finding on the Necessity of Protecting Safe Drinking Water Supplies as a Necessary Incident of Self-Government

Consistent with the finding that improperly managed underground injection activities can have direct harmful effects on human health and welfare, and economic and political interests, EPA has determined that proper management of such activities serves the purpose of protecting these public health and welfare, and political and economic interests, which is a core governmental function whose exercise is integral to, and a necessary aspect of, self-government. See 56 FR 64876, 64879 (December 12, 1991); *Montana* v. *EPA,* 137 F.3d 1135, 1140–41 (9th Cir. 1998). EPA has determined that Congress reached this conclusion in enacting the SDWA and that Congress considered the water quality protection functions authorized by SDWA to be important governmental functions serving to protect essential and vital public interests by ensuring that the public's essential drinking water supplies are safe from contamination, including contamination caused by underground injection activities.

The above findings regarding the effects on public health and welfare, and economic and political interests are generally true for human beings and their communities, wherever they may be located. EPA has determined that the above findings that underground injection regulation is an integral and necessary incident of self-government is generally true for any Federal, State and/or Tribal government having responsibility for protecting public health and welfare. With specific relevance to Tribes, EPA has long noted the relationship between proper environmental management within Indian country and Tribal self-government and self-sufficiency. Moreover, in the 1984 *EPA Policy for the Administration of Environmental Programs on Indian Reservations,* EPA determined that as part of the ''principle of Indian self-government,'' Tribal governments are the ''appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace,'' consistent with Agency standards and regulations. (*EPA Policy for the Administration of Environmental Programs on Indian Reservations,* Paragraph 2, November 8, 1984).

EPA interprets Section 1451 of the SDWA, in providing for the approval of Tribal programs under the Act, as authorizing eligible Tribes to assume a primary role in protecting drinking water sources. These general findings provide a backdrop for EPA's legal analysis of the Navajo Tribe's Application and, in effect, supplement EPA's factual findings specific to the Navajo Tribe and the areas covered by the Tribe's Application contained in the Proposed Decision Document and Appendix A thereto, and the Tribe's similar conclusions, contained in its Application, pertaining specifically to the Navajo Tribe and areas covered by its Primacy Application.

VII. 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 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA has determined that there is no need for an Information Collection Request under the Paperwork Reduction Act for this action because this proposed rule would not impose any new Federal reporting or record-keeping requirements. Reporting or record-keeping requirements would be based on the Navajo Nation UIC Regulations, and the Navajo Nation is not subject to the Paperwork Reduction Act.

However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR § 144–148) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2040–0042. 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 Procedure Act or any other statute unless the agency certifies that 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 proposed rule on small entities, a ''small entity'' is defined as: (1) A small business that is defined in the Small Business Administration's regulations at 13 CFR 121.201; (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.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Under this proposed rule, entities operating existing Class II wells would be subject to requirements substantially similar to the existing requirements of the EPA's program under 40 CFR 147.3000, and will not

[6] *Id.,* pp. 7–17.

[7] *See* Federal Water Quality Administration's Order COM 5040.10 (1970), *as referred to in* H.R. Report No. 93–1185, 561.

incur significant new costs as a result of this proposed rule.

Nonetheless, EPA continues to be interested in any potential impacts of the proposed rule on small entities and welcomes comments on issues related to any such impacts.

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 to 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 as 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 proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because the rule imposes no enforceable duty on any State, local, or tribal governments or the private sector. EPA's proposed approval of the Navajo Nation's Class II UIC program would not constitute a ''Federal mandate'' because there is no requirement that Tribes establish UIC regulatory programs, and because the program, if finally approved, would be a tribal, rather than a Federal program. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

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 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.''

EPA has determined that this proposed 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. If finalized, the proposed rule would simply provide that the Tribe has primary enforcement responsibility under the SDWA for the Class II UIC program, pursuant to which the Tribe would be implementing and enforcing a tribal regulatory program that is generally equivalent to the existing Federal program, as explained in more detail in Section V and in the Proposed Decision Document. The EPA will continue to administer the Federal Class I, III, IV, and V UIC programs on Navajo Indian lands. Authorizing the Navajo Nation as the primacy agency for the Class II UIC program in the areas covered by the Tribe's Primacy Application will not substantially alter the distribution of power and responsibilities among levels of government or significantly change EPA's relationship with the relevant States. The substitution of a Navajo Nation Class II program for an EPA-administered Class II program in the areas covered by the Tribe's Primacy Application will impose no additional costs on the States of Arizona, Utah or New Mexico. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA's policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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.''

EPA has concluded that this proposed rule will have tribal implications. However, it will neither impose substantial direct compliance costs on the tribal government, nor preempt tribal law. The Navajo Nation has voluntarily requested authorization for primary enforcement responsibility for the Class II UIC program and has voluntarily assumed the Tribal share of the costs for doing so. Additionally, EPA is proposing to approve the Navajo Nation's application for Class II UIC primacy and thus replace the existing Federal Class II UIC program in the areas covered by the Tribe's Primacy Application with a Tribal program administered pursuant to the laws of the Navajo Nation. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this proposed rule.

Consistent with EPA policy, EPA nonetheless consulted with Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Since awarding the first developmental grant to the Navajo Nation in fiscal year 1995 for developing capacity to assume the Class II UIC program, EPA has consulted and worked closely with the Tribe in the administration of these funds and in the development of the Tribe's regulatory program.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks & 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 a 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 proposed rule is not subject to the Executive Order because it is not economically ''significant'' as defined in the Executive Order 12866. If finalized, the proposed rule would simply provide that the Tribe has primary enforcement responsibility under the SDWA for the Class II UIC program, pursuant to which the Tribe would be implementing and enforcing a tribal regulatory program that is generally equivalent to the existing Federal program, as explained in more detail in the Proposed Decision Document. Therefore, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate risk to children.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. Section 272 note), directs EPA to use voluntary consensus standards 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 voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering 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 (EO) 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 proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it provides the same level of environmental protection as is currently provided by EPA and therefore will not have any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. If finalized, the proposed rule would simply provide that the Tribe has primary enforcement responsibility under the SDWA for the Class II UIC program, pursuant to which the Tribe would be implementing and enforcing a tribal regulatory program that is generally equivalent to the existing Federal program, as explained in more detail in the Proposed Decision Document.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: April 16, 2008.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

1. The authority citation for part 147 is revised to read as follows:

Authority: 42 U.S.C. 300h et seq.; and 42 U.S.C. 6901 et seq.

2. Part 147 heading is revised as set forth above.

Subpart A—[Amended]

3. Section 147.1 is revised to read as follows:

§ 147.1 Purpose and scope.

(a) This part sets forth the applicable Underground Injection Control (UIC) programs for each of the States, territories, and possessions identified pursuant to the Safe Drinking Water Act (SDWA) as needing a UIC program, including any Indian country geographically located within those States, territories, and possessions.

(b) The applicable UIC programs set forth in this part may be State-administered programs approved by EPA, Tribally-administered programs approved by EPA, or Federally-administered programs promulgated by EPA. In some cases, the applicable UIC program for a particular area may consist of a State-administered or Tribally-administered program applicable to some classes of wells and a Federally-administered program applicable to other classes of wells. Approval of a State or Tribal program is based upon a determination by the Administrator that the program meets the requirements of section 1422 or section 1425 of the SDWA, any other applicable provisions of this subpart, and the applicable provisions of 40 CFR parts 124, 144, 145 and 146. A Federally-administered program is promulgated in those instances where the State or Tribe has not submitted any program for approval or where the submitted program does not meet the minimum Federal statutory and regulatory requirements.

(c) In the case of each State or Tribal program approved by EPA pursuant to section 1422 of the SDWA, the relevant subpart describes the major elements of that program, including the relevant State or Tribal statutes and regulations, the Statement(s) of Legal Authority, the Memorandum of Agreement, and the Program Description. State or Tribal statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators have been incorporated by reference pursuant to regulations of the Office of the Federal Register. Material

incorporated by reference is available for inspection in the appropriate EPA Regional office, in EPA Headquarters, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/Federal_register/code_of_Federal_regulations/ibr_locations.html.* Other State or Tribal statutes and regulations containing standards and procedures that constitute elements of a State or Tribal program but do not apply directly to owners or operators have been listed but have not been incorporated by reference.

(d) In the case of any program promulgated under section 1422 for a State or Tribe that is to be administered by EPA, the relevant State or Tribal subpart makes applicable the provisions of 40 CFR parts 124, 144, 146, and 148, and any other additional requirements pertinent to the specific State or Tribal program.

(e) Regulatory provisions incorporated by reference (in the case of approved State or Tribal programs) or promulgated by EPA (in the case of EPA-administered programs), and all permit conditions or permit denials issued pursuant to such regulations, are enforceable by the Administrator pursuant to section 1423 of the SDWA.

Subpart D—[Amended]

4. Section 147.151 is amended by revising the first two sentences of paragraph (a) and the last sentence of paragraph (b) to read as follows:

§ 147.151 EPA-administered program.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is administered by EPA. The UIC program for Navajo Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program, consists of the requirements contained in subpart HHH of this part. * * *

(b) * * * The effective date for the UIC program on the lands of the Navajo, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

Subpart GG—[Amended]

5. Section 147.1603 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 147.1603 EPA-administered program—Indian Lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Mexico, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is administered by EPA. * * *

(b) *Effective date.* The effective date for the UIC program on Indian lands in New Mexico, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

Subpart TT—[Amended]

6. Section 147.2253 is amended by revising the first two sentences of paragraph (a) and paragraph (b) to read as follows:

§ 147.2253 EPA-administered program.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Utah, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is administered by EPA. The program for wells on Navajo Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program, and for Ute Mountain Ute consists of the requirements set forth at subpart HHH of this part. * * *

(b) *Effective date.* The effective date for this program for all other Indian lands in Utah, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

Subpart HHH—[Amended]

7. Section 147.3000 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 147.3000 EPA-administered program.

(a) *Contents.* The UIC program for Navajo Indian lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), the Ute Mountain Ute (Class II wells only on Ute Mountain Ute lands in Colorado and all wells on Ute Mountain Ute lands in Utah and New Mexico), and all wells on other Indian lands in New Mexico is administered by EPA. * * *

(b) *Effective date.* The effective date for the UIC program on these lands, except for Class II wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in § 147.3400), is November 25, 1988.

8. Subpart KKK is added and reserved to read as follows:

Subpart KKK—[Reserved]

9. Subpart LLL is added to read as follows:

Subpart LLL—Navajo Indian Lands

§ 147.3400 Navajo Indian Lands—Class II wells.

The UIC program for Class II injection wells located: Within the exterior boundaries of the formal Navajo Reservation, including the three satellite reservations (Alamo, Canoncito and Ramah), but excluding the former Bennett Freeze Area, the Four Corners Power Plant and the Navajo Generating Station; on Navajo Nation tribal trust and allotted lands outside those exterior boundaries (collectively referred to as ''Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program''), is the program administered by the Navajo Nation approved by EPA pursuant to Section 1425 of the SDWA. Notice of this approval was published in the **Federal Register** on [insert date of publication of final rule]; the effective date of this program is [insert date 30 days after publication of final rule]. This program consists of the following elements as submitted to EPA in the Navajo Nation's program application:

(a) *Incorporation by Reference.* The requirements set forth in the Navajo Nation's statutes, regulations, and resolutions cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for Class II injection wells on Navajo Indian lands for which EPA has granted the Navajo Nation primacy for the SDWA Class II UIC program (as defined in this section). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained or inspected at the Navajo Nation Environmental Protection Agency Office UIC Office, Old NAPA Auto Parts Building (Tribal Bldg. #S009–080), Highway 64, Shiprock, New Mexico, 87420, at the

Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3920, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 200, Washington, DC.

(1) Navajo Nation Safe Drinking Water Act, Navajo Nation Code § 2501 et seq., Title 22, Chapter 11, Subchapter 15, Subchapters 1, 2, 5, 7, 8 (August 9, 2001):

(2) Navajo Nation Underground Injection Control Regulations promulgated September 12, 2006, Parts 1 through 3:

(3) Permit and Monitoring Fee Schedule, adopted June 28, 2001:

(4) Uniform Regulations for Permit Review, Administrative Enforcement: Orders, Hearings, and Rulemakings under Navajo Nation Environmental Acts, adopted September 5, 2001, Subparts 1 through 3.

(b) *Memorandum of Agreement (MOA).* The MOA between EPA Region 9 and the Navajo Nation, signed by the EPA Regional Administrator on August 21, 2001. The Criminal Enforcement MOA between EPA Region 9 and the Navajo Nation, signed by EPA on October 30, 2006.

(c) *Statement of Legal Authority.* (1) ''Statement of the Attorney General of the Navajo Nation Pursuant to 40 CFR § 145.24'', August 27, 2001.

(2) ''Statement of the Attorney General of the Navajo Nation Regarding the Regulatory Authority and Jurisdiction of the Navajo Nation with Respect To Its Underground Injection Control Program'', July 3, 2002.

(3) ''Supplemental Statement of the Navajo Nation Attorney General Regarding the Regulatory Authority and Jurisdiction of the Navajo Nation to Operate an Underground Injection Control Program under the Safe Drinking Water Act'', October 11, 2006.

(d) *Program Description.* The Program Description submitted as part of the Navajo Nation's application, and any other materials submitted as part of this application or as a supplement thereto.

[FR Doc. E8–8961 Filed 4–23–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 301

[Docket Number: 080324461–8462–01]

RIN 0660-AA17

The Household Eligibility and Application Process of the Coupon Program for Individuals Residing in Nursing Homes and Households that Utilize Post Office Boxes; Waiver

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: In this document, the National Telecommunications and Information Administration (NTIA) proposes certain changes affecting section 301.3 of its Digital-To-Analog Converter Box Coupon Program rules set forth at 47 CFR 301.3. Specifically, NTIA proposes to waive the ''eligible household'' and application requirements in section 301.3(a), and section 301.3(e), for individuals residing in nursing homes or other senior care facilities, subject to the alternative application requirements specified herein. NTIA also proposes to amend section 301.3(a)(2) to permit an otherwise eligible household that utilizes a post office box for mail receipt to apply for and receive coupons subject to providing satisfactory proof of physical residence.

DATES: Comments must be submitted by 5 p.m. EST, no later than June 9, 2008.

ADDRESSES: Comments via mail should be submitted to: Milton Brown, Office of the Chief Counsel, National Telecommunications and Information Administration, 1401 Constitution Avenue, Room 4713, Washington, DC 20230. Comments may also be sent by facsimile to (202) 501–8013. Electronic comments may be submitted to coupon@ntia.doc.gov or to Regulations.gov at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Milton Brown at (202) 482–1816.

SUPPLEMENTARY INFORMATION: The Digital Television Transition and Public Safety Act of 2005 (the Act), among other things, authorized NTIA to create a Digital-to-Analog Converter Box Coupon Program (Coupon Program) to assist consumers who wish to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service after the February 17, 2009, deadline for full power stations to convert to digital-only transmissions.[1] Specifically, Section 3005 of the Act directed NTIA to implement and administer a program through which eligible U.S. households may obtain via the United States Postal Service a maximum of two coupons of $40 each to be applied towards the purchase of Coupon-Eligible Converter Boxes (CECB). To implement the Coupon Program, NTIA issued regulations on March 15, 2007.[2]

Since NTIA began accepting applications for coupons on January 1, 2008, the Program has received a number of applications submitted by, or on behalf of, individuals residing in nursing homes and from applicants who utilize a post office box for mail receipt. Because these applicants do not meet the current eligibility criteria under the Coupon Program regulations, these applications have been denied.

I. Nursing Home Residents

NTIA recognizes that our Nation's seniors, including those residing in nursing homes and other senior care facilities, constitute a vulnerable community that may rely on free, over-the-air television to a greater degree than other members of the public.[3] For this reason, seniors may have a greater need for converter boxes to continue receiving broadcast programming over the air using analog-only television sets. To date, NTIA has implemented the Coupon Program in a manner that strives to assure that no Americans lose television service as a result of the digital transition, and NTIA is committed to ensuring that the Program also addresses the particular needs of this vulnerable segment of the population as well. The eligibility requirements of the program, however, do not permit seniors living in nursing homes to avail themselves of the Coupon Program.

To permit seniors residing in nursing homes to participate in the program, NTIA proposes to waive the current household eligibility and application process set forth at 47 CFR 301.3 and to permit these individuals to apply for and receive one coupon under certain

[1] Title III of Pub. L. No. 109–171, 120 Stat. 4, 21 (2006).

[2] *See* 47 CFR Part 301.

[3] *See* Testimony of John M.R. Kneuer, Assistant Secretary for Communications and Information, Before the Committee on Commerce, Science and Transportation, United States Senate (Oct. 17, 2007) (recognizing seniors as a targeted group that depends on over-the-air television to a greater extent than the general population), *available at http://www.ntia.doc.gov/ntiahome/congress/2007/Kneuer__SenateCommerce__101707.htm.*

circumstances. However, NTIA must be assured that coupons are distributed to verifiable residents of these facilities and that the Coupon Program is administered effectively within the existing resources Congress has made available and in a manner that minimizes waste, fraud and abuse. NTIA requests comments on its proposal to waive its eligibility requirements for nursing home residents.

The addition of nursing home residents to the program presents particular administrative challenges. NTIA is concerned about whether information is readily available that would allow the agency to confirm that the individual making the coupon request (or on whose behalf the request is made) actually resides in a nursing home. NTIA seeks comments on ways to address these and other administrative challenges.

In addition, information the agency has gathered from organizations representing both residents and operators of senior care facilities indicates that the majority of residents of such facilities face cognitive, mobility, and economic barriers to requesting and using coupons. Many nursing home residents would therefore likely require the assistance of another person to order a coupon, purchase the box for them using the coupon, and install the converter box. NTIA seeks comment on how best to address the role of such assistive personnel in our waiver process while still protecting against the potential increased risk of waste, fraud, or abuse.

A. Identification of Nursing Homes or Other Senior Care Facilities

In order to plan and administer the Coupon Program effectively and efficiently, NTIA must be able to determine how many additional coupon requests will be added by operation of the proposed waiver. Moreover, NTIA must be able to ensure to the extent possible that such requests are being made by or on behalf of, and coupons are being issued to, legitimately qualified individuals who need converter boxes. NTIA recognizes that the terms ''nursing home'' and ''senior care facility'' are somewhat generic. There are many facilities that care for elderly residents that may be considered nursing homes in the general sense. These include assisted living facilities, continuing care retirement communities, and convalescent rest homes. For these reasons, NTIA believes it is necessary to define in some way the scope of facilities whose residents will qualify for the waiver (Eligible Nursing Home). NTIA seeks comments on how it should define eligible nursing homes for the purpose of the proposed waiver.

There are databases available to assist NTIA in identifying Eligible Nursing Homes. For example, the U.S. Department of Health and Human Services (HHS) Center for Medicare and Medicaid Services (CMS) determines a nursing facility's eligibility to participate in the Medicare program based on a state's certification of compliance and a facility's compliance with civil rights requirements.[4] CMS maintains an Online Survey, Certification and Reporting (OSCAR), in cooperation with the state long-term care surveying agencies.[5] NTIA proposes to use a facility's inclusion in the CMS OSCAR database as a baseline criterion to establish the eligibility of a facility for the waiver proposed here.

However, NTIA recognizes that not all nursing homes in the United States are included within the OSCAR database. Accordingly, NTIA solicits comments on ways to ensure that all appropriate facilities not otherwise in the OSCAR database are identified and included in our waiver standards. To that extent, NTIA requests that nursing home associations, state certifying agencies, and other senior care groups provide as much information as possible to enable NTIA to ensure that the Program reaches nursing homes with residents that would benefit from the Coupon Program. NTIA also seeks information on the number of nursing home residents that would actually need coupons to purchase converter boxes in order to continue receiving broadcast programming over the air using analog-only televisions not connected to cable, satellite, or other pay television service, and the impact on the cost of administering the program.

B. Administration of Coupon Program for Nursing Home Residents

To mitigate risks associated with the lack of readily available information to authenticate requests from or on behalf of nursing home residents, NTIA proposes an exception to our existing coupon eligibility and application requirements that would enable residents of Eligible Nursing Homes to apply for and receive coupons subject to certain additional information requirements not otherwise applicable to eligible households. Specifically, NTIA proposes to permit coupon applications to be submitted by, or on behalf of, a resident of an Eligible Nursing Home using any of the following three methods, provided that only one application may be submitted for any individual:

1. Individual: An individual residing in an Eligible Nursing Home (Nursing Home Resident) may apply for one (1) coupon on his own behalf. In such circumstances, the coupon applicant would be required to include: (i) his or her name, date of birth, and Social Security Number (SSN); (ii) the name and address of the Eligible Nursing Home; and (iii) a certification from the Nursing Home Resident as to whether he or she receives television exclusively over the air or through cable, satellite or other pay television service. In accordance with the Privacy Act of 1974, disclosure of an individual's SSN for purposes of this waiver process is voluntary; however additional information to verify the resident's identity will be solicited if the individual chooses not to disclose the SSN.[6] Such additional process may delay the resident's receipt of a coupon.

2. Person Designated to Act on a Nursing Home Resident's Behalf: Alternately, a person designated to act on behalf of a Nursing Home Resident may request one (1) coupon for that resident. In that case, the coupon application would be required to include all of the information specified in Option 1 above, and, in addition, the person requesting the coupon on the Nursing Home Resident's behalf must supply: (i) his own name, address, Social Security Number, and date of birth; and (ii) evidence that he is empowered to act on the behalf of the resident (*e.g.*, power of attorney or birth certificate indicating familial relationship).

3. An Administrator of a Nursing Home or Other Senior Care Facility: Finally, provided that an application has not already been submitted under either of the foregoing options, an administrator of an Eligible Nursing Home may also request one (1) coupon on behalf of a Nursing Home Resident of his facility. As in Option 2, the administrator would be required to provide for each resident for whom the request is being made all of the information specified in Option 1 above. In addition, the administrator would

[4] *See generally* 42 CFR Part 403.

[5] OSCAR is a compilation of all the data elements collected by surveyors during the inspection survey conducted at nursing facilities for the purpose of certification for participation in the Medicare and Medicaid programs. The institutional files are available at *http://www.cms.hhs.gov/HealthPlanRepFileData/05_Inst.asp*.

[6] The Privacy Act of 1974 provides that it ''shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security number.'' 5 U.S.C. 552a.

also be required to provide: (i) the name and address of the residents' Eligible Nursing Home; (ii) the administrator's own name, Social Security Number, and date of birth; and (iii) a copy of each facility's operating license indicating the administrator's authorization to administer the Eligible Nursing Home.

NTIA intends to audit periodically the use of coupons obtained through any of these methods to ensure that the coupon was used to provide a converter box for the resident's personal use. Due to the potentially high risk of fraud and lack of other identifying information for individuals in this population, NTIA proposes to collect the Social Security Numbers and dates of birth from nursing home residents and their representatives. This information provides a unique identifier for each resident. NTIA will only use the Social Security Number for identification, verification and tracking purposes for the Coupon Program. This information will be collected and maintained in a manner meeting the highest level of security required for personally identifiable information. The information collected will be limited to that which is necessary to identify the individual, and, if necessary, conduct an audit of the Coupon Program or the nursing home facility. Similar information is routinely collected from families and legal designees conducting business for individuals in senior care facilities.

NTIA requests comments on other methods or information that the agency can use to verify the legitimacy of requests made by or on behalf of Nursing Home Residents. NTIA also seeks comments on methods to track and prevent duplicate requests and identify patterns of fraudulent behavior.

C. Applicability of Other Provisions of the Coupon Program Rule

Consistent with section 301.4(d) of the Coupon Program regulations, NTIA proposes to send coupons to Nursing Home Residents via U.S. Postal Service to the address of the Eligible Nursing Home specified in the application. In the case of a request from an administrator on behalf of a Nursing Home Resident, NTIA proposes to mail the coupon directly to the requesting administrator at the address provided for the facility in the application.

NTIA proposes that a coupon issued pursuant to this waiver process may only be used to purchase a CECB to be connected to a television set individually-owned by the Nursing Home Resident on whose behalf the application was made. CECBs purchased with coupons issued under this process may not be connected to television sets owned by the nursing home or senior care facility.

The Coupon Program does not intend to reimburse individuals, family members, nursing home administrators or others who may be designated to act on behalf of residents for any costs these individuals may incur in obtaining coupons or providing other assistance related to obtaining and installing converter boxes.

NTIA proposes that all other provisions of the Coupon Program rules would apply to Nursing Home Residents.

II. Applicants Utilizing Post Office Boxes for Mail Receipt

As noted above, since NTIA began accepting applications for coupons on January 1, 2008, it has received and denied applications from a number of consumers that utilize a post office box for mail receipt. NTIA has become aware through the appeals process, however, that many applicants have sound reasons for utilizing a post office box for mail receipt. For example, a number of consumers appealing denials expressed concerns about the risk of identity theft as a result of stolen mail received via home delivery as the reason that they receive mail utilizing a post office box. As a consequence, NTIA believes it is appropriate to revisit our regulations concerning the treatment of applications using post office boxes.

In developing the Coupon Program regulations, NTIA carefully considered mechanisms to deter waste, fraud, and abuse in the Program. In a number of studies of government benefit programs, most recently in its examination of fraud associated with Hurricane Katrina and Rita disaster benefits distributed by the Federal Emergency Management Agency (FEMA), the Government Accountability Office (GAO) noted that preventive controls are the most effective and efficient means to minimize waste, fraud, and abuse.[7] GAO has specifically cited the misuse of post office boxes by applicants for benefits and recommended that preventive controls in a benefits program should, at a minimum, require that application data be validated against other government or third-party sources to determine whether an applicant has provided accurate information on their identity and place of residence.[8] Specifically, GAO recommended that applicants should be required to provide their actual address.[9]

Accordingly, the current Coupon Program regulations require applicants to provide a United States Postal Service mailing address in all but a few instances, such as applicants residing on Indian reservations, Alaskan Native Villages, and other rural areas to which the U.S. Postal Service does not deliver to residential addresses. Consistent with GAO's recommendation, the Coupon Program regulations make it clear that these applicants may be required to provide additional proof of their physical residence. Moreover, as GAO recommended, the address of each applicant is checked by NTIA's contractor against a third-party database to assist in validating eligibility.

NTIA now proposes to amend section 301.3(a) of its regulations to permit a household utilizing a post office box for mail receipt to become eligible to apply for and receive coupons if it can provide proof of physical residence as proof of the application process. NTIA believes that requiring proof of physical residence will balance the need for preventive controls to protect the Program from waste, fraud, and abuse with the goal of the Program to provide assistance to those consumers that will need a converter box to continue receiving broadcast programming over the air using analog-only televisions.

Specifically, NTIA proposes that an applicant that utilizes a post office box for mail receipt must provide one or more of the following documents to satisfy the requirement for proof of physical residence: a valid driver's license containing the applicant's physical address; a utility bill (water, gas, electric, oil, cable, or landline telephone (i.e., not wireless or pager) bearing the applicant's name and physical address and issued within the sixty (60) days immediately preceding the date the coupon application is

[7] Hurricanes Katrina and Rita Disaster Relief: Improper Fraudulent Individual Assistance Payments Estimated to be Between $600 Million and $1.4 Billion, Testimony, GAO–06–844T (GAO 2006 Testimony) (June 14, 2006); Hurricanes Katrina and Rita: Unprecedented Challenges Exposed the Individuals and Households Program to Fraud and Abuse; Actions Needed to Reduce Such Programs in Future, Report to Congressional Committees, GAO–06–1013 (Sept. 2006); Hurricanes Katrina and Rita Disaster Relief: Prevention is the Key to Minimizing Fraud, Waste, and Abuse in Recovery Efforts, Testimony, GAO–07–418T (GAO 2007 Testimony) (Jan. 29, 2007).

[8] GAO 2007 Testimony, *supra* n. 3, at 4–5. *See also Benefit Fraud with Post Office Boxes*, Letter to Representative Gallegly, GAO/HEHS–97–54R (Feb. 21, 1997).

[9] GAO stated ''[w]hile not all payments made to post office boxes are improper or potentially fraudulent, the number of potentially fraudulent payments could be substantially reduced if FEMA put in place procedures to instruct disaster recipients to provide actual street addresses of damaged property when claiming disaster assistance.'' GAO 2006 Testimony, *supra* n. 3, at 5.

submitted; a government-issued property tax bill for the applicant's residence; an unexpired homeowner's or renter's insurance policy for the applicant's residence; an unexpired residential lease or rental agreement with the applicant's name and physical address. NTIA will only use this information for identification, verification and tracking purposes for the Coupon Program. This information will be collected and maintained in a manner meeting the highest level of security required for personally identifiable information. Similar information is routinely collected by governmental agencies to verify residency.[10]

NTIA requests comments on other methods by which it can verify the physical address of an applicant that utilizes a post office box for mail receipt. NTIA also seeks other information and estimates of the number of consumers with post office boxes that will apply for coupons if the proposed rule is implemented.

Executive Order 12866

This proposed rule has been determined to be significant for purposes of Executive Order 12866; and therefore, has been reviewed by the Office of Management and Budget (OMB). In accordance with Executive Order 12866, an Economic Analysis was completed, outlining the costs and benefits of implementing this program. The complete analysis is available from NTIA upon request.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. NTIA has determined that the rule meets the applicable standards provided in section 3 of the Executive Order, to minimize litigation, eliminate ambiguity, and reduce burden.

Congressional Review Act

This rule has been determined to be major under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, 5 U.S.C. 603. NTIA has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this Notice. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this Notice and must have a separate and distinct heading designating them as a response to the IRFA.

Information Collection and Recording Requirements

This document contains proposed information collection requirements. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), NTIA invites comments on this information collection and intends to request approval for it from the Office of Management and Budget (OMB). To successfully administer this program, NTIA requests approval of the collection of information for the proposed coupon application process and requirements for Nursing Home Residents as well as for applicant utilizing a post office box for mail receipt. Comments on the information collection and recordkeeping requirements in this proposed rule must be received by June 23, 2008.

Comments are invited on (a) whether the collections of information are 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 collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments on the information collection and recordkeeping requirements in this proposed rule may be sent to Milton Brown, Office of the Chief Counsel, National Telecommunications and Information Administration, 1401 Constitution Avenue, Room 4713, Washington, DC 20230.

1.) *Title*: Waiver Application for the Digital-to-Analog Converter Box Coupon.

Type of Request: New Collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours (30 minutes) per respondent.

Respondents: Individuals residing in nursing homes and other senior care facilities, representatives of such individuals, and administrators of nursing homes or other senior care facilities.

Estimated Number of Respondents: 420,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: .50 hours.

2.) *Title*: Proof of Physical Residence for the Digital-to-Analog Converter Box Coupon Application.

Type of Request: New Collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours (30 minutes) per respondent.

Respondents: Individuals that utilize post office boxes for residential mail receipt.

Estimated Number of Respondents: 340,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: .50 hour.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Executive Order 12372

No intergovernmental consultation with State and local officials is required because this rule is not subject to the provisions of Executive Order 12372, Intergovernmental Consultation.

Unfunded Mandates

This rule contains no federal mandates under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995 for State, local and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

It has been determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), an Environmental Impact Statement is not required.

Government Paperwork Elimination Act

NTIA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

[10] *See e.g.*, Cal. Welfare and Institutions Code § 14007.1 (Deering 2007); D.C. Code Ann. § 39–309 (LexisNexis 2008); Ky. Rev. Stat. Ann. § 186.010 (LexisNexis 2008); N.C. Gen. Stat. § 20–7 (2007)

Executive Order 12630

This rule does not contain policies that have takings implications.

Executive Order 13132

This rule does not contain policies having federalism implications requiring preparation of Federalism Impact Statement.

Authority:

Title III of the Deficit Reduction Act of 2005, Pub. L. 109-171, 120 Stat. 4, 21 (Feb.8, 2005).

Dated: April 18, 2008.

Meredith Attwell Baker,

Acting Assistant Secretary for Communications and Information.

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

As required by the Regulatory Flexibility Act (RFA) of 1989, as amended, NTIA has prepared an Initial Regulatory Flexibility Analysis (IRFA) addressing the economic impact on small entities that might result from this Notice of Proposed Rulemaking (NPRM). NTIA requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above. NTIA will consider all timely comments in drafting our final Regulatory Flexibility Analysis and in making its decision on a final rule. NTIA will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

This analysis addresses six issues: (1) a description of the reasons why action by NTIA is being considered; (2) the proposed rule's objectives and legal basis; (3) a description of and, where feasible, an estimate of the number and types of small entities affected by the proposed rule; (4) a description of the projected reporting, record-keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement; and (5) the relevant rules that could duplicate, overlap, or conflict with the proposed rule. The following sections provide details on each of these issues.

A. Need for, Objectives of, the Proposed Rule

This proposed waiver to NTIA's TV Converter Box Coupon Programregulations will permit individuals residing in nursing homes to be eligible to receive coupons for the purchase of digital-to-analog converter boxes. The proposed rule also permits households utilizing a post office box for mail receipt to provide proof of physical residence, so that they can become eligible to apply for and receive coupons.

B. Legal Basis

The legal basis for any action taken pursuant to this proposed rule is contained in the Digital Television Transition and Public Safety Act of 2005 (the Act).[11] Specifically, section 3005 of the Act directs NTIA to implement and administer a program through which eligible U.S. households may obtain a maximum of two coupons, $40 each, to be applied towards the purchase of a digital-to-analog converter box.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules.[12] The RFA generally defines the term ''small entity'' to include ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[13] According to the Small Business Administration (SBA), Nursing Care Facilities and Continuing Care Retirement Communities must have receipts of $12.5 million or less in order to qualify as a small business concern.[14] SBA provided, however, that Homes for the Elderly and Other Residential Care Facilities must have receipts of $6.5 million or less to qualify as a small business concern.[15] NTIA does not have data on the number of these facilities that would qualify as a small business concern. NTIA also does not have data on the number of residents of these small businesses that would take advantage of the Coupon Program.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

There are no projected reporting, recordkeeping or other compliance requirements associated with this proposed rule. Nursing facility administrators should be aware, however, that NTIA intends to audit periodically the use of coupons obtained to ensure that the coupon was used to provide a converter box for the resident's personal use.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The proposed rule has no significant economic impact on small entities. Participation in this program is voluntary, thus any economic impact would not be caused by the proposed rule as small entities are not required to participate in the program. NTIA also notes that this program may not be attractive to many nursing care facilities or homes for the elderly, small or otherwise, because residents may receive television service through one of the multichannel video programming distributors, such as cable or satellite service. In fact, nursing care facilities or homes for the elderly are only implicated in this program if an administrator chooses to apply for a coupon on behalf of a resident. Although it would take an approximately 30 minutes to submit the application on the resident's behalf, there is no indication that this time commitment would a significant economic impact to nursing care facilities or homes for the elderly that are considered ''small entities.''

The proposed rule provides two alternatives to minimize any economic impact on nursing care facilities or homes for the elderly. Nursing home residents may apply for coupons directly, thereby eliminating any cost or time by the nursing facility. Alternatively, the proposed rule permits a person other than a nursing home employee acting on behalf of the nursing home resident to apply for the coupon. This option would also remove any cost or time on behalf of a nursing care facility or home for the elderly.

It should be noted that an alternative currently exists which permits seniors living in nursing homes to obtain converter boxes as a result of the Coupon Program. Family members or friends of seniors living in nursing homes may apply for coupons under the current regulations and use those coupons to purchase converter boxes for seniors living in nursing homes. Of course, the regulations only permit households to apply for up to two coupons, and they will not be permitted to apply for additional coupons beyond those permitted under the regulations. This alternative, while available to some, does not address those seniors living in nursing homes that do not have family members or friends willing or able to apply for coupons.

NTIA also considered other options to ensure that nursing home residents receive converter boxes. For example, NTIA considered purchasing the boxes directly and distributing them to nursing home residents. This option, however, would be administratively difficult to implement. NTIA has also approached industry regarding providing assistance to vulnerable groups that may need converter boxes. NTIA will continue reaching out to industry in this regard; however, this approach does not provide certainty that seniors living in nursing homes will receive converter boxes prior to the transition.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

NTIA is not aware of any federal rules that may duplicate, overlap or conflict with the proposed rule.

The preceding analysis indicates that the expected burden on small entities to implement the proposed rule would be minimal.

[11] Title III of Pub. L. No. 109–171, 120 Stat. 4, 21 (2006).

[12] 5 U.S.C. § 603(b)(3), 604(a)(3).

[13] 5 U.S.C. § 601(6).

[14] 13 CFR § 121.201

[15] 13 CFR § 121.201

[FR Doc. E8–8869 Filed 4–23–08; 8:45 am]

BILLING CODE 3510–60–S

Notices

Federal Register

Vol. 73, No. 80

Thursday, April 24, 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

Office of the Secretary

Privacy Act of 1974; Report of a System of Records

AGENCY: Office of the Secretary, Department of Agriculture (USDA).

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of Agriculture gives notice of a proposed system of records entitled Integrated Acquisition System (IAS).

DATES: Comments must be received no later than May 27, 2008. This system of records will be effective June 3, 2008 unless USDA receives comments which would result in a contrary determination.

ADDRESSES: Comments should be sent to Ruby Harvey, Division Chief, DA/OPPM–PSD, USDA, 300 7th Street, SW., Room 262, Washington, DC 20024, (202) 401–1023. Comments will be available for inspection and copying in the USDA Freedom of Information Reading Room, Room 1141, USDA South Building, 1400 Independence Avenue, SW., Washington, DC 20250–9883. Normal Reading Room hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Please call (202) 690–2817 to ensure that assistance will be available in the Reading Room.

FOR FURTHER INFORMATION CONTACT: Ruby Harvey, Division Chief, DA/OPPM–PSD, USDA, 300 7th Street, SW., Room 262, Washington, DC 20024, (202) 401–1023.

SUPPLEMENTARY INFORMATION: Pursuant to the Executive Order 12931, Federal Procurement Reform, which directed effective and efficient spending of public funds through fundamental reforms in Government procurement, USDA has developed and implemented a new system of records designated as the USDA Integrated Acquisition System (IAS). The Office of Procurement and Property Management, a component of the Departmental Administration staff office, will maintain IAS. IAS will allow USDA to better serve the public through a USDA-wide accounting and procurement system that conforms to generally accepted accounting standards and business best practices and ensures financial and procurement integrity.

USDA takes this action pursuant to the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), the Government Paperwork Elimination Act (GPEA), Pub. L. 105–277, Div. C., Title XVII, 1701 to 1710, principally classified as a note under 44 U.S.C. 3504; § 101; 15 U.S.C. 7001 *et seq.*, and the EGovernment Act of 2002, Pub. L. 107–347, 44 U.S.C. 3541, *et seq.* These statutory authorities mandate standards and goals for acquisition reform, efficiency and effectiveness.

Prior to the implementation of IAS, the various USDA component agencies performed acquisition activities using multiple, disparate systems which were not connected. These systems included: Purchase Order System, Agriculture Contract Automation System, Procurement Request Information System, Comprizon.buy, XPDite, Pontius, FARA, Logistics Management System, Contract Administration Reporting System and Procurement Reporting System. With the implementation of the IAS, the aforementioned disparate acquisition systems were merged into an enterprise system, which serves all of the USDA mission areas namely: Farm and Foreign Agricultural Services; Food, Nutrition and Consumer Services; Food Safety; Marketing and Regulatory Programs; Natural Resources and Environment; Research, Education and Economics; and, Rural Development.

Date: April 17, 2008.

Edward T. Schafer,

Secretary.

USDA/DA–01

SYSTEM NAME:

USDA Integrated Acquisition System, USDA/DA–01.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This is a USDA Web-based system hosted at geographically dispersed locations and is available for access by authorized USDA personnel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records include information about contractors of the United States Department of Agriculture, including their employees and subcontractors, and the officials of both.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in this system include all information incident to and developed in the acquisition process including, but not limited to, solicitations and statements of work; contractor bids, quotes, and proposals; awards; and other documents relevant to particular acquisitions. In order to facilitate payment to the contractor, the system includes contractor and subcontractor names, names and tax identification or Social Security numbers of their employees and officials; and other potentially personally identifiable information related to contractor and subcontractor employees and officials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act, as amended, 41 U.S.C. 251, *et seq.*; Competition in Contracting Act, Pub. L. 98–369; The Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355; Clinger-Cohen Act of 1996, Pub. L. 104–106. The E-Government Act of 2002, 44 U.S.C. 3541, *et seq.*, the Government Paperwork Elimination Act (GPEA), Pub. L. 105–277, 5 U.S.C. 3504 note; the Paperwork Reduction Act, 44 U.S.C. 3501 to 3520.

AGENCY OFFICIAL RESPONSIBLE FOR SYSTEM OF RECORDS:

Senior Chief Procurement Officer, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250.

PURPOSE:

The purpose of this system of records is to record and store the information and documentation incident to and developed in the acquisition process at USDA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Records in this system may be disclosed as follows:

(1) Records in this system may be disclosed to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(2) Records in this system may be disclosed to a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(3) Records in this system may be disclosed when a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

(4) Records in this system may be disclosed to a Member of Congress or to a congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the record is maintained.

(5) Records in this system may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

(6) Records in this system may be disclosed to agency employees, contractors, grantees, experts, consultants, or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

(7) The name and current address of record of an individual may be disclosed from this system of records to the parent locator service of the Department of Health and Human Services authorized persons defined by Public Law 93–647. 42 U.S.C. 653.

(8) Records in this system may be disclosed to Federal, State, local or foreign agency maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

(9) Records in this system may be disclosed to a Federal, State, local, foreign, or tribal or other public authority the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

(10) Records in this system may be disclosed to appropriate agencies, entities, and persons when (i) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (ii) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (iii) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(11) Records in this system may be disclosed to the Office of Government Ethics when the records are relevant and necessary to resolving any conflict of interest, conduct, financial statement reporting, or other ethics matter within the jurisdiction of that office.

(12) USDA will disclose information about individuals from this system of records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101 note); section 204 of the E-Government Act of 2002 (Pub. L. 107–347; 44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403, *et seq.*), or similar statutes requiring agencies to make available public information concerning Federal financial assistance, including grants, subgrants, loan awards, cooperative agreements, and other financial assistance; and contracts, subcontracts, purchase orders, task orders, and delivery orders.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

These records, or information derived from these records, may be disclosed to a consumer reporting agency pursuant to 5 U.S.C. 552a(12) and in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically on magnetic backup tapes and in an electronic database.

RETRIEVAL:

Data is retrieved by employee or contractor name, tax identification number, or Social Security number.

SAFEGUARDS:

Only authorized USDA procurement personnel will have access to these

records. IAS has been categorized as a moderate impact system as identified in Federal Information Processing Standard (FIPS) 199. The security controls implemented within IAS will correspond with those published in the National Institute of Standards and Technology Special Publication 800–53, Recommended Security Controls for Federal Information Technology Systems (Revision 1) for a moderate impact system. Users are granted system access only upon successful completion of security training and each user is supplied with a unique and strong user-id and password. The user roles and access are restrictive and based on the principle of least privilege allowing for adequate performing of job functions and access to information based on a need to know. Due to the financial nature of IAS, the system also adheres to the security controls identified in the Federal Information Security Control Audit Manual (FISCAM). The mandatory requirements of FIPS 199 and FIPS 200 support the Federal Information Security Management Act and the FISCAM supports the mandated OMB Circular A–123, Management of Internal Controls. Moreover, system users and managers observe specific USDA security requirements set forth in the USDA Cyber Security Manuals including but not limited to: USDA Departmental Manual (DM) 3545–000 Personnel Security, and DM 3510–001 Physical Security Standards for Information Technology Restricted Space.

RETENTION AND DISPOSAL:

IAS records are retained and disposed of in accordance with General Records Schedule 3—Procurement, Supply and Grant Records; and General Records Schedule 24—Information Technology Operations and Management Records; as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Division Chief, DA/OPPM–PSD, 300 7th Street, SW., Room 262, Washington, DC 20024, (202) 401–1023.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Departmental Administration, 1400 Independence Avenue, SW., Washington, DC 20250–9883.

RECORDS ACCESS PROCEDURES:

Direct access to a record pertaining to an individual should be directed to the Privacy Act Officer, Departmental Administration, 1400 Independence Avenue, SW., Washington, DC 20250–9883.

CONTESTING RECORDS PROCEDURES:

Contesting a record pertaining to an individual should be directed to the Privacy Act Officer, Departmental Administration, 1400 Independence Avenue, SW., Washington, DC 20250–9883.

RECORDS SOURCE CATEGORIES:

Employee name, contractor name, home address, contractor office phone number, contractor address, tax identification number and social security number are derived from a system account application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–8917 Filed 4–23–08; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0042]

Control of Russian Knapweed; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that an environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the environmental release of the gall wasp *Aulacidea acroptilonica* for the biological control of Russian knapweed (*Acroptilon repens*). The environmental assessment documents our review and analysis of environmental impacts associated with, and alternatives to, the release of this biological control agent. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before May 27, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0042* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0042, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0042.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Robert S. Johnson, Branch Chief, Permits, Registrations, Imports and Manuals, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 734–5055.

SUPPLEMENTARY INFORMATION:

Background

Russian knapweed (*Acroptilon repens*) is an aggressive, long-lived perennial in the *Asteraceae* or sunflower family that thrives in both irrigated and arid environments, and in cropland, pastures, rangeland, shrubland, and wasteland. It is difficult to control in alfalfa, clover, other forage crops, and pastures. It reduces wildlife habitat and suppresses the growth of other plants.

Russian knapweed has no known beneficial qualities. It is not utilized for forage because of its bitter taste, and may cause neurological disorders in horses if consumed. The quality of flour or other grain products that have been contaminated by Russian knapweed is reduced due to the bitter taste it imparts. Studies indicate that the spread of Russian knapweed may have a significant economic impact.

Russian knapweed reproduces primarily vegetatively from a primary vertical root with numerous lateral roots. It is a strong competitor and produces compounds that exclude other plant species. Russian knapweed seeds may be spread through infested hay or crop seeds or through the movement of cattle, as the seeds are able to survive the digestive system of these animals.

Estimated Russian knapweed acreage for the Western United States and Canada for the year 2000 totaled over 1,561,714 acres, with 80 percent of the affected acreage located in the States of Washington, Idaho, Colorado, and Wyoming.

Aulacidea acroptilonica is a small gall-forming wasp that has been demonstrated through specificity testing and field observations reported in scientific literature to attack only Russian knapweed. Gall induction diverts nutrients from flower formation, seed production, and the normal growth of plant tissues, thus reducing the plant's competitive ability and seed production.

APHIS' review and analysis of the potential environmental impacts associated with the use of *Aulacidea acroptilonica* as an agent for the biological control of Russian knapweed are documented in detail in an environmental assessment entitled ''Field Release of *Aulacidea acroptilonica* (Hymenoptera: Cynipidae), an Insect for Biological Control of Russian Knapweed (*Acroptilon repens*) in the Continental United States'' (January 22, 2008). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 18th day of April 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–8892 Filed 4–23–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Grain Inspection Advisory Committee. The Grain Inspection Advisory Committee meets twice annually to advise GIPSA on the programs and services we deliver under the U.S. Grain Standards Act. Recommendations by the committee help us to better meet the needs of our customers who operate in a dynamic and changing marketplace.

DATES: May 13, 8 a.m. to 5 p.m.; and May 14, 2008, 8 a.m. to 1 p.m.

ADDRESSES: The Advisory Committee meeting will take place at the Minneapolis Marriott City Center, 30 South Seventh Street, Minneapolis, Minnesota 55402.

Requests to address the Advisory Committee at the meeting or written comments may be sent to: Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601. Requests and comments may also be faxed to (202) 690–2173.

FOR FURTHER INFORMATION CONTACT: Ms. Terri Henry, (202) 205–8281 or by e-mail at *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*). Relevant information about the Advisory Committee is available on the GIPSA Web site. Go to *http://www.gipsa.usda.gov* and under the section ''I Want To * * *,'' click on ''Learn about the Grain Inspection Advisory Committee.''

The agenda will include discussions about the agency's financial status, the Agency's work in assessing wheat functionality, the Agency's work to capture first-point-of sale grading quality data via the Farm Gate Quality assessments; the status of export services contracts; a collaborative inspector training program; international trade issues; FGIS*online,* GIPSA's initiative to bring modernized business operations to the web to better serve our customers; and centralization of oversight programs.

For a copy of the agenda please contact Terri Henry, (202) 205–8281 or by e-mail *Terri.L.Henry@usda.gov.*

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Advisory Committee. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Terri Henry, at the telephone number listed above.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8–8902 Filed 4–23–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards; Correction

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments; correction.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration published a notice in the **Federal Register** (73 FR 15969) on March 26, 2008, announcing that 16 facilities now meet the definition of a stockyard under the Packers and Stockyards Act and that therefore we proposed to post signs identifying these facilities as posted stockyards. The document was published without indicating the date by which we expect those stockyards will be posted.

FOR FURTHER INFORMATION CONTACT: Catherine Grasso, 202–720–7201.

Correction

In the **Federal Register** of March 26, 2008, in FR Doc. E8–6090, on page 15969, in the third column correct the second sentence of the first full paragraph to read:

If we don't receive comments about these facilities, we expect that they will be posted by May 27, 2008.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E8–8901 Filed 4–23–08; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on air quality issues relating to agriculture.

DATES: The meeting will convene on Tuesday, May 13, 2008, and Wednesday, May 14, 2008, from 8 a.m. to 5 p.m., and Friday, May 16, 2008, from 8 a.m. to 12 p.m. A public comment period will be held on May 13, 2008, at 4:15 p.m. Individuals making oral presentations should register in person at the meeting site and must bring with them 50 copies of the materials they would like distributed. Written materials for AAQTF's consideration prior to the meeting must be received by Ron Heavner, Acting Designated Federal Officer, no later than April 28, 2008.

ADDRESSES: The meeting will be held at the Salt Lake City Marriott Downtown, 75 South West Temple, Salt Lake City, Utah 84101; telephone: (801) 531–0800.

FOR FURTHER INFORMATION CONTACT: Questions and comments should be directed to Mr. Heavner at USDA, Natural Resources Conservation Service, Post Office Box 2890, Washington, DC 20013; telephone: (202) 720–6107; e-mail: *Ron.Heavner@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning AAQTF may be found on the Internet at *http://www.airquality.nrcs.usda.gov/AAQTF/*.

Draft Agenda of the May 2008 Meeting of AAQTF*

Tuesday, May 13, 2008

A. *Welcome to Salt Lake City.*

B. *Discussion of Utah Air Quality Issues.*

C. *Discussion of Fire-Particulate Matter and Ozone Issues.*

Wednesday, May 14, 2008

D. *Discussion of Subcommittee Action Plans and Activities.*

E. *Discussion of Particulate Matter and Ozone.*

F. *Discussion of Climate Change.*

Friday, May 16, 2008

G. *Discussion of Subcommittee Action Plans and Activities.*

H. *Next Meeting, Time and Place.*

(Time is reserved on May 13, 2008, to receive public comment. Individual presentations will be limited to 5 minutes.)

**Please note that the timing of events in the agenda is subject to change to accommodate changing schedules of expected speakers.*

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Those persons wishing to make oral presentations should register in person at the meeting site. Those wishing to distribute written materials at the meeting (in conjunction with spoken comments) must bring 50 copies of the materials with them. Written materials for distribution to AAQTF members prior to the meeting must be received by Mr. Heavner no later than April 28, 2008.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Mr. Heavner. The Department of Agriculture (USDA) prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact USDA's Target Center at (202) 720–2000 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed in Washington, DC, on April 9, 2008.

Arlen L. Lancaster,

Chief.

[FR Doc. E8–8949 Filed 4–23–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of Availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #642, Water Well; #516, Pipeline; #614, Watering Facility; #533, Pumping Plant; and #527, Sinkhole and Sinkhole Area. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to W. Ray Dorsett, Acting State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1691; Fax number (804) 287–1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: *http://www.va.nrcs.usda.gov/technical/draftstandards.html*.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: April 9, 2008.

W. Ray Dorsett,

Acting State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. E8–8950 Filed 4–23–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Upper East Canyon Creek Watershed Stream Restoration Projects

AGENCY: Natural Resources Conservation Service (NRCS) in Utah, U.S. Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for UPPER EAST CANYON CREEK WATERSHED STREAM RESTORATION PROJECTS, Summit County, Utah.

FOR FURTHER INFORMATION CONTACT: Sylvia A. Gillen, State Conservationist, Natural Resources Conservation Service, Wallace F. Bennett Federal Building, 125 South State Street, Room 4402, Salt Lake City, Utah 84138–1100; telephone number (801) 524–4550.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Sylvia A. Gillen, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

Upper East Canyon Creek Watershed Stream Restoration Projects

Notice of a Finding of No Significant Impact

During Fiscal Year 2006, Congress appropriated funds through a Congressional Earmark to NRCS to provide technical and financial assistance to Snyderville Basin Water Reclamation District to implement a Non-point Source Pollution Reduction Project in the Upper East Canyon Creek Watershed. An Environmental Assessment (EA) was prepared in order to make a reasoned and informed decision in selecting which alternative to implement and also to determine if the proposed action is a major federal action that would significantly affect the quality of the human environment. The proposed action will implement stream and riparian restoration projects along East Canyon Creek and its tributaries in voluntary cooperation with willing landowners. The purpose of the proposed action is to reduce the erosion of sediments that transport phosphorus to East Canyon Creek. The proposed action is needed because non-point source pollution was identified as a possible cause of water quality impairments in the watershed by the Utah Department of Environmental Quality (DEQ). East Canyon Creek from the reservoir to the headwaters is on Utah's 303(d) list for total phosphorus and dissolved oxygen. Eroded sediments in surface runoff are the primary mechanism for phosphorus transport.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI and the EA are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Sylvia A. Gillen. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: April 18, 2008.

Sylvia A. Gillen,

State Conservationist, Natural Resources Conservation Service, Utah.

[FR Doc. E8–8952 Filed 4–23–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–910]

Amended Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Carbon Quality Steel Pipe From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 24, 2008.

SUMMARY: On January 15, 2008, the Department published in the **Federal Register** its preliminary determination that circular welded carbon quality steel pipe (''CWP'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). *See Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 2445, 2451 (January 15, 2008) (*''Preliminary Determination''*). On April 7, 2008, Jiangsu Yulong Steel Pipe Co., Ltd, (''Yulong''), the only participating mandatory respondent remaining in this investigation, notified the Department that it was withdrawing from the proceeding. Based on the circumstances described below, the Department of Commerce (the ''Department'') is amending the preliminary determination in the antidumping duty investigation of CWP from the PRC. This amended preliminary determination results in revised antidumping rates.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3936.

SUPPLEMENTARY INFORMATION:

Case History

On January 15, 2008, the Department published in the **Federal Register** the *Preliminary Determination* that CWP from the PRC is being, or is likely to be, sold in the United States at LTFV, as provided in section 733 of the Act. In the *Preliminary Determination,* the Department calculated a zero percent margin for Yulong, and included Yulong's zero percent preliminary margin in calculating the rate applied to the separate rate companies, and relied upon Yulong's individual sales margins in corroborating the rate assigned to the PRC-wide entity. *See Preliminary Determination.*

From January 28, 2008, through February 1, 2008, the Department conducted a verification of the U.S. sales and factors of production reported by Yulong. On February 27, 2008, the Department issued its verification report. *See* Memorandum from Thomas Martin and Maisha Cryor, International Trade Compliance Analysts, to the File, ''Verification of the Sales and Factors Response of Jiangsu Yulong Steel Pipe Co., Ltd. (''Yulong''),'' dated February 27, 2008.

We invited parties to comment on the *Preliminary Determination.* On March 12, 2008, the Petitioners,[1] Yulong, one separate rate applicant, and two U.S. importers of subject merchandise filed case briefs. On March 19, 2008, the Petitioners, Yulong, and one U.S. importer filed rebuttal briefs. On March 24, 2008, the Department held a public hearing.

On March 17, 2008, the Department received an unsolicited letter from the Director of a trading company registered in Hong Kong, referred to hereafter as Company X, in which it notified the Department that it had learned from industry sources that a PRC pipe producer involved in this investigation had claimed that it purchased hot-rolled steel coil for the production of merchandise subject to this investigation from Company X. *See* Memorandum from Abdelali Elouaradia, Office Director, to the File, ''Phone Conversation With Trading Company,'' dated March 27, 2008 (''Trading Company Memorandum''), at Attachment 1, which contains Company X's complaint letter. Company X claims it had learned that a PRC pipe producer submitted to the Department ''fake'' documents, including sales contracts, commercial invoices, packing lists, and mill test reports, under Company X's letterhead. *Id.* Company X clarified during a subsequent phone conversation with the Department that it had learned that a PRC pipe producer told the Department that the hot-rolled steel coils allegedly purchased from Company X were produced by non-Chinese steel mills. *Id.* at 1. During the telephone conversation, Company X further clarified that it had not purchased any hot-rolled steel in coils directly from foreign steel producers, nor purchased foreign-origin hot-rolled steel coils indirectly through other Chinese companies, and had not sold any hot-rolled steel coils to any PRC pipe producers involved in this investigation. *Id.*

After reviewing the administrative record of the proceeding, the Department concluded that Yulong was the only PRC pipe producer for which Company X's allegations could possibly be applicable. *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, to the File, ''Supporting Documentation for Market Economy Inputs Submitted to the Administrative Record,'' dated concurrently with this notice.

On March 27, 2007, the Department issued a memorandum in which it provided all interested parties an opportunity to place on the record of this investigation any new factual information that is relevant to the issues raised in Company X's complaint letter or the Department's phone conversation memorandum. *See* Memorandum from Mark Manning, Program Manager, to the File, ''Schedule of Submissions,'' dated March 27, 2008. On March 28, 2008, the Department issued to Yulong a letter in which it noted that Yulong reported to the Department certain commercial invoices and other documentation pertaining to one of its suppliers of hot-rolled steel in coils. *See* letter from Abdelali Elouaradia, Office Director, to Yulong dated March 28, 2008. In this letter, the Department asked Yulong to comment on certain actions the Department is considering taking with respect to the documents Yulong submitted to the Department that involve this supplier.

On April 7, 2008, Yulong notified the Department that: (1) It ''refuses to continue to contest the information contained in the Department's March 27, 2008, memorandum to the file;'' (2) ''Yulong will not participate any further in these proceedings;'' and (3) ''Yulong withdraws from the proceedings.'' *See* Letter to the Hon. Carlos M. Gutierrez, Secretary of Commerce, from Jiangsu Yulong Steel Pipe Co., Ltd., dated April 7, 2008 (''Yulong Withdrawal Letter''). Yulong also stated that it has ''full understanding that because of {Yulong's} lack of continued participation in these proceedings, the Department may find that Yulong has failed to cooperate to the best of its ability pursuant to section 776(b) of the Tariff Act of 1930.'' *Id.*

In sum, the Department notes the following facts in this case: (1) Yulong received a zero margin in the *Preliminary Determination;* (2) Company X has alleged that a PRC pipe company involved in this investigation submitted ''fake'' documents to the Department; (3) Yulong has withdrawn from this investigation and stated that it does not contest the allegations made by Company X and identified in the Trading Company Memorandum; (4) in the *Preliminary Determination,* the Department included Yulong's zero percent preliminary margin in calculating the rate applied to the separate rate companies, and relied upon Yulong's individual sales margins in corroborating the rate assigned to the PRC-wide entity; and (5) any change to Yulong's preliminary margin will have a significant impact on all margins included in the *Preliminary Determination.* In light of these facts, the Department finds it necessary to issue an amended preliminary determination.

Period of Investigation

The period of investigation (''POI'') is October 1, 2006, through March 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, *i.e.*, June 2007. *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The scope of this investigation covers certain welded carbon quality steel pipes and tubes, of circular cross-section, and with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), whether or not stenciled, regardless of wall thickness, surface finish (e.g., black, galvanized, or painted), end finish (e.g., plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (e.g., ASTM, proprietary, or other), generally known as standard pipe and structural pipe (they may also be referred to as circular, structural, or mechanical tubing).

Specifically, the term ''carbon quality'' includes products in which (a) Iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium; or
(xiv) 0.15 percent of zirconium.

Standard pipe is made primarily to American Society for Testing and Materials (''ASTM'') specifications, but can be made to other specifications. Standard pipe is made primarily to ASTM specifications A–53, A–135, and A–795. Structural pipe is made primarily to ASTM specifications A–252 and A–500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. This is often the case, for example, with fence tubing.

[1] The Petitioners in this investigation are Allied Tube & Conduit, Sharon Tube Company, IPSCO Tubulars, Inc., Western Tube & Conduit Corporation, Northwest Pipe Company, Wheatland Tube Co., *i.e.*, the Ad Hoc Coalition For Fair Pipe Imports From China, and the United Steelworkers.

Pipe multiple-stenciled to a standard and/or structural specification and to any other specification, such as the American Petroleum Institute (''API'') API–5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above and also has one or more of the following characteristics: Is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish.

The scope of this investigation does not include: (a) Pipe suitable for use in boilers, superheaters, heat exchangers, condensers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) mechanical tubing, whether or not cold-drawn; (c) finished electrical conduit; (d) finished scaffolding; (e) tube and pipe hollows for redrawing; (f) oil country tubular goods produced to API specifications; and (g) line pipe produced to only API specifications. The pipe products that are the subject of this investigation are currently classifiable in HTSUS statistical reporting numbers 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90, 7306.50.10.00, 7306.50.50.50, 7306.50.50.70, 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. However, the product description, and not the harmonized tariff schedule of the United States (''HTSUS'') classification, is dispositive of whether merchandise imported into the United States falls within the scope of the investigation.

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review,* 68 FR 70488 (December 18, 2003). Therefore, in this preliminary determination, we have treated the PRC as an NME country and applied our current NME methodology.

Adverse Facts Available

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if, *inter alia,* necessary information is not on the record or an interested party: (A) Withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may disregard all or part of the original and subsequent responses, subject to section 782(e) of the Act, as appropriate. Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On April 7, 2008, Yulong informed the Department that it would not continue participation in the instant investigation and does not contest the allegations made by Company X and identified in the Trading Company Memorandum. *See* Yulong Withdrawal Letter. In addition, because Yulong ceased participation in the instant investigation prior to submitting a response to the Department's March 28, 2008, request for comment concerning certain actions under consideration by the Department regarding documents Yulong submitted during this investigation, Yulong withheld information requested by the Department. Further, by not contesting the allegations made by Company X concerning a PRC pipe producer's purchases of the major input used to produce subject merchandise, as described in the Trading Company Memorandum, Yulong has significantly impeded the proceeding. In addition, by withdrawing from the investigation and no longer responding to the Department's requests for information, Yulong has prevented the Department from obtaining new information that could be used to conduct additional analyses to assess the validity of the documents Yulong submitted during the course of the investigation and during verification. For these reasons, we find that the use of facts available, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act is appropriate in determining the applicable dumping margin for Yulong.

Yulong's failure to contest the information contained in the Trading Company Memorandum, where Company X alleged that a PRC pipe company submitted false documents to the Department concerning purchases of hot-rolled steel coils, calls into question the veracity of all information Yulong submitted to the record. For this reason, the Department cannot rely upon the information Yulong submitted in its factors of production database, U.S. sales database, or separate rate application, and has disregarded all such information in making this amended preliminary determination. Since the Department cannot rely upon information contained in Yulong's separate rate application, we can no longer find that Yulong operates free of government control and that it is entitled to a separate rate. For this reason, we have denied Yulong a separate rate, and find that Yulong is part of the PRC-wide entity. As part of the PRC-wide entity, the Department's application of facts available to Yulong contributes to the application of facts available applied against the PRC-wide entity, as described in the *Preliminary Determination.*

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–20 (October 16, 1997); *Crawfish Processors Alliance* v. *United States,* 343 F. Supp.2d 1242 (CIT 2004) (approving use of adverse facts available (''AFA'') when respondent refused to participate in verification); *see also Statement of Administrative Action,* accompanying

the Uruguay Round Agreements Act (''URAA''), H.R. Rep. No. 103–316, 870 (1994) (''SAA''). Yulong's withdrawal from participation, its non-cooperation in submitting requested information, and its failure to contest the allegations made by Company X, constitute a failure to cooperate by not acting to the best of its ability to comply with requests for information in accordance with section 776(b) of the Act.

Section 776(b) of the Act authorizes the Department to use, as AFA, information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China,* 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at ''Facts Available''. In this case, as AFA, the Department has selected the highest margin alleged in the petition, as revised in the petitioners' supplemental responses, 85.55 percent.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted ''corroborate'' to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. *See Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 5554, 5568 (February 4, 2000); *see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996).

Because there are no cooperating mandatory respondents, to corroborate the 85.55 percent margin used as adverse facts available for the PRC-wide entity, to the extent appropriate information was available, we revisited our pre-initiation analysis of the adequacy and accuracy of the information in the petition. *See* Antidumping Investigation Initiation Checklist: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, (Initiation Checklist) (''Initiation Checklist'') (July 5, 2007). We examined evidence supporting the calculations in the petition and the supplemental information provided by the petitioners prior to initiation to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and NV in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the export price and NV calculations. *Id.* We received no comments as to the relevance or probative value of this information. Therefore, the Department finds that the rates derived from the petition for purposes of initiation have probative value for the purpose of being selected as the AFA rate assigned to the PRC-wide entity (including Yulong).

Critical Circumstances

As noted in the *Preliminary Determination,* on December 11, 2007, the Department preliminarily found that there is reason to believe or suspect that critical circumstances exist for imports of subject merchandise from Yulong, the separate rate companies, and the PRC-wide entity, because (A) in accordance with section 733(e)(1)(A)(i) of the Act, there is a history of dumped imports of subject merchandise and of material injury caused by such dumped imports, and (B) in accordance with section 733(e)(1)(B) of the Act, Yulong, the separate-rate companies, and the PRC-wide entity had massive imports during a relatively short period. *See* Memorandum from Abdelali Elouaradia, Director, Office 4, ''Preliminary Affirmative Determination of Critical Circumstances,'' dated December 11, 2007. Yulong, however, was not subject to suspension of liquidation at the *Preliminary Determination* because it received a zero percent margin. Pursuant to this amended preliminary determination, Yulong no longer has a separate rate and is part of the PRC-wide entity. Since the Department has preliminarily found that critical circumstances exist with respect to Yulong, and all other PRC exporters, the Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of CWP from the PRC for consumption produced and/or exported by Yulong, as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, on or after 90 days prior to the date of publication in the **Federal Register** of this amended preliminary determination. *See* ''Suspension of Liquidation'' section below.

Separate Rate Companies

In the *Preliminary Determination,* the Department assigned a separate rate to thirty-one exporter/producer combinations that qualified for a separate rate using the simple average of Yulong's zero percent margin and the AFA margin assigned to the PRC-wide entity. *See Preliminary Determination,* 73 FR at 2451. In light of Yulong's withdrawal from the investigation and the subsequent application of total AFA for Yulong (as part of the PRC-wide entity), this methodology is no longer appropriate. In cases where the estimated weighted-average margins for all individually investigated respondents are zero, *de minimis*, or based entirely on AFA, the Department may use any reasonable method to assign the separate rate. *See* section 735(c)(5)(B) of the Act. In this case, where there are no mandatory respondents receiving a calculated rate and the PRC-wide entity's rate is based upon total AFA, we find that applying the simple average of the rates alleged in the petition, incorporating revisions made in the petitioners' supplemental responses, is both reasonable and reliable for purposes of establishing a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479 (February 4, 2008) and the accompanying Issues and Decision Memorandum at Comment 2. Therefore, the Department will assign a separate rate to the thirty-one exporter producer combinations using the average of the margins alleged in the petition, pursuant to its practice. This rate is corroborated, to the extent practicable, for the reasons stated above.

Preliminary Determination Margins

The Department has determined that the following preliminary dumping margins exist for the POI:

Exporter	Producer	Weighted-average margin
Beijing Sai Lin Ke Hardware Co., Ltd	Xuzhou Guang Huan Steel Tube Products Co., Ltd	69.20
Wuxi Fastube Industry Co., Ltd	Wuxi Fastube Industry Co., Ltd	69.20
Jiangsu Guoqiang Zinc-Plating Industrial Co., Ltd.[2]	Jiangsu Guoqiang Zinc-Plating Industrial Co., Ltd.	69.20
Wuxi Eric Steel Pipe Co., Ltd	Wuxi Eric Steel Pipe Co., Ltd	69.20
Qingdao Xiangxing Steel Pipe Co., Ltd	Qingdao Xiangxing Steel Pipe Co., Ltd	69.20
Wah Cit Enterprises	Guangdong Walsall Steel Pipe Industrial Co., Ltd	69.20
Guangdong Walsall Steel Pipe Industrial Co., Ltd	Guangdong Walsall Steel Pipe Industrial Co., Ltd	69.20
Hengshui Jinghua Steel Pipe Co., Ltd	Hengshui Jinghua Steel Pipe Co., Ltd	69.20
Zhangjiagang Zhongyuan Pipe-Making Co., Ltd	Zhangjiagang Zhongyuan Pipe-Making Co., Ltd	69.20
Weifang East Steel Pipe Co., Ltd	Weifang East Steel Pipe Co., Ltd	69.20
Shijiazhuang Zhongqing Imp & Exp Co., Ltd	Bazhou Zhuofa Steel Pipe Co., Ltd	69.20
Tianjin Baolai Int'l Trade Co., Ltd	Tianjin Jinghai County Baolai Business and Industry Co., Ltd	69.20
Wai Ming (Tianjin) Int'l Trading Co., Ltd.	Bazhou Dong Sheng Hot-dipped Galvanized Steel Pipes Co., Ltd.	69.20
Kunshan Lets Win Steel Machinery Co., Ltd	Kunshan Lets Win Steel Machinery Co., Ltd	69.20
Shenyang Boyu M/E Co., Ltd	Bazhou Dong Sheng Hot-dipped Galvanized Steel Pipes Co., Ltd.	69.20
Dalian Brollo Steel Tubes Ltd	Dalian Brollo Steel Tubes Ltd	69.20
Benxi Northern Pipes Co., Ltd	Benxi Northern Pipes Co., Ltd	69.20
Shanghai Metals & Minerals Import & Export Corp	Huludao Steel Pipe Industrial Co	69.20
Shanghai Metals & Minerals Import & Export Corp	Benxi Northern Pipes Co., Ltd	69.20
Huludao Steel Pipe Industrial Co	Huludao Steel Pipe Industrial Co	69.20
Tianjin Xingyuda Import & Export Co., Ltd	Tianjin Lifengyuanda Steel Group	69.20
Tianjin Xingyuda Import & Export Co., Ltd	Tianjin Xingyunda Steel Pipe Co	69.20
Tianjin Xingyuda Import & Export Co., Ltd	Tianjin Lituo Steel Products Co	69.20
Tianjin Xingyuda Import & Export Co., Ltd	Tangshan Fengnan District Xinlida Steel Pipe Co., Ltd	69.20
Jiangyin Jianye Metal Products Co., Ltd	Jiangyin Jianye Metal Products Co., Ltd	69.20
Rizhao Xingye Import & Export Co., Ltd	Shandong Xinyuan Group Co., Ltd	69.20
Tianjin No. 1 Steel Rolled Co., Ltd	Tianjin Hexing Steel Co., Ltd	69.20
Tianjin No. 1 Steel Rolled Co., Ltd	Tianjin Ruitong Steel Co., Ltd	69.20
Tianjin No. 1 Steel Rolled Co., Ltd	Tianjin Yayi Industrial Co	69.20
Kunshan Hongyuan Machinery Manufacture Co., Ltd	Kunshan Hongyuan Machinery Manufacture Co., Ltd	69.20
Qingdao Yongjie Import & Export Co., Ltd	Shandong Xinyuan Group Co., Ltd	69.20
PRC-Wide Entity (Including Yulong)[3]		85.55

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary determination within five days after the date of publication of these preliminary determination.

Suspension of Liquidation

As noted above, on December 11, 2007, the Department found that critical circumstances exist with respect to shipments of CWP from all PRC exporters. Yulong, however, was not subject to suspension of liquidation at the *Preliminary Determination* because it received a zero percent margin. Pursuant to this amended preliminary determination, Yulong no longer has a separate rate and is part of the PRC-wide entity. Therefore, to apply the Department's affirmative finding of critical circumstances for the PRC-wide entity to Yulong, in accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of CWP from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption from Yulong on or after 90 days prior to the date of publication in the **Federal Register** of this amended preliminary determination. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this amended preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own separate rate, including Yulong, the cash-deposit rate will be the PRC-wide rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain lined paper

[2] In the *Preliminary Determination*, the Department incorrectly identified Jiangsu Guoqiang Zinc-Plating Industrial Company, Ltd., as Jiangsu Guoqiang Zinc-Plating Co., Ltd. We note, however, that in the Department's subsequent instructions to CBP to suspend liquidation and require cash deposits for CWP from PRC, the Department correctly identified Jiangsu Guoqiang Zinc-Plating Industrial Company, Ltd.

[3] In the *Preliminary Determination*, the Department also found that the Tianjin Shuangjie Group is part of the PRC-wide entity.

products, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Interested parties may submit written comments (case briefs) by the close of business on the third business day after the date of signature (rather than publication) of this amended preliminary determination and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within three business days after the deadline for filing case briefs. *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d). Parties are requested to limit the issues raised in their case briefs to only those issues relevant to this amended preliminary determination and not already briefed. Specifically, the Department requests that parties limit their case briefs to the following issues: (1) Whether the Department should use the facts available in reaching its determination with respect to Yulong, pursuant to Section 776(a) of the Act; (2) whether Yulong has failed to cooperate to the best of its ability, warranting the application of an adverse inference, pursuant to section 776(b) of the Act; (3) how the Department should determine any AFA rate for Yulong, what the rate should be, and corroboration of the rate, to the extent practicable, if the rate is based upon secondary information, pursuant to section 776(c) of the Act; (4) whether Yulong qualifies for a separate rate; and (5) what rate to apply to the separate rate companies and corroboration of the rate, to the extent practicable, if the rate is based upon secondary information.

Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a disk containing the public version of those comments.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 18, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–8953 Filed 4–23–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XH40

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a workgroup of its Socioeconomic Panel (SEP).

DATES: The meeting will be convened at 9 a.m. on Wednesday, May 14, 2008 and conclude no later than 5 p.m.

ADDRESSES: The meeting will be held at the Inter-Continental Hotel, 4860 W. Kennedy Blvd., Tampa, FL 33609; telephone: (813) 286–4400.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene a workgroup of its Socioeconomic Panel (SEP) to discuss social and economic aspects of total allowable catch (TAC) allocations between the recreational and commercial sectors.

A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the SEP workgroup 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 this meeting. Actions of the SEP workgroup 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.

Special Accommodations

This meeting is 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: April 21, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–8937 Filed 4–23–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XH42

Mid-Atlantic Fishery Management Council (MAFMC); 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's (MAFMC) Ad Hoc Excessive Shares Committee will hold a public meeting.

DATES: The meeting will be held on Thursday, May 15, 2008, from noon until 4 p.m.

ADDRESSES: The meeting will be held at the Sheraton Suites Wilmington, 422 Delaware Ave., Wilmington, DE 19801, telephone: (302) 654–8300.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, 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, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting will be to review and discuss the application of: Magnuson-Stevens Act (MSA) National Standard 4 [Section 301(a)(4) of MSA]; allocation of limited access privilege program shares so that no shareholder acquires an excessive share [Section 303A(c)(5)(D) of MSA]; and, the antitrust savings clause [Section 303A(c)(9) of MSA]. The Committee will also address the concept of one-size-fits-all and the use of cases-by-case approaches regarding determining excessive share thresholds and/or ceilings.

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 this meeting. 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 Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan at the Council office, (302) 674–2331 extension 18, at least 5 days prior to the meeting date.

Dated: April 21, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–8939 Filed 4–23–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XH41

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Multispecies (Groundfish) Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, May 13, 2008, at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

The Groundfish Oversight Committee will meet to continue development of Amendment 16 to the Northeast Multispecies Fishery Management Plan. Amendment 16 will adopt measures necessary to continue rebuilding of multispecies stocks. The Committee will focus its efforts on reviewing alternatives for effort controls designed to meet the mortality objectives of the amendment. Since stock status will not be known until later this year, the effort control alternatives will be designed to achieve changes in mortality identified in an earlier action. It is not known if these changes will be sufficient or unnecessary once stock status is known. The Committee will also develop options for recreational management measures, further develop annual catch limit and accountability measures for commercial and recreational groundfish fishing, and clarify sector policy issues. The Committee may develop recommendations for preferred alternatives for all management measures that are being considered. Recommendations from this committee will be forwarded to the Council for consideration.

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 this meeting. 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 Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: April 21, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–8938 Filed 4–23–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XH39

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species (CPS) advisory bodies will hold meetings, which are open to the public, on May 13–15, 2008. The primary purpose of the meetings is to review the current Pacific Mackerel Stock Assessment.

DATES: The Coastal Pelagic Species Management Team (CPSMT) and the Scientific and Statistical Committee's (SSC) CPS subcommittee will meet in a joint session on Tuesday, May 13, 2008, from 10 a.m. until business for the day is completed. The CPSMT will hold a work session on Wednesday, May 14, 2008, from 8:30 a.m. until business for the day is completed. The Coastal Pelagic Species Advisory Subpanel (CPSAS) will meet Thursday, May 15, 2008, from 8:30 a.m. until business for the day is completed.

ADDRESSES: All meetings will be held at National Marine Fisheries Service, Southwest Regional Office, Glenn M. Anderson Federal Office Building, Suite 4200, Large Conference Room, 501 West Ocean Boulevard, Long Beach, CA 90802; telephone: (562) 980–4000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The CPSMT and the SSC CPS subcommittee will review the current Pacific mackerel stock assessment. The CPSMT will also develop harvest guideline and seasonal structure recommendations for the 2008–09 Pacific mackerel fishery and review the 2008 CPS Stock Assessment and Fishery Evaluation (SAFE) document. The CPSAS will review information developed by the CPSMT about the current Pacific mackerel stock assessment and harvest guideline and seasonal structure recommendations for the 2008–09 fishery. The CPSMT and CPSAS will develop recommendations for Council consideration at its June 2008 meeting in Foster City, CA, and address other issues relating to CPS management, including, status and management of the 2008 Pacific sardine fishery, marine protected areas, research and data needs, and implementation of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act. No management actions will be decided by the CPSMT, the SSC CPS subcommittee, or the CPSAS.

Although non-emergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Advisory body 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 intent to take final action to address the emergency.

Special Accommodations

This meeting is 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: April 21, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–8936 Filed 4–23–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XH43

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.

SUMMARY: This notice advises the public that the Western Pacific Fishery Management Council (Council) will convene meetings of the Hawaii Archipelago Advisory Panel, the Hawaii Archipelago Plan Team and the Hawaii Archipelago Regional Ecosystem Advisory Committee in Honolulu, HI.

DATES: The Hawaii Archipelago Advisory Panel meeting will be held Tuesday, May 13, 2008. The Hawaii Archipelago Plan Team meeting will be held Wednesday, May 14 and Thursday, May 15, 2008. The Hawaii Archipelago Regional Ecosystem Advisory Committee meeting will be held Friday May 16, 2008. For the specific date, time, and agenda for each meeting, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings of the Hawaii Archipelago Advisory Panel and the Hawaii Archipelago Plan Team will be held at the Council office at 1164 Bishop Street, Suite 1400, Honolulu, HI 96813. The meeting of the Hawaii Archipelago Regional Ecosystem Advisory Committee will be held at the Pagoda Hotel 1525 Rycroft Street, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The date, time and agenda for each meeting are as follows:

Tuesday, May 13, 2008, 10 a.m. - 5 p.m.

Hawaii Archipelago Advisory Panel

1. Status Report on 2007 Advisory Panel Recommendations
2. Emerging Fishery Issues
3. Bottomfish Fisheries
   a. Main Hawaiian Islands Bottomfish Management Update
   b. Bottomfish Aquaculture
4. Pelagic Fisheries
   a. Hana Community Fish Aggregation Device
   b. Hawaii Longline Swordfish Management
   c. Non-longline Pelagic Fisheries Management
5. Other Fishery-Related Issues
   a. Barter, Trade and Subsistence Issues
   b. Marine Recreational Information Program
   c. Council five year research priorities
   d. Cooperative Research
6. Upcoming Council Fisheries Management Actions
   a. Main Hawaiian Island Bottomfish Risk Assessment
   b. Annual Catch Limits
   c. Community Development Program Options
7. Discussion and Action

Wednesday, May 14, 2008, 8:30 a.m. - 5 p.m.

Hawaii Archipelago Plan Team

1. Seabed Biodiversity and Ecosystem Models of the Australian Great Barrier Reef

2. Update on Main Hawaiian Islands Bottomfish Management Actions
3. Review of Draft Annual Report Modules
   a. Bottomfish
   b. Coral Reef Ecosystem
   c. Crustaceans
   d. Precious Corals
4. Discussion and Action

Thursday, May 15, 2008, 8:30 a.m. - 5 p.m.

Hawaii Archipelago Plan Team

5. Fisheries Research
   a. Council Five Year Research Priorities
   b. Cooperative Research
   c. Archipelagic Wide Research Needs
6. Upcoming Council Fisheries Management Actions
   MHI Bottomfish Risk Assessment
7. 2007 Magnuson-Stevens Reauthorization
   a. Marine Recreational Information Program
   b. Annual Catch Limits
8. Hawaii Archipelago Advisory Panel Report

9. Discussion and Action

Friday, May 16, 2008, 9 a.m. - 5 p.m.

Hawaii Archipelago Regional Ecosystem Advisory Committee (REAC)

1. Upcoming Council Fisheries Management Actions
2. Community-based Resource Management Partnerships
   a. Report from Federal REAC Members
   b. Report from State REAC Members
   c. Report from County REAC Members
3. Community Marine Management Forum

4. Discussion and Action

The order in which agenda items are addressed may change. Public comment periods will be provided throughout each agenda. The Advisory Panel, Plan Team and Regional Ecosystem Advisory Committee will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before these groups 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 Accommodations

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: April 21, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–8940 Filed 4–23–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant An Exclusive Patent License

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Part 404 of Title 37, code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Northeastern Electronics Company, Inc., a corporation of New York, having a place of business at 102 State Route 5 West, Elbridge, New York, 13060, an exclusive license in any right, title and interest the Air Force has in:

U.S. Patent No. 6,275,050, issued August 14, 2001, entitled ''Apparatus and Method to Detect Corrosion in Metal Junctions'' by Frank H. Born, John E. Dodge, William G. Duff, Laurence J. Reynolds, and Arlie G. Turner, all as co-inventors.

DATES: A license for this patent will be granted unless a written objection is received within fifteen (15) days from the date of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Written objection should be sent to: Air Force Research Laboratory, Office of the Staff Judge Advocate, AFRL/RIJ, 26 Electronic Parkway, Rome, New York 13441–4514. Telephone: (315) 330–2087; Facsimile (315) 330–7583.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–8887 Filed 4–23–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Announcement of IS–GPS–200, IS–GPS–705, IS–GPS–800; Interface Control Working Group (ICWG) Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Meeting notice.

SUMMARY: This notice informs the public that the Global Positioning Systems Wing will be hosting a technical working group meeting for document/s IS–GPS–200D (Navstar GPS Space Segment/Navigation User Interfaces), IS–GPS–705 (Navstar GPS Space Segment/User Segment L5 Interfaces), and IS GPS–800 (Navstar GPS Space Segment/User Segment L1C Interfaces). The meeting will address PIRN/IRN changes incorporated into the documents. The discussion will include addressing those comments submitted from the review of the IS–GPS–200, etc.

This meeting is open to the general public. In order to ensure adequate facilities, you are requested to register to attend the meeting no later than 2 weeks prior to the planned ICWG. Please send registration information to *thomas.davis.ctr@losangeles.af.mil* and provide your name, organization, telephone number, address, and country of citizenship. More information, including a preliminary agenda, Comments Resolution Matrixes (CRMs), and track changed documents, will be posted at: *http://gps.losangeles.af.mil/engineering/icwg.*

Please send all CRM comments to Thomas Davis by 9 May 2008.

DATES: 22 May 2008: IS–GPS–800. 23 May 2008: IS–GPS–200D, IS–GPS–705. 8 a.m.–4 p.m.

Location: Los Angeles, CA vicinity (exact location will be announced on the GPS Public Web site—see link above).

FOR FURTHER INFORMATION CONTACT: Thomas Davis, *thomas.davis@linquest.com,* 1–310–416–8440, or Captain Scott Cunningham *scott.cunningham@losangeles.af.mil,* 1–310–653–3771.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–8881 Filed 4–23–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information: Emergency Management for Higher Education Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184T.

DATES: *Applications Available:* April 24, 2008. *Deadline for Transmittal of Applications:* May 27, 2008. *Deadline for Intergovernmental Review:* July 23, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Emergency Management for Higher Education (EMHE) Grants support efforts by higher education institutions to develop, or review and improve, and fully integrate, campus-based all-hazards emergency management planning efforts within the framework of the four phases of emergency management [Prevention-Mitigation, Preparedness, Response, and Recovery].

Priority: We are establishing this priority for the FY 2008 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition in accordance with section 437(d)(1) of the General Education Provisions (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Develop, or Review and Improve, and Fully Integrate Campus-Based All-Hazards Emergency Management Planning Efforts for Higher Education Institutions.

A program funded under this absolute priority must use the framework of the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery) to:

(1) Develop, or review and improve, and fully integrate a campus-wide all-hazards emergency management plan that takes into account threats that may be unique to the campus;

(2) Train campus staff, faculty, and students in emergency management procedures;

(3) Ensure coordination of planning and communication across all relevant components, offices, and departments of the campus;

(4) Coordinate with local and State government emergency management efforts;

(5) Develop a written plan with emergency protocols that include the medical, mental health, communication, and transportation needs of persons with disabilities, temporary special needs of individuals, and other unique needs (including those arising from language barriers or cultural differences such as specific clothing expectations) of individuals;

(6) Develop or update a written plan that prepares the campus for infectious disease outbreaks with both short-term implications for planning (*e.g.,* outbreaks caused by methicillin-resistant *Staphylococcus aureus* (MRSA) or food-borne illnesses) and

long-term implications for planning (*e.g.*, pandemic influenza); and

(7) Develop or enhance a written plan for preventing violence on campus by assessing and addressing the mental health needs of students who may be at risk of causing campus violence by harming themselves or others.

Note: Information about the four phases of emergency management is available in the Department's *Practical Information on Crisis Planning Guide,* which is accessible on the Department's Web site at *http://www.ed.gov/admins/lead/safety/crisisplanning.html.*

Additional Requirements: All applicants must meet the following additional requirements.

Partner Agreements. To be considered for a grant award, an applicant must include in its application an agreement that details the higher education institution's procedures for coordination between the campus and: (1) A representative of the appropriate level of local or State government for the locality in which the campus is located (for example, the mayor, city manager, or county executive) and (2) a representative from a local or State emergency management coordinating body (for example, head of the local emergency planning council that would be involved in coordinating a large-scale emergency response effort in the campus community). The agreement must include a description of the partners' roles and responsibilities in supporting and strengthening emergency management plans for the campus as well as descriptions of the roles and responsibilities of the higher education institution in grant implementation and partner coordination. An authorized representative of the higher education institution and both of the partners identified in this paragraph must sign an assurance form acknowledging the agreement. If either of the two required partners is not present in an applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner.

Applications that fail to include the required agreement (or an explanation documenting why an agreement is not included as specified in the previous paragraph), including information on partners' roles and responsibilities and on their commitment to continuation and continuous improvement (with signatures and explanations for missing signatures as specified), will not be read.

Applicants submitting on behalf of multiple campuses must include partner agreements with required partner signatures for each participating campus.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the higher education institution.

Coordination with State or Local Homeland Security Plan. All emergency management plans must be coordinated with the Homeland Security Plan of the State or locality in which the applicant campus is located. All States submitted such a plan to the Department of Homeland Security (DHS) on January 30, 2004. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, an applicant must include in its application an assurance that the higher education institution will coordinate with, and follow, the requirements of its State or local Homeland Security Plan for emergency services and initiatives. This assurance must be signed by the applicant and submitted with the application.

Implementation of the National Incident Management System (NIMS). Each applicant must agree to implement its grant in a manner consistent with the implementation of the NIMS in its community. An applicant must include in its application an assurance that it has met, or will complete, all current NIMS requirements by the end of the grant period.

Because DHS' determination of NIMS requirements may change from year to year, an applicant must refer to the most recent list of NIMS requirements published by DHS when submitting its application. In any notice inviting applications, the Department will provide applicants with information necessary to access the most recent DHS list of NIMS requirements. Information about the FY 2007 NIMS requirements for tribal governments and local jurisdictions, including higher education institutions, may be found at: *http://www.fema.gov/pdf/emergency/nims/imp_mtrx_tribal.pdf.*

Note: A higher education institution's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first-responder capabilities held by the higher education institution and the local government. The relationship between any campus-based law enforcement or security department and plan must be considered in conjunction with the plan and capacity of local fire and rescue departments, emergency medical service providers, crisis center/hotlines, and law enforcement agencies that may be called to assist in a large-scale disaster. Participation of the higher education institution in the NIMS preparedness program of the local government is essential to ensure that first-responder services are delivered in a timely and effective manner. Additional information about NIMS implementation is available at: *http://www.fema.gov/emergency/nims/nims_compliance.shtm.*

Higher education institutions that have previously received Federal preparedness funding and are, therefore, already NIMS-compliant should indicate that in the assurance form.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. In the report language accompanying the 2008 Department of Education Appropriations Act, Congress indicated that funding recommended for school emergency preparedness activities be used for new grant awards to higher education institutions to develop and implement emergency management plans for preventing campus violence (including assessing and addressing the mental health needs of students) and for responding to threats and incidents of violence or natural disaster in a manner that ensures the safety of the campus community. (House Appropriations Committee Print explanatory statement regarding the Consolidated Appropriations Act, 2008 (H.R. 2764; Pub. L. 110–161), pg. 1582). The EMHE grant competition is the first grant competition for this program under 20 U.S.C. 7131 and, therefore, qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priority and other requirements under section 437(d)(1) of GEPA. This priority and other requirements will apply to the FY 2008 grant competition and any subsequent years in which we make awards from the list of unfunded applicants from this competition.

Program Authority: 20 U.S.C. 7131.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, 99, and 299.

Note: The regulations in 34 CRF part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $5,374,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards later in

FY 2008 and in FY 2009 and subsequent years from the list of unfunded applicants from this competition.

Estimated Range of Awards: $50,000–$500,000.

Estimated Average Size of Awards: $50,000 for small-sized institutions; $250,000 for medium-sized institutions; and $500,000 for large-sized institutions.

Estimated Number of Awards: 18.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* Higher education institutions and consortia thereof. For the purposes of this competition, the term ''higher education institutions'' includes those institutions described in sections 101(a), 101(b), and 102 of the Higher Education Act of 1965, as amended (HEA), except that institutions included in section 102 of the HEA are eligible only to the extent that they are located within the United States (including Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). A copy of the relevant provisions from the HEA will be included in the application package.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:*

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.184T.

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 listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: April 24, 2008.

Deadline for Transmittal of Applications: May 27, 2008.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (*Grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 23, 2008.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The EMHE Grants competition, CFDA Number 84.184T, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the EMHE Grants competition at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.184, not 84.184T).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the

Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department). The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date. *Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address: *By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184T), 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 84.184T), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184T), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the

Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this 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. You must also submit an interim report nine months after the award date. This report should provide the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* We have identified the following key Government Performance and Results Act of 1993 (GPRA) performance measure for assessing the effectiveness of the EMHE Grants program: The percentage of EMHE grantees that demonstrate a 50 percent increase at the end of the project period in the number of course completions by their higher education institution personnel in key National Incident Management System (NIMS) courses compared to the number of such courses completed at the start of the grant project period. This GPRA measure constitutes the Department's indicator of success for this program. Applicants for a grant under this program are advised to give careful consideration to this measure in designing their proposed project. Before beginning implementation of training connected to this grant, each grantee will be required to determine baseline data on the total number of these courses completed by personnel on its campus between April 2004 (when the courses first became available) and the project start date for their EMHE grant. Each applicant is strongly encouraged to include this information in its application if it is available. If it is not available during the application phase, each grantee will be required to collect and report baseline data in its interim report and both baseline and final progress with regard to this measure in its final report.

For the purposes of this measure, ''key NIMS courses'' are those identified by the Federal Emergency Management Agency (FEMA) in the Department of Homeland Security as requirements for NIMS compliance. To date these courses include the following: Incident Command System (ICS)–100 Introduction to ICS, ICS–200 ICS for Single Resources and Initial Action Incidents, ICS–300 Intermediate ICS, ICS–400 Advanced ICS, ICS–700 National Incident Management System: An Introduction, and ICS–800.B National Response Framework, An Introduction. ICS–100, ICS–200, ICS–700, and ICS–800.B courses are all available online as Independent Study (IS) courses offered through the FEMA's Emergency Management Institute (EMI) at: *http://training.fema.gov.* (It is not necessary that the key NIMS training requirements be met through a Federal source such as the on-campus resident courses or online distance learning courses offered by the EMI. The courses may also be taken through State, Tribal, and local emergency management training programs that offer equivalent, in-classroom training for completion.)

Note: Completion of course IS–100.SC Introduction to the Incident Command System, I–100, for Schools, constitutes completion of course ICS–100. This course was specifically designed to provide ICS training within a school-based context.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Tara Hill, U.S. Department of Education, 400 Maryland Ave., SW., room 3E340, Washington, DC 20202–6450. Telephone: (202) 708–9431 or by e-mail: *tara.hill@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: April 18, 2008.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E8–8954 Filed 4–23–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences

AGENCY: Department of Education, Institute of Education Sciences.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of the National Board for Education Sciences. The notice also describes the functions of the committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: May 21 and 22, 2008.

Time: May 21, 10 a.m. to 4:30 p.m.; May 22, 8:30 a.m. to 1 p.m.

ADDRESSES: Institute of Education Sciences Board Room, 80 F St., NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Norma Garza, Executive Director, National Board for Education Sciences, 555 New Jersey Ave., NW., Room 627 H, Washington, DC 20208; phone: (202) 219–2195; fax: (202) 219–1466; e-mail: *Norma.Garza@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute.

On Wednesday May 21, from 10:15 a.m. to 12:15 p.m., the Board will receive reports from the Director of IES and the commissioners of the IES centers on projects underway since January 2008. From 1:30 p.m. to 2:30 p.m., the Board will hear a presentation of its ongoing contract to evaluate the work of IES by the project manager, Steve Baldwin, of Synergy, Inc., after which the Board's Communication and Legislation committees will give their respective reports. The meeting will adjourn at 5:30 p.m.

On Thursday, May 22, the Board will convene at 8:30 a.m. Following a review of the prior day's activities, from 9:45 to 10:45 a.m., the Board will hear a panel discussion on the Family Educational Rights and Privacy Act (FERPA). After a break from 10:45 to 11 a.m., the FERPA panel will continue, followed by a Board discussion of the issues raised. This discussion will conclude at 12:30 p.m. The meeting will adjourn at 1 p.m.

A final agenda will be available from Norma Garza (see contact information above) on May 12. Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting devices, assistance listening devices, or materials in alternative format) should notify Norma Garza no later than May 12. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all committee proceedings and are available for public inspection at 555 New Jersey Ave., NW., Room 627 H, Washington, DC, 20208, from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Electronic Access to This Document: You may 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/fed-register/index.html.*

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: April 18, 2008.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. E8–8868 Filed 4–23–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–104–000]

Southern Natural Gas Company; Notice of Application

April 16, 2008.

Take notice that on April 3, 2008, Southern Natural Gas Company (Southern), Colonial Brookwood Center, 569 Brookwood Village, Suite 501, Birmingham, Alabama 35209, filed with the Federal Energy Regulatory Commission (Commission) an abbreviated application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's regulations for authorization to abandon by sale to Nexus Gas Holdings LLC (Nexus) and its successors, all of its facilities located to the west of it's Bienville Compressor Station which consist of certain transmission pipelines, a compressor station, meter stations, and related appurtenant facilities located in Panola and Shelby Counties, Texas, and DeSoto, Red River, and Bienville Parishes, Louisiana. Southern also requests a determination that, upon the closing of the sale, the facilities to be abandoned will be considered non-jurisdictional gathering facilities under section 1(b) of the NGA, or non-jurisdictional intrastate transmission facilities under section 2(16) of the Natural Gas Policy Act (NGPA). Southern states that the proposed abandonment will not affect the capacity of its pipeline system or the availability of gas supplies on its system. Southern's proposal and a detailed description of the facilities are fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application should be directed to John C. Griffin, Senior Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563 at (205) 325–7133.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the

requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: May 7, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8849 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–120–000]

Texas Eastern Transmission, LP; Notice of Application

April 17, 2008.

Take notice that on April 8, 2008, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, 77251, filed in Docket No. CP08–120–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations for permission and approval to abandon compressor station facilities and related appurtenances, located in Illinois, Indiana, and Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Texas Eastern proposes to abandon: (i) Compressor station facilities and related appurtenances located in Union County, Illinois, the Lick Compressor Station; (ii) compressor station facilities and related appurtenances located in Gibson County, Indiana, the Oakland City Compressor Station; and (iii) the electric compressor and related appurtenances at the compressor station in Gregg County, Texas, the Longview Compressor Station. Texas Eastern states that due to changes over the years in the operation of the Texas Eastern system, the Lick Creek and Oakland City Compressor Stations and the electric compressor at the Longview Compressor Station are outdated and are not required to satisfy current firm service obligations. Texas Eastern asserts that there will be no termination or reduction in firm service to any existing customers of Texas Eastern as a result of the proposed abandonment of these facilities.

Any questions regarding this application should be directed to Garth Johnson, General Manager, Manager, Certificates & Reporting, Texas Eastern Transmission, LP, Houston, Texas 77251–1642, at (713) 627–5415 or e-mail *gjohnson@spectraenergy.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 8, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8851 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 18, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP96–272–073.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits 49 Revised Sheet 66A et al. to FERC Gas Tariff, Fifth Revised Volume 1, effective April 18, 2008.

Filed Date: 04/17/2008.

Accession Number: 20080417–0203.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Docket Numbers: RP07–699–001.

Applicants: Wyoming Interstate Company, Ltd.

Description: Wyoming Interstate Company, Ltd. submits Eleventh Revised Sheet 83 et al. to FERC Gas Tariff, Second Revised Volume 2, to become effective 4/1/08.

Filed Date: 04/16/2008.

Accession Number: 20080417–0026.

Comment Date: 5 p.m. Eastern Time on Monday, April 28, 2008.

Docket Numbers: RP08–227–001.

Applicants: Guardian Pipeline, L.L.C.

Description: Guardian Pipeline, L.L.C. submits revised tariff sheets to implement two new services under its FERC Gas Tariff, Guardian proposed to offer an off-system storage service under Rate Schedule OSS and a load balancing service etc.

Filed Date: 04/14/2008.

Accession Number: 20080415–0248.

Comment Date: 5 p.m. Eastern Time on Monday, April 28, 2008.

Docket Numbers: RP08–316–000.

Applicants: Saltville Gas Storage Company L.L.C.

Description: Saltville Gas Storage Company, L.L.C. submits Third Revised Sheet 146 to FERC Gas Tariff, Original Volume 1, to become effective 5/16/08.

Filed Date: 04/16/2008.

Accession Number: 20080417–0025.

Comment Date: 5 p.m. Eastern Time on Monday, April 28, 2008.

Docket Numbers: RP08–317–000.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corporation submits Second Revised Sheet 489 to its FERC Gas Tariff, Second Revised Volume 1 to become effective 6/1/08.

Filed Date: 04/16/2008.

Accession Number: 20080417–0149.

Comment Date: 5 p.m. Eastern Time on Monday, April 28, 2008.

Docket Numbers: RP08–318–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Thirty-Fourth Revised Sheet 1 to FERC Gas Tariff, Second Revised Volume 1A, to be effective 5/18/08.

Filed Date: 04/17/2008.

Accession Number: 20080418–0216.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 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. E8–8870 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 14, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–67–000.

Applicants: LS Power Development, LLC, Luminus Management, LLC.

Description: LS Power Development, LLC and Luminus Management, LLC, Joint Application for Approval Under Section 203 of the Federal Power Act and Request for Expedited Review.

Filed Date: 04/08/2008.

Accession Number: 20080410–0086.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Docket Numbers: EC08–68–000.

Applicants: Centrica plc, Direct Energy Services, LLC, Great Plains Energy, Custom Energy Holdings, L.L.C., Strategic Energy, L.L.C.

Description: Joint Application for Centrica Plc *et al.* of the proposed transaction that will result in an indirect transfer of control of Strategic Energy, LLC *et al.*

Filed Date: 04/08/2008.

Accession Number: 20080410–0085.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–57–000.

Applicants: Wolf Ridge Wind, LLC.

Description: Notice of Self Certification of Exempt Wholesale Generator Status of Wolf Ridge Wind, LLC.

Filed Date: 04/08/2008.

Accession Number: 20080408–5010.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–4281–017; ER99–2161–008; ER99–3000–007; ER02–1572–005; ER02–1571–005; ER99–1115–012; ER99–1116–012; ER00–2810–006; ER99–4359–005; ER99–4358–005; ER99–2168–008; ER98–1127–012; ER07–649–002; ER99–2162–008; ER00–2807–006; ER00–2809–006; ER98–1796–011; ER07–1406–003; ER99–4355–005; ER99–4356–005; ER00–3160–007; ER99–4357–005; ER00–2808–007; ER00–2313–007; ER02–2032–005; ER02–1396–005; ER02–1412–005; ER08–666–001; ER00–3718–006; ER99–3637–006; ER07–486–003; ER99–1712–008; ER00–2808–007.

Applicants: NRG Power Marketing Inc.; Arthur Kill Power LLC; Astoria Gas Turbine Power LLC; Bayou Cove Peaking Power LLC; Big Cajun I Peaking Power LLC; Cabrillo Power I LLC; Cabrillo Power II LLC; Conemaugh Power LLC; DEVON POWER LLC; Connecticut Jet Power LLC; El Segundo Power, LLC; EL Segundo Power II LLC; Huntley Power LLC; Indian River Power LLC; Keystone Power LLC; Long Beach Generation LLC; Long Beach Peakers LLC; Louisiana Generating LLC; MIDDLETOWN POWER LLC; Montville Power LLC; NEO Freehold-Gen LLC; Norwalk Power LLC; Vienna Power LLC; NRG Energy Center Paxton LLC; NRG New Jersey Energy Sales LLC; NRG Rockford LLC; NRG Rockford II LLC; NRG Southaven LLC; NRG Sterlington Power LLC; OSWEGO HARBOR POWER LLC; Saguaro Power Company, a Ltd. Partnership; Somerset Power LLC; Vienna Power LLC.

Description: NRG MBR Entities submits notice of non-material change in status etc.

Filed Date: 04/07/2008.

Accession Number: 20080409–0077.

Comment Date: 5 p.m. Eastern Time on Monday, April 28, 2008.

Docket Numbers: ER00–1053–020.

Applicants: Maine Public Service Company.

Description: Maine Public Service Company submits the status of negotiations regarding Maine Public's June 15, 2007 informational filing setting forth the changes open access transmission tariff changes effective June 1, 2007 etc.

Filed Date: 04/07/2008.

Accession Number: 20080410–0033.

Comment Date: 5 p.m. Eastern Time on Monday, April 28, 2008.

Docket Numbers: ER02–1173–004; ER06–1265–001; ER02–1336–004.

Applicants: Front Range Power Company, LLC; Orlando Cogen Ltd LP; Vandolah Power Company, LLC.

Description: Front Range Power Company, LLC et al submits the attached modified rate schedule sheets and Appendix B listing, this filing constitutes a supplement to the December 20, 2004 filing.

Filed Date: 04/09/2008.

Accession Number: 20080410–0082.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 30, 2008.

Docket Numbers: ER08–129–002.

Applicants: Southern Operating Companies.

Description: Southern Companies submit clarification of record and compliance filing.

Filed Date: 04/09/2008.

Accession Number: 20080410–0158.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 30, 2008.

Docket Numbers: ER08–303–002; ER97–4587–007.

Applicants: Williams Gas Marketing, Inc., Williams Generation Company—Hazleton.

Description: Williams Gas Marketing, Inc. and Williams Generation Company—Hazelton's Notice of Change in Status.

Filed Date: 04/11/2008.

Accession Number: 20080411–5150.

Comment Date: 5 p.m. Eastern Time on Friday, May 02, 2008.

Docket Numbers: ER08–603–001.

Applicants: Conectiv Delmarva Generation, LLC.

Description: Conectiv Delmarva Generation, LLC submits an Amended Notice of Succession, Rate Schedule FERC 1.

Filed Date: 04/09/2008.

Accession Number: 20080410–0159.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 30, 2008.

Docket Numbers: ER08–703–001.

Applicants: Nevada Power Company.

Description: Revised page 2 of Attachment D of Nevada Power Company.

Filed Date: 04/08/2008.

Accession Number: 20080409–5021.

Comment Date: 5 p.m. Eastern Time on Friday, April 18, 2008.

Docket Numbers: ER08–803–000.

Applicants: ConAgra Trade Group, Inc.

Description: ConAgra Trade Group Inc. submits their notice of cancellation of its market-based rate schedule etc.

Filed Date: 04/08/2008.

Accession Number: 20080410–0076.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Docket Numbers: ER08–804–000.

Applicants: Virginia Electric and Power Company.

Description: Virginia Electric and Power Company dba Dominion Virginia Power submits a Notice of Cancellation and a revised cover sheet to cancel a Standard Large Generator Interconnection Agreement.

Filed Date: 04/08/2008.

Accession Number: 20080410–0077.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Docket Numbers: ER08–805–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits an executed Service Agreement for Network Integration Transmission Service with Associated Electric Coop, Inc.

Filed Date: 04/08/2008.

Accession Number: 20080410–0075.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Docket Numbers: ER08–806–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc. submits the First Revised Large Generator Agreement among Summit Wind, LLC, the Midwest ISO and Interstate Power Light and Light Company.

Filed Date: 04/04/2008.

Accession Number: 20080410–0078.

Comment Date: 5 p.m. Eastern Time on Friday, April 25, 2008.

Docket Numbers: ER08–807–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revisions to its Open Access Transmission Tariff.

Filed Date: 04/08/2008.

Accession Number: 20080410–0074.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Docket Numbers: ER08–808–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc. submits a Petition for Approval of Settlement Agreement.

Filed Date: 04/08/2008.

Accession Number: 20080410–0080.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Docket Numbers: ER08–809–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy Inc. submits Second Revised Sheet 10 and 1 to the Wholesale Electric Service Agreement dated 12/8/87 designated First Revised Rate Schedule FERC 179 with the City of Mindenmines, MI.

Filed Date: 04/08/2008.

Accession Number: 20080410–0081.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 29, 2008.

Docket Numbers: ER08–810–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits First Revised Service Agreement 67 for the provision of Long-Term Firm Point-to-Point Transmission Service with Black Hills Corp.

Filed Date: 04/09/2008.

Accession Number: 20080411–0040.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 30, 2008.

Docket Numbers: ER08–811–000.

Applicants: Atlantic City Electric Company.

Description: Atlantic City of Electric Company submits an executed transmission facilities agreement between it and Public Service Electric and Gas Company designated Original

Service Agreement 1877 under the FERC Electric Tariff etc.

Filed Date: 04/09/2008.

Accession Number: 20080411–0041.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 30, 2008.

Docket Numbers: ER08–812–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits the Meter Service Agreement for scheduling Coordinators with the Western Area Power Administration—Desert Southwest Region.

Filed Date: 04/09/2008.

Accession Number: 20080411–0042.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 30, 2008.

Docket Numbers: ER08–813–000.

Applicants: Otter Tail Power Company.

Description: Otter Tail Power Company submits an unexecuted service agreement with Langdon Wind, LLC to be effective 3/10/08.

Filed Date: 04/09/2008.

Accession Number: 20080411–0043.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 30, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–34–001.

Applicants: Detroit Edison Company.

Description: Supplemental Information in connection with its pending Application of Authorization of The Detroit Edison Company.

Filed Date: 04/11/2008.

Accession Number: 20080414–5023.

Comment Date: 5 p.m. Eastern Time on Friday, April 25, 2008.

Docket Numbers: ES08–35–001.

Applicants: New York State Electric and Gas Corporation.

Description: Revisions to New York State Electric and Gas Corporation's Application for Supplemental Authorization to Issue Securities.

Filed Date: 04/11/2008.

Accession Number: 20080411–5041.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ES08–37–001.

Applicants: Rochester Gas and Electric Corporation.

Description: Revisions to Rochester Gas and Electric Corporation's Application for Supplemental Authorization to Issue Securities.

Filed Date: 04/11/2008.

Accession Number: 20080411–5042.

Comment Date: 5 p.m. Eastern Time on Monday, April 21, 2008.

Docket Numbers: ES08–41–000.

Applicants: El Paso Electric Company.

Description: Application of El Paso Electric Company for Authorization Under Section 204 of the FPA for Transactions Related to Refunding and Reissuing Pollution Control Bonds and Request for Shortened Comment Period.

Filed Date: 04/04/2008.

Accession Number: 20080404–5072.

Comment Date: 5 p.m. Eastern Time on Friday, April 25, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–7–001.

Applicants: American Electric Power Service Corporation.

Description: Order No. 890 OATT 30-Day Compliance Filing of American Electric Power Service Corporation.

Filed Date: 04/09/2008.

Accession Number: 20080409–5099.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 30, 2008.

Docket Numbers: OA07–60–003.

Applicants: Idaho Power Company.

Description: Order No. 890 OATT Compliance Filing of Idaho Power Company Pursuant to March 19, 2008 Order.

Filed Date: 04/11/2008.

Accession Number: 20080411–5137.

Comment Date: 5 p.m. Eastern Time on Friday, May 02, 2008.

Docket Numbers: OA07–95–001.

Applicants: Sierra Pacific Resources Operating Company.

Description: Order No. 890 OATT Attachment C-Available Transfer Capability Compliance Filing of Sierra Pacific Resources Operating Companies.

Filed Date: 04/11/2008.

Accession Number: 20080411–5123.

Comment Date: 5 p.m. Eastern Time on Friday, May 02, 2008.

Docket Numbers: OA08–100–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Order No. 890 OATT Compliance Filing of Duke Energy Carolinas, LLC.

Filed Date: 04/11/2008.

Accession Number: 20080411–5125.

Comment Date: 5 p.m. Eastern Time on Friday, May 02, 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.

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Kimberly D. Bose,

Secretary.

[FR Doc. E8–8918 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG08–29–000; EG08–30–000; EG08–31–000; EG08–33–000; FC08–2–000]

Bicent (California) Malburg LLC; Kelson Energy III LLC; Lockport Energy Associates, L.P.; AES Hawaii, Inc.; Macquarie Group Limited; InfraVest Wind Power Co., Ltd.; Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

April 18, 2008.

Take notice that during the month of March 2008, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations, with the exception of the entity that is the subject of the filing in Docket No. FC08–2–000, whose status became effective in February 2008. 18 CFR 366.7(a).

Kimberly D. Bose,

Secretary.

[FR Doc. E8–9015 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR07–17–002]

Bridgeline Holdings, L.P.; Notice of Compliance Filing

April 16, 2008.

Take notice that on April 2, 2008, Bridgeline Holdings, L.P. filed a Report of Refunds in compliance with the Commission's letter order issued on January 28, 2008 in Docket Nos. PR07–17–000 and PR07–17–001.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time April 22, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8848 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS04–286–003]

Exelon Corporation; Notice of Filing

April 16, 2008.

Take notice that on November 26, 2007, Exelon Corporation, on behalf of its subsidiary, Commonwealth Energy Company, filed additional information in response to the Commission's October 26, 2007 Order in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 24, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8847 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–370–002]

Missouri River Energy Services; Notice of Filing

April 18, 2008.

Take notice that on April 14, 2008, Missouri River Energy Services (MRES), submitted for filing additional information regarding revisions to the Midwest ISO open access transmission tariff that would establish an Attachment O transmission rate formula to its December 20, 2007 filing. MRES and Western Minnesota Municipal Power Agency (Western Minnesota) are also requesting for a declaratory order permitting MRES and Western Minnesota to combine their financial information for Attachment O.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and

interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–9016 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC08–55–000]

Southeast Chicago Energy Project, LLC; Notice of Filing

April 17, 2008.

Take notice that on April 15, 2008 Southeast Chicago Energy Project, LLC submitted a request for waiver of the FERC Form Nos. 1 and 3–Q under sections 141.1 and 141.4 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 16, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8852 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

April 18, 2008.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date received	Presenter or requester
Prohibited:		
ER08–538–000	4–9–08	Tim Healy.
Exempt:		
1. CP07–208–000	4–4–08	Hon. Michael R. Turner.
2. EL08–39–000	4–3–08	Hon. Maurice D. Hinchey, Hon. Hillary Rodham Clinton, Hon. Michael A. Arcuri, Hon. John J. Hall.
3. EL08–39–000	4–9–08	Hon. Charles E. Schumer.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–9014 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13036–001]

BPUS Generation Development, LLC; Notice of Surrender of Preliminary Permit

April 17, 2008.

Take notice that BPUS Generation Development, LLC, permittee for the proposed Mount Morris Dam Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on February 21, 2008, and would have expired on January 31, 2011.[1] The project would have been located on the Genesee River in Livingston County, New York.

The permittee filed the request on April 11, 2008, and the preliminary permit for Project No. 13036 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–8850 Filed 4–23–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8362–5]

Access to Confidential Business Information by Solutions by Design II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Solutions by Design II (SBD) of Vienna, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than May 1, 2008.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Scott Sherlock, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564-8257; fax number: (202) 564-8251; e-mail address: *Scott Sherlock@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. All documents in the docket are listed in the docket's index available at *http://www.regulations.gov*. 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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

Under Contract Number EP-W-08-004, contractor SBD of 8614 Westwood Center Drive, Suite 100, Vienna, VA will assist the Office of Pollution Prevention and Toxics (OPPT) in developing the Premanufacture Notice (PMN) Lotus Notes Work Flow Application for the New Chemicals Program and PMN Review Process. Once the Application is completed, SBD will also assist in the continued operation and maintenance of the system.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract Number EP-W-08-004, SBD will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. SBD personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide SBD access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters.

SBD will be authorized access to TSCA CBI at EPA Headquarters under the EPA *TSCA CBI Protection Manual*.

Access to TSCA data, including CBI, will continue until October 31, 2009. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

SBD personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

[1] "True up" is to fit, place or shape accurately. See *Webster's NewWorld Dictionary,* Second College Edition. New York: Simon & Schuster, 1980.

List of Subjects

Environmental Protection, Confidential Business Information.

Dated: April 17, 2008.

Brion Cook,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–8995 Filed 4–23–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2005–0530; FRL–8557–9]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Reference and Equivalent Method Determination (Renewal); EPA ICR No. 0559.11 OMB Control No. 2080–0005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 23, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2005–0530, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: Office of Research and Development (ORD) Docket, *ord.docket@epa.gov.*
- Fax: 202–566–1749.
- Mail: ORD Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies.
- Hand Delivery: Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2005–0530. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Robert W. Vanderpool, U.S. Environmental Protection Agency, Human Exposure and Atmospheric Sciences Division, Process Modeling Research Branch, Mail Drop D205–03, Research Triangle Park, NC 27711; telephone number: 919–541–7877; facsimile number: 919–541–1153; e-mail: *Vanderpool.Robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–ORD–2005–0530, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Research and Development is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

Affected Entities: Entities potentially affected by this action are primarily manufacturers and vendors of ambient air quality monitoring instruments that are used by state and local air quality monitoring agencies in their federally required air surveillance monitoring networks, and agents acting for such instrument manufacturers or vendors. Other entities potentially affected may include state or local air monitoring agencies, other users of ambient air quality monitoring instruments, or any other applicant for a reference or an equivalent method determination.

Title: Application for Reference and Equivalent Method Determination (Renewal).

ICR Numbers: EPA ICR No. 0559.11; OMB Control No. 2080–0005.

ICR Status: This ICR is currently scheduled to expire on May 31, 2008. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: To determine compliance with the NAAQS, State air monitoring agencies are required to use, in their air quality monitoring networks, air monitoring methods that have been formally designated by the EPA as either reference or equivalent methods under EPA regulations at 40 CFR Part 53. A manufacturer or seller of an air monitoring method (e.g. an air monitoring sampler or analyzer) that seeks to obtain such EPA designation of one of its products must carry out prescribed tests of the method. The test results and other information must then be submitted to the EPA in the form of an application for a reference or equivalent method determination in accordance with 40 CFR Part 53. The EPA uses this information, under the provisions of Part 53, to determine whether the particular method should be designated as either a reference or equivalent method. After a method is designated, the applicant must also maintain records of the names and mailing addresses of all ultimate purchasers of all analyzers or samplers sold as designated methods under the method designation. If the method designated is a method for fine particulate matter ($PM_{2.5}$) and coarse particulate matter ($PM_{10-2.5}$), the applicant must also submit a checklist signed by an ISO-certified auditor to indicate that the samplers or analyzers sold as part of the designated method are manufactured in an ISO 9001-registered facility. Also, an applicant must submit a minor application to seek approval for any proposed modifications to previously designated methods.

A response to this collection of information is voluntary, but it is required to obtain the benefit of EPA designation under 40 CFR Part 53. Submission of some information that is claimed by the applicant to be confidential business information may be necessary to make a reference or equivalent method determination. The confidentiality of any submitted information identified as confidential business information by the applicant will be protected in full accordance with 40 CFR 53.15 and all applicable provisions of 40 CFR Part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 341 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 22.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 7,492.

Estimated total annual costs: $681,630. This includes an estimated burden cost of $546,248 and an estimated cost of $135,382 for capital investment or maintenance and operational costs.

Are There Changes in the Estimates From the Last Approval?

There is an increase of 2,774 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's estimate that an average of 1.33 additional applications for reference or equivalent method determinations, and an average of 1.67 additional minor applications for approval of modifications, will be received annually due to the promulgation of regulation changes in 2006. It is estimated that there will be a corresponding increase in total respondent costs of $249,601 for these additional applications and an increase in $5,058 for these additional minor modifications.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Dated: April 17, 2008.

Jewel Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E8–8965 Filed 4–23–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0143; FRL–8359–2]

Water Quality & Pesticide Disposal; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG) Working Committee on Water Quality and Pesticide Disposal (WQ & PD) will hold a 2–day meeting, beginning on May 5,

2008 and ending May 6, 2008. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, May 5, 2008 from 8:30 a.m. to 5 p.m. and 8:30 a.m. to 12 noon on Tuesday, May 6, 2008.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA, One Potomac Yard (South Bldg.), 2777 Crystal Drive, Arlington, VA, 4th Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division, (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford, DE 19963; telephone number: (302) 422–8152; fax (302) 422–2435; e-mail address: *''grier stayton'' <aapco-sfireg@comcast.net>*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2008–0143. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

1. State Updates/Issues.

2. Model Assessment for Selection of Reduced Risk Pesticides.

3. OPP EFED Assignment of Ground Water Statements.

4. Surface Water Benchmarks Updates.

5. OPP EFED Tools: Estimating Pesticide Concentrations in Water.

6. Surface Water Pesticide Monitoring Priorities in California.

7. Pesticide Concentrations in Urban Low Flow Streams.

8. Chemigation Label Referral.

9. POINTS Performance Measures Reporting Tool.

10. Pesticide Regulatory Education Program (PREP): Planning for Water PREP.

11. SFIREG WQ and PD Committee Scope & Possible Name Change.

12. Triggers for State Review of New a.i.s.

13. Draft Atrazine Criteria and Implementation Plans.

14. Safe Drinking Water Act: Contaminant Candidate List & Pesticides.

15. Water Quality Exchange (WQX) and EPA WQ Data Management.

16. EPA Update/Briefing.

a. Office of Pesticide Programs Update.

b. Office of Enforcement Compliance Assurance Update.

List of Subjects

Environmental protection.

Dated: April 9, 2008.

William R. Diamond,

Director, Field External Affairs Division, Office of Pesticide Programs.

[FR Doc. E8–8999 Filed 4–23–08; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 17, 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, 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 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 June 23, 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: You 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, send them to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Jerry Cowden at (202) 418–0447 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1080.

Title: Collections for the Prevention or Elimination of Interference and for the Reconfiguration of the 800-MHz Band.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; and/or State, local or tribal governments.

Number of Respondents: 2,420 respondents; 6,269 responses.

Estimated Time per Response: 4.5104 hours (range of 30 minutes to 10 hours).

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 28,276 hours.

Total Annual Cost: $62,400.

Privacy Impact Assessment: No impact.

Nature and Extent of Confidentiality: The Commission will work with respondents to ensure that their concerns regarding the confidentiality of any proprietary or public safety-sensitive information are resolved in a manner consistent with the Commission's rules. See 47 CFR 0.459.

Needs and Uses: The information sought will assist 800-MHz licensees in preventing or resolving interference and enable the Commission to implement its rebanding program. Under that program, certain licensees are being relocated to new frequencies in the 800-MHz band, with all rebanding costs to be paid by Sprint Nextel Corporation (Sprint). The Commission's overarching objective in this proceeding is to eliminate interference to public safety communications. The Commission's orders provided for the 800-MHz licensees in non-border areas to complete rebanding by June 26, 2008. This collection is being revised to incorporate the waiver request information collection previously approved under OMB control number 3060–1114.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–8790 Filed 4–23–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 18, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). 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. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB 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 that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before June 23, 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: Submit your comments by e-mail to *PRA@fcc.gov.* Include in the e-mail the OMB control number of the collection. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) or to obtain a copy of the collection send an e-mail to *PRA@fcc.gov* and include the collection's OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below, or call [insert name and telephone number of appropriate PERM PRA analyst].

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1064.

Title: Regulatory Fee Assessment True-Ups.

Form Number: N/A.

Type of Review: Extension without change of a currently approved collection.

Respondents: Businesses or other for-profit.

Number of Respondents and Responses: 1,650 respondents; 1,650 responses.

Estimated Time per Response: 15 minutes (0.25 hours).

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 413 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: Section 9 of the Communications Act of 1934, as amended, 47 CFR Section 9, mandates that the Commission collect annual regulatory fees from its regulatees. To facilitate this effort, the Commission publishes various Public Notices and Fact Sheets each year that (1) announce when fees payments are due; (2) provide the current schedule of fee amounts for all service categories; and (3) provide guidance for making fee payments to the Commission.

Beginning in Fiscal Year (FY) 2004, the Commission now mails fee assessment notifications to cable television operators, broadcast licensees and commercial mobile radio service (CMRS) licensees on an annual basis. With these fee assessment notifications, we also provide regulatees with a ''true-up'' [1] opportunity to contact the FCC to update or otherwise correct their assessed fee amounts well before the actual due date for payment of regulatory fees. Providing a ''true-up'' opportunity is necessary because the data sources that were used to generate the fee assessments may not have complete accuracy. The Commission offers several ways for regulatees to ''true-up'' their assessed fee amount. Regulatees may call the Commission's Financial Operations Help Desk. They may return their amended assessment notification or otherwise send written correspondence to a designated Commission mailing address. In addition, cable television operators and broadcast licensees may use a Commission-authorized Web site to key-in corrections to their assessment information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–8941 Filed 4–23–08; 8:45 am]

BILLING CODE 6712–01–P

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[1] ''True up'' is to fit, place or shape accurately. See *Webster's NewWorld Dictionary,* Second College Edition. New York: Simon & Schuster, 1980.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0263]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Requirements for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (OMB Control No. 0920–0263)—Extension—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to continue its data collection, ''Requirements for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States'', for another three years. There are no revisions proposed to the currently approved information collection request.

A registered importer must request a special permit to import Cynomolgus, African Green, or Rhesus monkeys. To receive a special permit to import nonhuman primates, the importer must submit a written plan to the Director of CDC which specifies steps that will be taken to prevent exposure of persons and animals during the entire importation and quarantine process for the arriving nonhuman primates.

Under the special permit arrangement, registered importers must submit a plan to CDC for importation and quarantine if they wish to import the specific monkeys covered. The plan must address disease prevention procedures to be carried out in every step of the chain of custody of such monkeys, from embarkation in the country of origin to release from quarantine. Information such as species, origin and intended use for monkeys, transit information, isolation and quarantine procedures, and procedures for testing of quarantined animals is necessary for CDC to make public health decisions. This information enables CDC to evaluate compliance with the standards and to determine whether the measures being taken are adequate to prevent exposure of persons and animals during importation. CDC will monitor at least 2 shipments to be assured that the provisions of a special permit plan are being followed by a new permit holder. CDC will assure that adequate disease control practices are being used by new permit holders before the special permit is extended to cover the receipt of additional shipments under the same plan for a period of 180 days, and may be renewed upon request. This extension eliminates the burden on importers to repeatedly report identical information, requiring submission only of specific shipment itineraries and information on changes to the plan which require approval.

Respondents are commercial or not-for-profit importers of nonhuman primates. These businesses and organizations apply for limited and/or extended permits to import these nonhuman primates. The burden represents full disclosure of information and itinerary/change information, respectively. There are no costs to respondents except for their time to complete the requisition process. The annualized burden for this data collection is 20 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Businesses (limited permit)	2	5	30/60
Businesses (extended permit)	3	5	10/60
Organizations (extended permit)	15	5	10/60

Dated: April 18, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–8888 Filed 4–23–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–08–0337]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Blood Lead Surveillance System (OMB No. 0920–0337)—Extension—National Center for Environmental Health (NCEH), Coordinating Center for Environmental Health and Injury Prevention (CCEHIP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for Environmental Health requests an extension for data collection through the National Blood Lead Surveillance System to continue its effort to collect information related to lead exposure among children and adults. The purpose of this project is to support Childhood Lead Surveillance Systems and the Adult Blood Lead Epidemiology and Surveillance Program (ABLES) at the state and national levels. The objectives for continuing data collection with the use of these systems are three fold. First, we would like to use surveillance data

to estimate the extent of elevated blood-lead levels (BLLs) among children less than 6 years old. This is important because it will allow us to systematically track the management and follow-up of those children found to be poisoned with lead.

Our next objective for the continued use of this system is to examine potential sources of lead exposure. Although we've been successful in eliminating atmospheric lead with the use of unleaded gasoline and have continued to make strides in the elimination of household sources of lead commonly found in paint and dust, recent events have highlighted other potentially hidden sources of lead. This system will allow us to track the burden of such hidden sources and will help us eliminate such threats with the establishment of laws aimed at preventing the importation of such goods into our nation. The establishment of such laws will of course be a joint effort between several federal agencies; however, this surveillance system will help facilitate our efforts.

The final objective of this system is to facilitate the allocation of resources for lead poison prevention activities. The allocation of federal resources to State surveillance systems are based on reports of blood-lead tests from laboratories. Ideally, laboratories report results of all lead tests to the state health department. State health departments then send reports to CDC using de-identified data. It is from these reports that CDC is able to determine funding levels.

The use of both Childhood Lead Surveillance System and the ABLES Program will allow us to systematically track pockets of exposure to lead. It will also allow us to fully understand exposure potential and ways in which to prevent future sources of lead poisoning. Both systems are invaluable and will no doubt help us as we continue our stride in the elimination of lead poisoning in our nation.

There is no cost to respondents other than their time. The total estimated annualized burden hours are 656.

ESTIMATED ANNUALIZED BURDEN

Respondents	Number of respondents	Number of response per respondent	Average burden per response (in hrs.)	Total burden hours
State and Local Health Departments for Child Surveillance	42	4	2	336
State and Local Health Departments for Adult Surveillance	40	4	2	320
Total				656

Dated: April 18, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–8915 Filed 4–23–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0180]

Draft Guidance for Industry on Developing Coronary Drug Eluting Stents; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop entitled ''Coronary Drug-Eluting Stent (DES) Guidance Document Workshop.'' FDA is cosponsoring the workshop with the Advanced Medical Technology Association (AdvaMed). The purpose of the workshop is to discuss the draft guidance entitled ''Coronary Drug-Eluting Stents: Nonclinical and Clinical Studies'' announced in the **Federal Register** of March 27, 2008, and its companion document entitled ''Coronary Drug-Eluting Stents-Nonclinical and Clinical Studies (Companion Document)'' (the Companion Document). The workshop intends to solicit additional comments on the issues and questions presented in the draft guidance during the open comment period.

DATES: The public workshop will be held on April 29, 2008, from 8 a.m. to 6 p.m. Participants are encouraged to arrive early to ensure time for parking, security screening, and registration before the meeting. Security screening will begin at 7 a.m., and registration will begin at 7:30 a.m. Please preregister by April 22, 2008, according to the instructions in section I.C of this document.

ADDRESSES: The public conference will be held at the Food and Drug Administration, White Oak Campus, Bldg. 2, located at 10903 New Hampshire Ave., Silver Spring, MD 20993.

FOR FURTHER INFORMATION CONTACT:

Ashley Boam, Center for Devices and Radiological Health, 9200 Corporate Blvd. (HFZ–400), Rockville, MD 20850, 240–276–3983 *ashley.boam@fda.hhs.gov* or

Elizabeth Hillebrenner, Center for Devices and Radiological Health, 9200 Corporate Blvd. (HFZ–450), Rockville, MD, 20850, 240–276–4222, *elizabeth.hillebrenner@fda.hhs.gov*

SUPPLEMENTARY INFORMATION:

I. The Public Workshop

A. Why Are We Holding This Public Workshop?

The purpose of the workshop is to discuss the draft guidance announced in the **Federal Register** of March 27, 2008 (73 FR 16311), and any issues that it may raise, and to solicit additional input on the issues and questions presented in this draft guidance. In addition, the purpose of this workshop is to discuss the Companion Document.

B. What Are the Topics We Intend To Address at the Workshop?

We hope to discuss a large number of issues at the workshop, including, but not limited to:

- How to characterize the drug substance, including chemistry, nonclinical systemic and local tissue pharmacology and toxicology, and how to evaluate potential for and consequences of systemic clinical exposure.
- How to characterize the drug-device combination product, including the chemical/physical/mechanical properties of the DES, the nonclinical local vascular and regional myocardial toxicology, and the clinical performance of the drug-stent combination.
- Regulatory considerations that are unique to DES combination products.

• Other issues and questions raised by the workshop attendees or others.

C. Is There a Fee and How Do I Register for the Workshop?

There is a modest fee to attend the workshop to defray the costs of meals provided and other expenses. The fee for the meeting for registrants from industry is $125, and the fee for government registrants is $75. Fees will be waived for invited speakers and panelists. The registration process will be handled by AdvaMed, which has extensive experience in planning, executing, and organizing educational meetings. Register online at *www.AdvaMed.org.* Although the facility is spacious, registration will be on a first-come, first-served basis. If you need special accommodations because of a disability, please contact Elizabeth Hillebrenner at least 7 days before the workshop.

D. Where Can I Find Out More About This Public Workshop?

Background information on the workshop, registration information, the agenda, information about lodging, and other relevant information will be posted, as it becomes available, on the Internet at: *www.AdvaMed.org* and *http://www.fda.gov/cdrh/dsma/workshop.html*.

II. Electronic Access

Persons with access to the Internet may obtain both the draft guidance document entitled ''Coronary Drug-Eluting Stents: Nonclinical and Clinical Studies''and the Companion Document at: *http://www.fda.gov/cdrh/ode/guidance/6255.pdf*.

Dated: April 18, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–8853 Filed 4–23–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Postponement of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is postponing the meeting of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee scheduled for May 16, 2008. The meeting was announced in the **Federal Register** of March 27, 2008 (73 FR 16315). FDA's Center for Devices and Radiological Health will further evaluate data relevant to the topic. A future meeting date will be announced in the **Federal Register**.

Contact Person: Michael Bailey, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4100, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512524. Please call the Information Line for up-to-date information on this meeting.

Dated: April 17, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–8845 Filed 4–23–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Report on the Performance of Drug and Biologics Firms in Conducting Postmarketing Commitment Studies; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is required, under the Food and Drug Administration Modernization Act of 1997 (Modernization Act), to report annually in the **Federal Register** on the status of postmarketing study commitments made by applicants of approved drug and biological products. This is the agency's report on the status of the studies applicants have agreed to or are required to conduct.

FOR FURTHER INFORMATION CONTACT: Cathryn C. Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6464, Silver Spring, MD 20993–0002, 301–796–0700; or

Robert Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1400 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

Section 130(a) of the Modernization Act (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding a new provision requiring reports of certain postmarketing studies (section 506B of the act (21 U.S.C. 356b)) for human drug and biological products. Section 506B of the act provides FDA with additional authority to monitor the progress of a postmarketing study commitment that an applicant has been required or has agreed to conduct by requiring the applicant to submit a report annually providing information on the status of the postmarketing study commitment. This report must also include reasons, if any, for failure to complete the commitment. On December 1, 1999 (64 FR 67207), FDA published a proposed rule providing a framework for the content and format of the annual progress report. The proposed rule also clarified the scope of the reporting requirement and the timing for submission of the annual progress reports. The final rule, published on October 30, 2000 (65 FR 64607), modified annual report requirements for new drug applications (NDAs) and abbreviated new drug applications (ANDAs) by revising § 314.81(b)(2)(vii) (21 CFR 314.81(b)(2)(vii)). The rule also created a new annual reporting requirement for biologics license applications (BLAs) by establishing § 601.70 (21 CFR 601.70). These regulations became effective on April 30, 2001. The regulations apply only to human drug and biological products. They do not apply to animal drug or to biological products that also meet the definition of a medical device.

On September 27, 2007, the President signed Public Law 110–85, the Food and Drug Administration Amendments Act of 2007 (FDAAA). Section 901, in Title IX of FDAAA, creates a new section 505(o) of the act authorizing FDA to require certain studies and clinical trials for prescription drugs and biological products approved under section 505 of the act or section 351 of the Public Health Service Act. This new authority became effective on March 25, 2008. FDA is considering how this new authority will be integrated with postmarketing commitments. FDA expects that next year's report will reflect this integration.

Sections 314.81(b)(2)(vii) and 601.70 apply to postmarketing commitments made on or before enactment of the Modernization Act (November 21, 1997) as well as those made after that date. Sections 314.81(b)(2)(vii) and 601.70 require applicants of approved drug and

biological products to submit annually a report on the status of each clinical safety, clinical efficacy, clinical pharmacology, and nonclinical toxicology study that is required by FDA (e.g., accelerated approval clinical benefit studies) or that they have committed to conduct either at the time of approval or after approval of their NDA, ANDA, or BLA. The status of other types of postmarketing commitments (e.g., those concerning chemistry, manufacturing, production controls, and studies conducted on an applicant's own initiative) are not required to be reported under §§ 314.81(b)(2)(vii) and 601.70 and are not addressed in this report. It should be noted, however, that applicants are required to report to FDA on these commitments made for NDAs and ANDAs under § 314.81(b)(2)(viii).

According to the regulations, once a postmarketing study commitment has been made, an applicant must report on the progress of the commitment on the anniversary of the product's approval until the postmarketing study commitment is completed or terminated and FDA determines that the postmarketing study commitment has been fulfilled or that the postmarketing study commitment is either no longer feasible or would no longer provide useful information. The annual progress report must include a description of the postmarketing study commitment, a schedule for completing the study commitment, and a characterization of the current status of the study commitment. The report must also provide an explanation of the postmarketing study commitment's status by describing briefly the postmarketing study commitment's progress. A postmarketing study commitment schedule is expected to include the actual or projected dates for the following: (1) Submission of the study protocol to FDA, (2) completion of subject accrual or initiation of an animal study, (3) completion of the study, and (4) submission of the final study report to FDA. The postmarketing study commitment status must be described in the annual report according to the following definitions:

- Pending: The study has not been initiated (i.e., no subjects have been enrolled or animals dosed), but does not meet the criterion for delayed (i.e., the original projected date for initiation of subject accrual or initiation of animal dosing has not passed);
- Ongoing: The study is proceeding according to or ahead of the original schedule;
- Delayed: The study is behind the original schedule;
- Terminated: The study was ended before completion, but a final study report has not been submitted to FDA; or
- Submitted: The study has been completed or terminated, and a final study report has been submitted to FDA.

Databases containing information on postmarketing study commitments are maintained at the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). Information in this report covers any postmarketing study commitment that was made, in writing, at the time of approval or after approval of an application or a supplement to an application, including those required (e.g., to demonstrate clinical benefit of a product following accelerated approval) and those agreed to with the applicant. Information summarized in this report includes: (1) The number of applicants with open (uncompleted) postmarketing commitments, (2) the number of open postmarketing commitments, (3) the status of open postmarketing commitments as reported in § 314.81(b)(2)(vii) or § 601.70 annual reports, (4) the status of concluded postmarketing studies as determined by FDA, and (5) the number of applications with open postmarketing commitments for which applicants did not submit an annual report within 60 days of the anniversary date of U.S. approval.

Additional information about postmarketing study commitments made by applicants to CDER and CBER is provided on FDA's Web site at *http://www.fda.gov/cder/pmc*. Like this notice, the site does not list postmarketing study commitments containing proprietary information. It is FDA policy not to post information on the Web site until it has been reviewed for accuracy. The numbers published in this notice cannot be compared with the numbers resulting from searches of the Web site. This notice incorporates totals for all postmarketing study commitments in FDA databases, including those undergoing review for accuracy. The report in this notice will be updated annually while the Web site is updated quarterly (in January, April, July, and October).

II. Summary of Information From Postmarketing Study Progress Reports

This report summarizes the status of postmarketing commitments as of September 30, 2007. If a commitment did not have a schedule or a postmarketing progress report was not received, the commitment is categorized according to the most recent information available to the agency.

Data in table 1 are numerical summaries generated from FDA databases. The data are broken out according to application type (NDAs/ANDAs or BLAs).

TABLE 1.—SUMMARY OF POSTMARKETING STUDY COMMITMENTS (NUMBERS AS OF SEPTEMBER 30, 2007)

	NDAs/ANDAs (% of Total)	BLAs[1] (% of Total)
Applicants with open postmarketing commitments	136	54
Number of open postmarketing commitments	1,281	401
Status of open postmarketing commitments		
• Pending	911 (71%)	133 (33%)
Postmarketing commitment created within the last year (FY07)	165 (18%)	41 (31%)
Postmarketing commitment created within the past 2 years (FY06 and FY07)	361 (40%)	99 (74%)
Postmarketing commitment created within the past 3 years (FY05, FY06, and FY07)	489 (54%)	111 (83%)
• Ongoing	173 (14%)	98 (24%)
• Delayed	39 (3%)	86 (22%)

TABLE 1.—SUMMARY OF POSTMARKETING STUDY COMMITMENTS (NUMBERS AS OF SEPTEMBER 30, 2007)—Continued

	NDAs/ANDAs (% of Total)	BLAs[1] (% of Total)
• Terminated	1 (0.1%)	3 (1%)
• Submitted	157 (12%)	81 (20%)
Concluded studies (October 1, 2006—September 30, 2007)	133	26
• Commitment met	101 (76%)	21 (81%)
• Commitment not met	1 (<1%)	0
• Study no longer needed or feasible	31 (23%)	5 (19%)
Applications with open postmarketing commitments with annual reports due, but not submitted within 60 days of the anniversary date of U.S. approval	115 (37%)[2]	41 (51%)

[1] On October 1, 2003, FDA completed a consolidation of certain products formerly regulated by CBER into CDER. The previous association of BLA reviews only with CBER is no longer valid; BLAs are now received by both CBER and CDER. Fiscal year statistics for CDER BLA postmarketing study commitments will continue to be counted under BLA totals in this table.

[2] Note that this statistic counts all annual reports submitted more than 60 days after the anniversary date of U.S. approval as overdue, including reports that may have been submitted on a modified reporting schedule in accordance with prior FDA agreement. Of the applications categorized as having overdue annual reports using this definition, annual reports were subsequently submitted in FY06 for 115/115 (100 percent) of NDAs/ANDAs and 20/41 (49 percent) of BLAs.

Dated: April 15, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–9007 Filed 4–23–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[CFDA Number 93.224; HRSA–09–095, HRSA–09–096, HRSA–09–097, and HRSA–09–098]

Amendment to the Fiscal Year 2009 Service Area Competition—New and Competing Continuation Funding

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Change in application deadline and amendment of the available service areas.

SUMMARY: HRSA is announcing the reissuance of Fiscal Year 2009 Service Area Competition—New and Competing Continuation Funding (HRSA Announcement Numbers HRSA–09–095, HRSA–09–096, HRSA–09–097, and HRSA–09–098). The HRSA Electronic Handbook (EHB) application deadline for project periods beginning in November and December 2008 has been changed and the list of available service areas has been updated.

The new EHB application deadline for HRSA–09–095 is May 9, 2008. (The grants.gov application deadline of April 7, 2008 remains the same.) All other requirements of HRSA–09–095 remain the same. Please see the chart on pages 6 and 7 of the guidance for a complete listing of all application deadlines.

In addition, corrections to two service areas listed in the Service Area Competition guidance have been made. In Appendix F of the guidance, Bismarck, ND, is *incorrectly* listed as an available service area in fiscal year (FY) 2009. The correct service area that is currently available in FY 2009 is Beulah, ND. Also, Clay, WV, is *incorrectly* listed as an available service area in FY 2009. The correct service area that is currently available in FY 2009 is Blacksville, WV. Bismarck, ND and Clay, WV, are not available service areas for the FY 2009 Service Area Competition. For a complete listing of all available service areas for the FY 2009 Service Area Competition funding opportunity, please see Appendix F of the guidance.

DATES: The effective date of this amended Agency guidance is April 24, 2008.

Background: HRSA administers the Health Center Program, which supports more than 4,000 health care delivery sites, including community health centers, migrant health centers, health care for the homeless centers, and public housing primary care centers. Health centers serve clients that are primarily low-income and minorities, and deliver comprehensive, culturally competent, quality primary health care services to patients regardless of their ability to pay. Charges for health care services are set according to income.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, please contact Nicole Amado in the Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, at 301–594–4300 or *Nicole.Amado@hrsa.hhs.gov.*

Dated: April 17, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8–9009 Filed 4–23–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its fifty-ninth meeting.

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times: June 2, 2008, 9 a.m.–4:30 p.m. June 3, 2008, 8:45 a.m.–5:15 p.m. June 4, 2008, 8:15 a.m.–10:30 a.m.

Place: Siena Hotel, 1505 East Franklin Street, Chapel Hill, NC 27514. Phone: 919–929–4000.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research,

development and administration of health and human services in rural areas.

Agenda: Monday morning, at 9 a.m., the meeting will be called to order by the Chairperson of the Committee, the Honorable David Beasley. The first presentation will be an overview of rural North Carolina. The Committee will hear presentations on the three chosen Subcommittee topics. The first panel will focus on Workforce and Community Development. Erin Fraher, MPH, with the Rural Health Research and Policy Analysis Center, is a confirmed speaker. The second panel of speakers will lead a discussion on At-Risk Children. The final panel for the day is on the Medical Home Model. After the panel discussions, the Committee Chair will give an overview of the site visits. The Monday meeting will close at 4:30 p.m.

Tuesday morning, at 8:45 a.m., the Committee will break into Subcommittees and depart to the site visits. The Workforce and Community Development Subcommittee will depart to Raleigh, North Carolina, to visit the Turning Point Allied Health Regional Skills Partnership. The At-Risk Children Subcommittee will depart to Siler City, North Carolina and take a ''ChildWatch'' Tour where they will learn about the different services provided for children and the status of children and families. After the tour, the Subcommittee will arrive at the Chatham Family Resource Center. The Medical Home Subcommittee will depart for Community Care of Eastern Carolina in Greenville, North Carolina. Transportation to the site visits will not be provided to the public. At 4:15 p.m. the Subcommittees will arrive back at the Siena Hotel for Subcommittee meetings. The Tuesday meeting will close at 5:15 p.m.

The final session will be convened Wednesday morning, at 8:15 a.m. The Committee will break into Subcommittee format and meet for forty-five minutes. The Committee as a whole will reconvene at 9 a.m. There will be a review of the site visits and action items will be developed for the Committee members and staff. The Committee will draft the letter to the Secretary and discuss the September meeting. The meeting will be adjourned at 10:30 a.m.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Jennifer Chang, MPH, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray-Gibson, Office of Rural Health Policy (ORHP), Telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov.*

Dated: April 16, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–9010 Filed 4–23–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0308]

Houston/Galveston Navigation Safety Advisory Committee; Meetings

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet in Houston, Texas to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. These meetings will be open to the public.

DATES: The Committee will meet on Thursday, May 22, 2008 at 9 a.m. The meeting of the Committee's working groups will be held on Thursday May 8, 2008 at 9 a.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard at least five (5) working days before the meeting. Requests to have a copy of your material distributed to each member of the committee or working group should reach the Coast Guard at least ten (10) working days before the meeting.

ADDRESSES: The full Committee meeting and working groups meetings will be held at the Houston Pilots Association, 8150 South Loop East, Houston, Texas 77011–1747, (713) 645–9620. Send written material and requests to make oral presentations to Captain William Diehl, Designated Federal Officer (DFO) of HOGANSAC, 9640 Clinton Drive, Houston, Texas 77029. This notice may be viewed in our online docket, USCG–2008–0308 at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Hal R. Pitts, Assistant to the DFO of HOGANSAC, telephone (713) 671–5164, e-mail *hal.r.pitts@uscg.mil* or Lieutenant Sean Hughes, telephone (713) 678–9001, e-mail *sean.p.hughes@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda is as follows:

(1) Opening remarks by the Committee Sponsor (RADM Whitehead) or the Committee Sponsor's representative, DFO (CAPT Diehl) and Chairperson (Ms. Tava Foret).

(2) Approval of the 26 February 2008 minutes.

(3) Old Business:

(a) Navigation Operations (NAVOPS)/Maritime Incident Review subcommittee report;

(b) Deep Draft Entry Facilitation (DDEF) subcommittee report;

(c) Dredging subcommittee report;

(d) Technology subcommittee report;

(e) Area Maritime Security Committee (AMSC) Liaison's report;

(f) Harbor of Safe Refuge subcommittee report;

(g) HOGANSAC Outreach report;

(h) Maritime Awareness subcommittee report.

(4) New Business:

Working Groups Meeting. The tentative agenda for the working groups meeting is as follows:

(1) Presentation by each working group of its accomplishments and plans for the future;

(2) Review and discuss the work completed by each working group;

(3) Put forth any action items for consideration at the full committee meeting.

Working groups have been formed to examine the following issues: Dredging and related issues, electronic navigation systems, aids to navigation (AtoN) knockdowns, impact of passing vessels on moored ships, boater education issues, facilitating deep draft movements, mooring infrastructure, and harbor of safe refuge. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility.

Procedural: All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Assistant DFO at least five (5) working days before the meeting. Written material for distribution at a meeting should reach the Coast Guard at least ten (10) working days before the meeting. If you would like a copy of

your material distributed to each member of the committee or working group in advance of a meeting, please submit 19 copies to the DFO at least ten (10) working days before the meeting.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant DFO as soon as possible.

Dated: April 15, 2008.

J.H. Korn,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. E8–8859 Filed 4–23–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Proposed Collection; Comment Request; Line Release Regulations

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651–0060; Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Line Release Regulations (Border Release Advance Screening and Selectivity (BRASS)). This request for comment is being made pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 23, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Line Release Regulations (BRASS).

OMB Number: 1651–0060.

Form Number: N/A.

Abstract: Line release (BRASS) was developed to release and track high volume and repetitive shipments. Line release (BRASS) respondents make an automated submission by transmitting bar code information to CBP. BRASS is intended to expedite the processing of merchandise entering the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 25,700.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 6,425.

Dated: April 16, 2008.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E8–9011 Filed 4–23–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2008–N0079; 30120–8312–0463]

Assessment Plan for Natural Resources Injured by Releases of Hazardous Substances From Dow Chemical Company's Midland, MI, Plant on the Tittabawassee River

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft assessment plan; request for comments.

SUMMARY: We, the Fish and Wildlife Service (FWS), announce the release for public review of the April 2008, Natural Resource Damage Assessment (NRDA) Plan for the Tittabawassee River System Assessment Area—Public Release Draft (Assessment Plan). The Assessment Plan was developed by the Tittabawassee River Natural Resource Trustee Council in order to assess injuries to natural resources resulting from the releases of hazardous substances at and from Dow Chemical Company's plant on the Tittabawassee River in Midland County, Michigan. The Assessment Plan describes the proposed approach for determining and quantifying natural resource injuries and calculating damages associated with these injuries. We invite all interested parties to submit comments on the Assessment Plan.

DATES: We must receive written comments on or before May 27, 2008.

ADDRESSES: Send written comments to the NRDA Trustee Coordinator, East Lansing Field Office, U.S. Fish and Wildlife Service, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823; telephone (517) 351–2555; and facsimile (517) 351–1443. To obtain a review copy, see ''Obtaining a Review Copy'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Lisa Williams, (517) 351–8324.

SUPPLEMENTARY INFORMATION: On behalf of the Department of the Interior (DOI), the State of Michigan, and the Saginaw Chippewa Indian Tribe of Michigan, we announce the release for public review of the Natural Resource Damage Assessment (NRDA) Plan for the Tittabawassee River System Assessment Area—Public Release Draft (Assessment Plan). The Assessment Plan was developed by the Tittabawassee River Natural Resource Trustee Council (Trustees), consisting of representatives of FWS; Bureau of Indian Affairs, DOI; Michigan Department of Environmental Quality, Michigan Department of

Natural Resources, Michigan Attorney General, and the Saginaw Chippewa Indian Tribe of Michigan, to assess injuries to natural resources resulting from the releases of hazardous substances at and from Dow Chemical Company's (Dow) plant on the Tittabawasee River in Midland County, Michigan.

The Trustees, pursuant to section 107(f) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended (42 U.S.C. 9601 *et seq.*) and other applicable Federal, State and tribal laws, may act on behalf of the public to pursue natural resource damages for injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances to the environment. Under CERCLA, sums recovered by trustees as damages shall be used to restore, rehabilitate, replace, or acquire the equivalent of such natural resources.

In November 2006, the Trustees issued a preassessment screen and determination for the Tittabawassee River System Assessment Area in accordance with the Federal regulations for NRDAs (43 CFR part 11). The preassessment screen documents the Trustees' determination that conditions warrant a NRDA. The next step is the issuance of an Assessment Plan. The Assessment Plan developed by the Trustees is intended to describe how the Trustees will assess injuries to natural resources resulting from releases of hazardous substances at and from the Dow plant property. The Assessment Plan describes the proposed approach for determining and quantifying natural resource injuries and calculations damages associated with these injuries. By developing an Assessment Plan, the Trustees can ensure that the NRDA will be completed at a reasonable cost. The Trustees intend to conduct elements of the assessment cooperatively with Dow. The Trustees have entered into a funding and participation agreement with Dow that is available on the FWS Web site listed above. The agreement specifies how parts of the NRDA can be conducted cooperatively with Dow. The Trustees envision an assessment based on a combination of Dow-implemented cooperative work, Trustee-implemented cooperative work, and (as needed to accomplish Trustee goals) independent Trustee work.

Obtaining a Review Copy

The Assessment Plan is available for review by appointment during normal business hours from the following officials at their office locations:

(1) East Lansing, MI: Lisa Williams, East Lansing Field Office, U.S. Fish and Wildlife Service, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823; phone: (517) 351–8324.

(2) Washington, DC: Al Sedik, Bureau of Indian Affairs, Division of Environmental and Cultural Resources Management, 1849 C Street, NW., Washington, DC 20240; phone: (202) 208–5474.

(3) Mt. Pleasant, MI: Sally Kniffen, Saginaw Chippewa Indian Tribe, 7070 E. Broadway, Mt. Pleasant, MI 48858; phone: (989) 775–4015.

The Assessment Plan is also available for review on the Internet at *http://www.fws.gov/midwest/TittabawasseeRiverNRDA/*.

Public Comment Availability

Before including your address, phone number, e-mail address, or other personal indentifying information in your comment, be advised that your entire comment—including your personal indentifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Dated: April 8, 2008.

Chris Jensen,

Acting Regional Director, Region 3, Fort Snelling, Minnesota.

[FR Doc. E8–8959 Filed 4–23–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–210–08–1610–PN]

Notice of Availability of Revised NEPA Handbook

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Bureau of Land Management's (BLM) Handbook to support implementation of the procedures the BLM uses to comply with the National Environmental Policy Act (NEPA).

DATES: You may submit written comments on the NEPA Handbook within 90 days following the date this Notice of Availability is published in the **Federal Register**.

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

- E-mail: *NEPA@blm.gov.*
- Mail: U.S. Department of the Interior, Director (210), Bureau of Land Management, Mail Stop 850 LS, 1849 C St., NW., Attention: AD200, Washington, DC 20240.
- Personal or messenger delivery: 1620 L Street, NW., Room 850, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Peg Sorensen, Senior Planning and Environmental Analyst—NEPA, 202–557–3564, *peg_sorensen@blm.gov*.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This notice announces the availability of the revised BLM NEPA Handbook for use by BLM personnel in the field. The handbook provides supplemental information, guidance, and examples to assure consistency with the Department of the Interior's Departmental Manual (DOI DM) and the Council on Environmental Quality (CEQ) NEPA regulations. The BLM NEPA Handbook (H–1790–1) was last updated October 25, 1988 and revisions are necessary to update the information and to reflect current NEPA guidance. The public can review the revised edition of the NEPA Handbook on the BLM Web site at *http://www.blm.gov,* on the left click on Information and then click on NEPA. Note that the Web Guide links will be functional at a later date. The handbook will be mailed to those who indicate that they want a hard copy or compact disk. The handbook is based upon current regulation, policy, and procedures.

The handbook revisions focus on helping the BLM improve analysis to support decision making. The revisions to the NEPA Handbook are also designed to make the NEPA process more efficient, avoiding redundant or unnecessary documentation. The revisions include updates to clarify definitions and incorporate new Departmental requirements.

Written Comments

The public is welcome to review and comment on the handbook. Today's publication is a notice of internal BLM guidance and not a rulemaking. Therefore, no formal comment period will occur resulting in no obligation for the BLM to respond or address

comments from the public. If you choose to submit comments, please limit such comments to issues pertinent to the handbook itself and explain the reasons for any recommended changes. Where possible, reference the specific section or paragraph of the handbook which you are addressing.

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.

Procedural Requirements: Although the NEPA Handbook is not a rulemaking, we have addressed the various procedural requirements that are generally applicable to proposed and final rulemaking to contribute to this open review process.

Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) it has been determined that this action is the implementation of policy and procedures applicable only to the BLM and not a significant regulatory action. These policies and procedures would not impose a compliance burden on the general economy.

Administrative Procedure Act

The NEPA Handbook is not subject to prior notice and opportunity to comment under the Administrative Procedures Act because it provides internal guidance to BLM personnel [5 U.S.C. 553(b)(A)]. In addition, the Handbook does not establish agency procedures for implementing the NEPA, and therefore does not require review by the CEQ or public notice and the opportunity to comment under the CEQ regulations [40 CFR 1507.3(a)]. However, the Department of the Interior's (DOI) Office of Environmental Policy and Compliance has reviewed the Handbook, and the BLM has elected to invite public comment as well.

Regulatory Flexibility Act

This document is not subject to notice and comment under the Administrative Procedures Act, and, therefore, is not subject to the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document provides the BLM with instruction and information under the NEPA and does not compel any other party to conduct any action.

Small Business Regulatory Enforcement Fairness Act

This handbook does not comprise a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The document will not have an annual effect on the economy of $100 million or more and is expected to have no significant economic impacts. Further, it will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and will [[Page 52596]] impose no additional regulatory restraints in addition to those already in operation. Finally, the document does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this document will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. The document does not require any additional management responsibilities. Further, this document will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a significant regulatory action under the Unfunded Mandates Reform Act. These policies and procedures are not expected to have significant economic impacts nor will they impose any unfunded mandates on other Federal, State, or local government agencies to carry out specific activities.

Federalism

In accordance with Executive Order 13132, this document does not have significant Federalism effects; and, therefore, a Federalism assessment is not required. The policies and procedures will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially, directly affected. Therefore, the document does not have significant effects or implications on Federalism.

Paperwork Reduction Act

This document does not require information collection as defined under the Paperwork Reduction Act. Therefore, this document does not constitute a new information collection system requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The CEQ regulations do not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing the NEPA. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. As explained above, however, this Handbook does not establish procedures for implementing the NEPA but provides supplemental information, guidance, and examples for the use of BLM personnel in the field. Therefore, no NEPA analysis, or preparation of analytical documents pursuant to the NEPA is required to support its publication. To the extent any documentation of compliance with the NEPA or the CEQ regulations may be required; the DOI's Department Categorical exclusion 1.10 is applicable. See DOI DM 2 (Appendix 1).

Essential Fish Habitat

We have analyzed this document in accordance with section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and determined that issuance of this document will not affect the essential fish habitat of federally managed species; and, therefore, an essential fish habitat consultation on this document is not required.

Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175 of November 6, 2000, and 512 DM 2, we have assessed this handbook's impact on tribal trust resources and have determined that it does not directly affect tribal resources since it supports implementation of the BLM's procedures for its compliance with the NEPA.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 of May 18, 2001, requires a Statement of Energy Effects for significant energy actions. Significant energy actions are actions normally published in the **Federal Register** that lead to the promulgation of a final rule or regulation and may have

any adverse effects on energy supply, distribution, or use. We have explained above that this document is an internal BLM action which only affects how the BLM conducts its business under the NEPA. This handbook is not a rulemaking; and therefore, not subject to Executive Order 13211.

Actions To Expedite Energy-Related Projects

Executive Order 13212 of May 18, 2001, requires agencies to expedite energy-related projects by streamlining internal processes while maintaining safety, public health, and environmental protections. Today's publication is in conformance with this requirement as it promotes existing process streamlining requirements and revises the text to emphasize this concept.

Government Actions and Interference With Constitutionally Protected Property Rights

In accordance with Executive Order 12630 (March 15, 1988) and Part 318 of the Departmental Manual, the BLM has reviewed today's notice to determine whether it would interfere with constitutionally protected property rights. Again, we believe that as internal instructions to the BLM on implementation of the NEPA, this publication would not cause such interference.

James Caswell,

Director, Bureau of Land Management.

[FR Doc. E8–8866 Filed 4–23–08; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Southern Delivery System, Fryingpan-Arkansas Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice for the extension of the public comment period and the announcement of a public listening session for the Southern Delivery System Draft Environmental Impact Statement (DEIS).

SUMMARY: Reclamation is announcing an extension of the public comment period for the Southern Delivery System DEIS. The original comment period published in the **Federal Register** (73 FR 11144) was scheduled to end on April 26, 2008. We are now notifying the public that Reclamation is extending the comment period to June 13, 2008.

Reclamation is also announcing a public listening session that will be held in Pueblo, Colorado on May 29, 2008. We are hosting this meeting to provide an additional opportunity for the interested public to provide comments on the DEIS. Reclamation will not be responding to comments or answering questions publically at this meeting. The intent of this meeting is to listen to and record comments made by the public. All comments received on the DEIS will have corresponding responses published in the Final Environmental Impact Statement.

DATES: The public listening session will be held on May 29, 2008 from 6 p.m. to 8 p.m. at the location shown in the **ADDRESSES** section below. All comments on the DEIS must be received by Reclamation on or before June 13, 2008 at one of the addresses provided below.

ADDRESSES: Written comments on the DEIS can be sent to: Southern Delivery System EIS, Attention: Ms. Kara Lamb, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, CO 80537–9711. Comments may also be submitted via facsimile at (970) 663–3212 (attention: Ms. Kara Lamb; Southern Delivery System EIS) or e-mail to: *klamb@gp.usbr.gov*.

The public listening session on May 29, 2008 will be held at the Sangre de Cristo Arts and Conference Center, 210 North Santa Fe Avenue, Pueblo, CO 81003.

FOR FURTHER INFORMATION CONTACT: For copies of the DEIS or the technical reports, please send written requests to Ms. Kara Lamb via the postal or e-mail address provided above. The full reports and documents are also available on the project Web site at: *http://www.sdeis.com*. For additional information please contact Ms. Kara Lamb at (970) 962–4326.

SUPPLEMENTARY INFORMATION: Reclamation staff will hear from interested members of the public in a formal public hearing forum. Statements will be limited to a maximum of 3 minutes per commenter. For those people wanting to speak at the listening session advance registration is required and is available from 5:30 p.m. to 6 p.m. There will be a third-party moderator to facilitate the process and a court reporter to document the comments.

Copies of the DEIS are available for public inspection and review at the following locations:

- Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, CO 80537.
- Buena Vista/North Chaffee County Library, 131 Linderman Ave., Buena Vista, CO 81211.
- Canyon City Public Library, 516 Macon Ave., Canyon City, CO 81212.
- Pikes Peak Library District—Penrose Library, 20 N. Cascade Ave., Colorado Springs, CO 80903.
- Pueblo City-County Library District, 100 E. Abriendo Ave., Pueblo, CO 81004.
- Woodruff Memorial Library, 522 Colorado Ave., La Junta, CO 81050.

Public Disclosure Statement: Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 18, 2008.

Donald E. Moomaw,

Deputy Regional Director, Great Plains Region.

[FR Doc. E8–8916 Filed 4–23–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on April 7, 2008, a proposed Consent Decree (''Consent Decree'') in the matter of *United States* v. *ConocoPhillips Company,* Civil Action No. 2–08CV–077–J, was lodged with the United States District Court for the Northern District of Texas.

In the complaint in this matter, the United States sought injunctive relief and penalties against ConocoPhillips Company (''ConocoPhillips'') for claims arising under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, in connection with discharges of pollutants from the petroleum refinery ConocoPhillips operates in Borger, Texas. Under the Consent Decree, ConocoPhillips will pay a civil penalty of $1,200,000.00, perform a Supplemental Environmental Project to reduce the amount of solids discharged into nearby waters during storm events, monitor surrounding waters for selenium levels, and maintain the controls it has already put into place to minimize selenium discharges and correct whole effluent toxicity violations. 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* v. *ConocoPhillips Co.,* D.J. Ref. No. 90–5–1–1–08325. The Consent Decree may be examined at the Office of the United States Attorney, 500 S. Taylor St., Suite 300, Amarillo, TX 79101, and at U.S. EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $16.50 (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.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–8905 Filed 4–23–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Emergency Planning and Community Right-To-Know Act

Notice is hereby given that on April 18, 2008, a proposed Consent Decree (''Decree'') in *United States* v. *Rohm and Haas Chemicals LLC,* Civil Action No. 3:08–cv–00198–TBR, was lodged with the United States District Court for the Western District of Kentucky, Louisville Division.

In this action the United States sought to obtain injunctive relief and assessment of civil penalties against Rohm and Haas Chemicals LLC (''Rohm and Haas'') for alleged violations of the Clean Air Act, 42 U.S.C. 7404–7671(q); the Resource Conservation and Recovery Act, 42 U.S.C. 6901–6992(k) (''RCRA''); the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601–9675(c) (''CERCLA''); and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001–11050 (''EPCRA'') that occurred at a Rohm and Haas chemical-manufacturing facility in Louisville, Kentucky. The Decree would settle these claims and require Rohm and Haas to pay $35,975 in civil penalties and to perform the following Supplemental Environmental Projects: Install an emission-reducing cover on an organic water gravity separator at the Louisville Plant at an estimated cost of $115,000, and provide the City of Louisville with a hazard analysis software module at an estimated cost of $18,671.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the 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 reference *United States* v. *Rohm and Haas Chemicals LLC.,* Civil Action No. 3:08–cv–00198–TBR, D.J. Ref. No. 90–5–2–1–08598.

The Decree may be examined at the Office of the United States Attorney, 510 W. Broadway, 10th Floor, Louisville, Kentucky 40202. During the public comment period, the Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the 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 number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–8947 Filed 4–23–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Second Amendment to a Consent Decree Under the Clean Air Act

Notice is hereby given that a proposed Second Amendment (Second Amendment) to the Consent Decree previously entered in *United States* v. *Tampa Electric Co.*, Civil Action No. 99–2524–T–23F, was lodged with the United States District Court for Middle District of Florida.

In this action the United States alleged that Tampa Electric failed to comply with the requirements of the Clean Air Act at two coal-fired electric generating plants, known as Big Bend and Gannon Stations. These violations allegedly arose from the company's failing to seek permits prior to making major modifications to parts of these facilities and by failing to install appropriate pollution control devices to reduce emissions of air pollutants from those facilities. Those two stations are located in Hillsborough County, Florida, near the City of Tampa. (Gannon Station also is now known as Bayside Station.)

The civil action was resolved in October 2000, through a Consent Decree entered by the District Court; that Decree was amended by consent of the parties in 2001; that amendment also was entered as an order of the District Court.

The Second Amendment, proposed here, would make a number of adjustments to the extant Consent Decree and would resolve some disputes between the parties; in sum, the Second Amendment would: (1) Adopt a method of measuring certain emissions of oxides of nitrogen—an air pollutant—more in line with the method used for measuring that pollutant in subsequent consent decrees which the United States entered into with owners and operators of other coal-fired electric generating units; (2) resolve a dispute between the parties involving operation of continuous emissions monitors for the pollutant known as particulate matter; (3) set for certain units the emission rate for oxides of nitrogen, within the range of rates established for those units under the original Decree; and (4) explain further the treatment given under Decree to certain allowances that may relate to the emissions of oxides of nitrogen.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Second Amendment. 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* v. *Tampa Electric Co.*, D.J. Ref. 90–5–2–1–06932.

The Second Amendment may be examined at the Office of the United States Attorney, Middle District of Florida, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602, and at U.S. EPA Region 4, Office of Regional Counsel, 61 Forsyth Street, SW., Atlanta, Georgia 30303. During the public comment period, the Second Amendment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Second Amendment 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*), facsimile No. (202) 514–0097, telephone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or facsimile, forward a check in that amount to the Consent Decree Library at the stated address.

Thomas A. Mariani, Jr.,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–8908 Filed 4–23–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,659]

Richloom Home Fashions Division of Richloom Fabrics Corporation Clinton, SC; Notice of Affirmative Determination Regarding Application for Reconsideration

By applications postmarked March 6, 2008, a petitioner 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 February 22, 2008 and published in the **Federal Register** on March 7, 2008 (73 FR 12466).

The initial investigation resulted in a negative determination based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner provided additional information regarding the production of samples by the subject firm and requested that the Department conduct further investigation of the Sample Department.

The Department has carefully reviewed the request for reconsideration and the existing record and determined that the Department will conduct further investigation to determine if the Sample Department workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, 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 27th day of March, 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8981 Filed 4–23–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection for OMB Approval for Work-Flex State Plan Submission and Reporting Requirements; Comment Request

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning The Work Flex State Plan Submission and Reporting Requirements.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.doleta.gov/OMBCN/OMBControlNumber.cfm*.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before June 23, 2008.

ADDRESSES: Submit written comments to Janet Sten, Chief, Division of Workforce System Support, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4510, Washington, DC 20210, Telephone number: 202–693–3045 (this is not a toll-free number). Fax: 202–693–3015. E-mail: *Sten.janet@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Janet Sten, Chief, Division of Workforce System Support, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4510, Washington, DC 20210, Telephone number: 202–693–3045 (this is not a toll-free number). Fax: 202–693–3015. E-mail: *Sten.janet@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 192 of the Workforce Investment Act (Pub. L. 105–220, August 7, 1998) permits States to apply for a workforce flexibility (Work-Flex) waiver authority to implement reforms to their workforce investment systems in exchange for program improvements. The Act provides that the Secretary may grant Work-Flex waiver authority for a period of up to five years pursuant to a Work-Flex Plan submitted by a State. Under Work-Flex, Governors are granted the authority to approve requests submitted by their local areas to waive certain statutory and regulatory provisions of WIA Title I programs. States may also request from the Secretary waivers of certain requirements of the Wagner-Peyser Act (Sections 8–10) and certain provisions of the Older Americans Act applicable to State agencies that administer the Senior Community Service Employment Program (SCSEP). The intent of the Work-Flex provision is to authorize States and Local Areas the operational flexibility they need to improve employment and training productivity for adult, dislocated, and youth populations. One of the underlying

principles of Work-Flex is that it will result in improved performance outcomes for persons served and that waiver authority will be granted in consideration of improved performance.

Work-Flex State Plan Instructions

States requesting designation as a Work-Flex State must submit a Work-Flex Plan which includes descriptions of:

a. The process by which local areas in the State may submit and obtain approval by the State of applications for waivers of requirements applicable under Title I of WIA, including provisions for public review and comment on local area waiver applications.

b. The statutory and regulatory requirements of Title I that are likely to be waived by the State under the plan.

c. The requirements applicable under Sections 8 through 10 of the Wagner-Peyser Act that are proposed to be waived, if any.

d. The statutory and regulatory requirements of the Older Americans Act of 1965 applicable to State agencies on aging with respect to administration of the Senior Community Service Employment Program (SCSEP) that are proposed to be waived, if any.

e. The outcomes to be achieved by the waiver authority including, where appropriate, revisions to adjusted levels of performance included in the State or Local Plan under Title I of WIA.

f. Special measures (in addition to current procedures) to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

g. Prior to submitting a Work-Flex Plan to the Secretary for approval, the State must provide notice to all interested parties and to the general public adequate notice and a reasonable opportunity for comment on the waivers proposed to be implemented. The plan should describe the process used for ensuring meaningful public comment.

Include a description of the Governor's and the State Workforce Investment Board's involvement in drafting, reviewing and commenting on the Plan. Describe the actions taken to collaborate in the development of the State Work-Flex Plan with local chief elected officials, local workforce investment boards and youth councils, the business community (including small businesses), labor organizations, educators, vocational rehabilitation agencies, and other interested parties, such as service providers, welfare agencies, community and faith-based organizations, transportation providers and other stakeholders.

Work-Flex Quarterly Report Instructions

Report for each waiver granted:

1. Waiver (assigned by State).
2. Date received.
3. Date granted.
4. Local Area(s) requesting waiver.
5. Purpose (brief statement).
6. Regulation/statute affected.

Summary (year-to-date):

1. Of waivers granted.
2. Of waivers denied.
3. Of waivers pending.
4. Total waivers received.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Work-Flex State Plan Submission and Reporting Requirements.

OMB Number: 1205–0432.

Recordkeeping: Consistent with 29 CFR 97.42, records and supporting documentation should be retained for three years on a Federal fiscal year basis. The retention period for quarterly reports associated with a fiscal year status on the date the State submits its last quarterly report for that fiscal year. The retention period for the State Work-Flex Plan starts on the last day of the fiscal year for which it was initially approved or subsequently modified, whichever is later.

Affected Public: State and local governments.

Form: See above instructions.

Total Respondents: 5.

Frequency: 5 state plans annually; 20 quarterly reports.

Total Responses: 25.

Average Time per Response: 38.4 hours.

Estimated Total Burden Hours: 960.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 16th day of April, 2008.

Gay M. Gilbert,

Administrator, Office of Workforce Investment.

[FR Doc. E8–8813 Filed 4–23–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,784]

Kemet Electronics Corporation, A Subsidiary of Kemet Corporatiion Simpsonville Facility Including On-Site Leased Workers From Blanton Phillps Staffing Simpsonville, SC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 12, 2008, applicable to workers of Kemet Electronics Corporation, a subsidiary of Kemet Corporation, Simpsonville Facility, including on-site leased workers from Blanton Phillips Staffing, Simpsonville, South Carolina. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of tantalum capacitors.

Findings show that there was a previous certification, TA–W–58,661A, issued on February 7, 2006, for the workers of the Simpsonville Facility, Simpsonville, South Carolina. That certification expired February 7, 2008. To avoid an overlap in worker group

coverage for the workers of the Simpsonville, South Carolina location, the certification is being amended to change the impact date from January 25, 2007 to February 8, 2008.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Kemet Electronics Corporation, a subsidiary of Kemet Corporation who were adversely affected by a shift in production of tantalum capacitors to Mexico.

The amended notice applicable to TA–W–62,784 is hereby issued as follows:

All workers of Kemet Electronics Corporation, a subsidiary of Kemet Corporation, Simpsonville Facility, including on-site leased workers from Blanton Phillips Staffing, Simpsonville, South Carolina, who became totally or partially separated from employment on or after February 8, 2008, through March 12, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 25th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8984 Filed 4–23–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *March 17 through March 21, 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.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

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.

Insert Cd.

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–62,811; CUL-Mac Industries, Formerly Know as Standhardt Chemical Corporation, Grand Rapids, MI: February 6, 2007.

TA–W–62,824; Jewel America, Inc., New York, NY: February 9, 2007.

TA–W–62,920; Lanxess Sybron Chemicals, A Subsidiary of Lanxess Corp., Birmingham, NJ: February 27, 2007.

TA–W–62,508; Brenham Spring, A Subsidiary of Leggett and Platt, Brenham, TX: November 29, 2006.

TA–W–62,518; Chace Leathers, Inc., Fall River, MA: November 28, 2006.

TA–W–62,692; SB Acquisitions d/b/a Saunders Brothers, Greenwood, ME: January 15, 2007.

TA–W–62,770; Diamond Tool and Die Company, Dayton, OH: January 24, 2007.

TA–W–62,792; Erisco Industries, Erie, PA: January 30, 2007.

TA–W–62,804; Hp Pelzer Automotive Systems, A Subsidiary of HP Pelzer Group, Thomson, GA: January 9, 2007.

TA–W–62,873; Alice Manufacturing Co., Inc., Foster Plant, Easley, SC: November 25, 2007.

TA–W–62,684; The New Mayflower Corporation, Formerly Know as Janef, Inc., Old Forge, PA: October 18, 2007.

TA–W–62,951; Best King Fashions, Inc., New York, NY: February 5, 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–62,814; Tricon Industries, Inc., Electromechanical Division, Downers Grove, IL: December 23, 2007.

TA–W–62,863; Orient Engine, Falmouth, KY: February 15, 2007.

TA–W–62,867; Vanity Fair Brands, LP, Distribution, Mission, TX: February 5, 2007.

TA–W–62,870; Timken U.S. Corporation, A Wholly Owned Subsidiary of the Timken Co., Clinton, SC: February 20, 2007.

TA–W–62,891; FCI USA, Inc., Electronics Division, Etters, PA: March 18, 2008.

TA–W–62,909; R. E. Phelon (Lomira Division), Leased workers from Seek Careers, Lomira, WI: August 3, 2007.

TA–W–62,918; TT Electronics/IRC, Inc., Boone, NC: February 27, 2007.

TA–W–62,961; Dura Automotive Systems, Inc., Moberly Brake Operations, Moberly, MO: February 27, 2007.

TA–W–62,966; Sanmina-SCI, Inc., Leased workers of Kelly Services, Rapid City, SD: February 27, 2007.

TA–W–62,972; Edwards Vacuum, Inc., Tempe, AZ: March 3, 2007.

TA–W–62,977; Mold Masters Injectioneering, LLC, Apple One, Staffing Assoc., Aristaff, and Aerotek, Spartanburg, SC: March 8, 2007.

TA–W–62,988; A.O. Smith, Electrical Products Division, Scottsville, KY: March 11, 2007.

TA–W–62,994; Essex Group, Inc., A Subsidiary of Superior Essex, Inc, Vincennes, IN: March 4, 2007.

TA–W–63,005; Eagle Ottawa LLC, On-Site Leased Workers From Adecco, Rochester Hills, MI: March 17, 2008.

TA–W–62,837; Pentair Water, Ashland OPA, A Subsidiary of Pentair, Inc., Ashland, OH: January 29, 2007.

TA–W–62,845; Durham Manufacturing Co., Inc., Warehouse and Maintenance Departments, Durham, CT: February 13, 2007.

TA–W–62,861; Brammall Inc, A Subsidiary of Tyden Group. Holdings Corporation, Angola, IN: February 14, 2007.

TA–W–62,998; C.H.P. Industries, Charlotte, NC: March 7, 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–62,725; Elmet Technologies, Lighting Department, Lewiston, ME: January 22, 2007.

TA–W–62,823; Sandpiper Knitting, Inc., Pageland, SC: February 8, 2007.

TA–W–62,950; Key Plastics LLC, Leased workers from Tempstar Staffing, York, PA: March 3, 2007.

TA–W–62,963; Lexington Precision Corporation, Vienna, OH: March 4, 2007.

TA–W–63,007; Grover Industries, Inc., Grover Division, Grover, NC: October 5, 2007.

TA–W–63,007A; Grover Industries, Inc., Tryon Division, Lynn, NC: October 5, 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.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–62,947; Norcal Pottery Products, Richmond Distribution Center, Richmond, CA.

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–62,686; FitLinxx, Inc., Norwalk, CT.

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–62,613; Longview Fibre Paper and Packaging, Longview Mill,

Formerly Longview Fibre Co., Longview, WA.

TA–W–62,712; Emerson Motor Company, dba Hurst Manufacturing, Industrial Motor Division, Princeton, IN.

TA–W–62,783; Kemet Electronics Corporation, Fountain Inn, SC.

TA–W–62,800; Wilkins, Kaiser and Olsen, Inc., Carson, WA.

TA–W–62,875; Bolton Metal Products Company, Bellefonte, PA.

TA–W–62,943; Bekaert Corporation, Steel Cord Division, Rome, GA.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–62,876; B and P Alloys, Inc., Waukesha, WI.

TA–W–62,927; Chase Homes Finance LLC, A Division of JP Morgan Chase & Co., Lexington, KY.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

TA–W–62,894; Siemens IT Solutions and Services, Working On-Site at Owens Corning, Toledo, OH.

I hereby certify that the aforementioned determinations were issued during the period of *March 17 through March 21, 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: May 28, 2008.

Erin Fitzgerald,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–8976 Filed 4–23–08; 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 May 5, 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 May 5, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of March 2008.

Erin FitzGerald,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 3/17/08 and 3/21/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63006	Air Products and Chemicals (State)	Paulsboro, NJ	03/17/08	03/17/08
63007A	Grover Industries, Inc. (Comp)	Lynn, NC	03/17/08	03/14/08
63007	Grover Industries, Inc. (Comp)	Grover, NC	03/17/08	03/14/08
63008	Burley Design, LLC (Comp)	Eugene, OR	03/17/08	03/14/08
63009	RSA The Security Division of EMC (State)	Bedford, MA	03/17/08	03/17/08
63010	Rotor Coaters International/Trillium Staffing/Poch Staffing (Wkrs).	Saginaw, MI	03/17/08	03/14/08
63011	B. Walter E Company (Comp)	Wabash, IN	03/17/08	03/10/08
63012	GAF Materials (IBT)	Millis, MA	03/17/08	03/08/08
63013	A.O. Smith Electrical Products Co. (Comp)	Scottsville, KY	03/17/08	03/11/08
63014	KLA—Tencor (State)	Mipitas, CA	03/17/08	03/13/08
63015	CNI, Inc. (Wkrs)	Owossa, MI	03/17/08	03/14/08
63016	Electronic Data Systems (Wkrs)	Dayton, OH	03/18/08	03/14/08
63017	Quantum Corporation (Wkrs)	Irvine, CA	03/18/08	03/17/08
63018	Pomeroy, Inc (Wkrs)	Alderson, WV	03/18/08	03/17/08
63019	Honeywell Aerospace (UAW)	Teterboro, NJ	03/18/08	03/14/08
63020	Owens Brockway (Comp)	Fulton, NY	03/18/08	03/12/08
63021	Leviton Manufacturing (Wkrs)	West Jefferson, NC	03/18/08	03/17/08
63022	CCPS, Inc. (Wkrs)	San Jose, CA	03/18/08	03/01/08
63023	Amilon LLC (Comp)	Wallace, NC	03/18/08	03/17/08
63024	Tech Group (The) (Wkrs)	Erie, PA	03/18/08	03/07/08
63025	Sanmina—SCI Corp (Comp)	Guntersville, AL	03/19/08	03/12/08
63026	Pioneer Manufacturing Company, Inc. (Comp)	Colorado Springs, CO	03/19/08	03/18/08
63027	Coleman Powermate (State)	Springfield, MN	03/19/08	03/18/08
63028	FujiFilm Manufacturing U.S.A., Inc. (Comp)	Greenwood, SC	03/19/08	02/19/08
63029	Carm Newsome Hosiery, Inc. (Comp)	Fort Payne, AL	03/19/08	03/05/08
63030	Daisy Outdoor Products (Wkrs)	Neosho, MO	03/19/08	03/18/08
63031	G.M. Root, Inc. (Comp)	Lackawanna, NY	03/19/08	03/17/08
63032	William Wright Company—Factory Outlet (Comp)	Fiskdale, MA	03/20/08	03/13/08

APPENDIX—Continued

[TAA petitions instituted between 3/17/08 and 3/21/08]

TA–W	Subject firm (petitioners)	Location	Date of nstitution	Date of etition
63033	Lear Corporation (UAW)	Roscommon, MI	03/20/08	03/13/08
63034	Phoenix Sewing (Comp)	Fort Wayne, IN	03/20/08	03/18/08
63035	Summit Productions (Comp)	Fort Wayne, IN	03/20/08	03/18/08
63036	Mercury Manufacturing (Comp)	Fort Wayne, IN	03/20/08	03/18/08
63037	American Mirror Company (Comp)	Galax, VA	03/20/08	03/14/08
63038	Union Special (Wkrs)	Huntley, IL	03/20/08	03/19/08
63039	Yannis Design, Inc./Dental Associates (Wkrs)	Appleton, WI	03/20/08	03/19/08
63040	Thos Moser Cabinetmakers (Comp)	Auburn, ME	03/20/08	03/17/08
63041	Saint-Gobain Performance Plastics (Comp)	Elk Grove Village, IL	03/20/08	03/19/08
63042	Lemco Mills, Inc. (State)	Burlington, NC	03/20/08	03/18/08
63043	Grammer Industries, Inc. (Comp)	Piedmont, SC	03/21/08	03/20/08
63044	Springs Global—Piedmont (Comp)	Piedmont, AL	03/21/08	03/20/08
63045	Mount Vernon Mills Arkwright Division (Comp)	Spartanburg, SC	03/21/08	03/19/08
63046	Alcoa Wheel Products (Wkrs)	Beloit, WI	03/21/08	03/19/08
63047	Boise Wood Products (Wkrs)	White City, OR	03/21/08	03/10/08
63048	Cooperfield (Wkrs)	Avilla, IN	03/21/08	03/11/08
63049	Cardinal Health (Rep)	El Paso, TX	03/21/08	03/20/08
63050	Ruma Production, Inc. (Wkrs)	New York, NY	03/21/08	03/18/08
63051	Surratt Hosiery Mills, Inc. (Comp)	Denton, NC	03/21/08	03/20/08
63052	Chrysler, LLC (UAW)	Fenton, MO	03/21/08	03/18/08

[FR Doc. E8–8975 Filed 4–23–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,614]

Weyerhaeuser Green Mountain Lumber Mill, Toutle, WA; Notice of Negative Determination on Reconsideration

On February 29, 2008, the Department of Labor (Department) issued an Affirmative Determination Regarding Application for Reconsideration regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of Weyerhaeuser Green Mountain Lumber Mill, Toutle, Washington (the subject firm). The Department's Notice of Affirmative Determination regarding the request for reconsideration was published in the **Federal Register** on March 7, 2007 (73 FR 12463). Workers produce rough sawn softwood dimensional lumber.

The initial negative determination was based on the Department's findings that sales and production at the subject firm remained stable during the relevant period compared to previous year; the subject firm did not shift production to a foreign country; and the subject firm did not import articles like or directly competitive with the lumber produced by the subject workers. The determination also stated that the predominant cause of worker separations is related to the transfer of production to another, domestic, affiliated facility.

In the request for reconsideration, dated February 28, 2008, the IAM Woodworkers Local W536 (the Union) alleged that increased imports by Weyerhaeuser Corporation of articles like or directly competitive with softwood dimensional lumber produced at the subject firm contributed importantly to the workers' separations (''Weyerhaeuser Corporation is the largest producer of softwood dimensional lumber in the United States with significant production facilities in Canada and worldwide'').

To be certified for TAA on the basis of increased imports, the petitioning worker group must meet the criteria set forth under Section 223(a)(2)(A) of the Trade Act of 1974:

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. Increases of 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.

After careful review of previously-submitted information, the Department determines that Section 223(a)(2)(A)(A) and Section 223(a)(2)(A)(B) were met. Accordingly, the Department's reconsideration investigation focused on whether the petitioning worker group satisfied Section 223(a)(2)(A)(C).

Under 29 CFR 90.16 (Determinations and certifications of eligibility to apply for adjustment assistance), certification for TAA may be issued if a significant number or proportion of the workers in the subject firm (or an appropriate subdivision of the firm) have become or are threatened to become totally or partially separated; sales and/or production of the subject firm (or an appropriate subdivision of the firm) have decreased absolutely; and increases (absolute or relative) of imports of articles like or directly competitive with articles produced by the subject firm (or an appropriate subdivision of the firm) contributed importantly to the workers' separation, or threat of separation, and to such decline in sales or production. The regulation also states that ''contributed importantly means a cause which is importantly but not necessarily more important than any other cause.''

During the reconsideration investigation, the Department determined that there were no increased imports of softwood dimensional lumber during 2007 from 2006 by either the subject firm or Weyerhaeuser. Rather, imports of softwood dimensional lumber by Weyerhaeuser decreased in 2007 from 2006 levels.

On reconsideration, the Department confirmed that the predominant cause of the workers' separations was the shift of production to another, newly-built, domestic facility. New information

obtained by the Department during the reconsideration revealed that the move was due to the decreased amount of timber around the Toutle area and the plentiful amount of timber around the new location.

Accordingly, the Department determines that the petitioning worker group has not satisfied Section 223(a)(2)(A)(C) and are not eligible to apply for worker adjustment assistance under the Trade Act.

In order for the Department to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA), the subject worker group must be certified eligible to apply for TAA. Since the petitioning worker group is denied eligibility to apply for TAA, the subject workers cannot be certified eligible for ATAA.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Weyerhaeuser Green Mountain Lumber Mill, Toutle, Washington.

Signed at Washington, DC this 28th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8980 Filed 4–23–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,698]

Bodycote Materials Testing, Inc., Engineering and Technology Division, Hillsdale, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 6, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 8, 2008 and published in the **Federal Register** on February 22, 2008 (73 FR 9836).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Bodycote Materials Testing, Inc., Engineering and Technology Division, Hillsdale, Michigan was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner states that services provided by workers at the subject firm ''are integral to the production of an automobile''. The petitioner further states that the workers of the subject firm ''produce data (written certification) that is used to determine if the product does meet the requirements.''

The petitioner alleges that because all manufacturers of automotive products are required to test their products independently using the services provided by such companies as Bodycote Materials Testing, Inc., workers of the subject firm who provide the testing services should be certified eligible for TAA.

The investigation revealed that the workers of Bodycote Materials Testing, Inc., Engineering and Technology Division, Hillsdale, Michigan are engaged in testing services to the automotive, appliance, and general industrial markets. These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act.

Any incidental documents, such as written certifications, generated as a result of testing of the equipment are incidental to the services provided by the subject firm. The fact that a written record is generated in the process does not make the service firm a production firm and these documents do not constitute production of an article for purposes of the Trade Act.

The petitioner also states that Bodycote intends to move jobs to Mexico and Canada.

The allegation of a shift to another country might be relevant if it was determined that workers of the subject firm produced an article. However, the investigation determined that workers of Bodycote Materials Testing, Inc., Engineering and Technology Division, Hillsdale, Michigan do not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 26th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8983 Filed 4–23–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,341]

Nortel Networks Corporation Global Order Fulfillment, Research Triangle Park, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked February 4, 2008, three petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on January 16, 2008 and published in the **Federal Register** on February 1, 2008 (73 FR 6213).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or

of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Nortel Networks Corporation, Global Order Fulfillment, Research Triangle Park, North Carolina was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner states that the determination document incorrectly describes activities performed by the workers of the subject firm. The petitioner states that the workers fulfilled customer orders for telecommunications network ''solutions'' and not ''software.''

The change in the description of the activities from ''software'' to ''solutions'' does not change the fact that the workers of the subject firm do not produce an article and do not directly support production of any kind. The investigation revealed that the workers of the subject firm receive, monitor the progression and process customer orders, collect data and ensure its accuracy and fulfillment. These activities do not constitute production of an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 25th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8979 Filed 4–23–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,688]

SEI Data, Inc., a Subsidiary of SEI Communications, Dillsboro, IN; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 7, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 7, 2008 and published in the **Federal Register** on February 22, 2008 (73 FR 9836).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of SEI Data, Inc., a subsidiary of SEI Communications, Dillsboro, Indiana was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner states that employment at the subject firm was negatively impacted by a shift of job functions to Canada. The petitioner further states that regardless whether workers of the subject firm produce a product or provide services, they should be certified eligible for Trade Adjustment Assistance.

The investigation revealed that the workers of SEI Communications, Dillsboro, Indiana are engaged in activities related to providing technical support for Internet and telephone services. These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act of 1974.

The allegation of a shift to another country might be relevant if it was determined that workers of the subject firm produced an article. Since the investigation determined that workers of SEI Communications, Dillsboro, Indiana do not produce an article however, there cannot be imports nor a shift in production of an ''article'' abroad within the meaning of the Trade Act of 1974 in this instance.

The petitioner did not supply facts not previously considered nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 28th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8982 Filed 4–23–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61, 696]

Medtronic, Inc. Cardiovascular Division, Santa Rosa, CA; Notice of Revised Determination on Remand

On February 27, 2008, the United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand for further investigation in *Former Employees of Medtronic, Inc.* v. *United States*, Court No. 07–362.

The worker-filed petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), dated June 14, 2007, alleged that the subject workers produced ''medical stents'' and that the subject firm shifted production to a foreign country. Petitioners did not identify the foreign country to which production shifted.

On July 19, 2007, the Department of Labor (Department) issued a negative determination regarding eligibility to apply for TAA/ATAA for workers and former workers of Medtronic, Inc.,

Cardiovascular Division, Santa Rosa, California (the subject firm). The initial investigation revealed that the subject workers produced cardiovascular stents and that, during the relevant period, the subject firm did not import cardiovascular stents and did not shift production to a foreign firm. A survey of the subject firm's major declining domestic customers was not conducted because the subject firm sold its stents to an affiliated, foreign facility. The Department's Notice of negative determination was published in the **Federal Register** on August 2, 2007 (72 FR 42436).

In the request for reconsideration, dated August 7, 2007, the petitioning workers alleged that production ''was indeed shifted to a foreign country, Ireland, based on the information we received from'' the subject firm. The Department issued a Notice of Affirmative Determination Regarding Application for Reconsideration on August 16, 2007. The Notice was published in the **Federal Register** on August 27, 2007 (72 FR 49026).

On September 11, 2007, the Department issued a negative determination on reconsideration stating that Section (a)(2)(B) of the Trade Act of 1974, as amended, was not met. The negative determination was based on the Department's findings that, while the subject firm did shift cardiovascular stent production to Ireland, as alleged, Ireland does not have a free trade agreement with the United States and is not named as a beneficiary country under the Andean Trade Preference Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act, and that, following the shift of production, the subject firm did not import or plan to import articles like or directly competitive with those produced at the subject firm. The Department's Notice of negative determination on reconsideration was published in the **Federal Register** on September 21, 2007 (72 FR 54074).

In their complaint to the USCIT, dated October 3, 2007, the Plaintiffs made the same allegation they made in the request for reconsideration—that production shifted to Ireland—and two new allegations—that production shifted to Mexico and that the subject firm shifted production to a foreign country and will import stents like or directly competitive with those produced at the subject firm (''Medtronic's is awaiting FDA approval of their Drug Eluding Stents (DES) * * * the DES will be made available to the medical markets in the United States'').

In order to be certified under Section (a)(2)(B) of the Trade Act of 1974, as amended, the Department must determine that the following was 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; 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 remand investigation, the Department confirmed that cardiovascular stent production shifted from the Medtronic facility in Santa Rosa, California, to Galway, Ireland, and did not shift to Mexico. Accordingly, the Department determines that Section (a)(2)(B)(A) and Section (a)(2)(B)(B) have been met, and that Section (a)(2)(B)(C)(1) and Section (a)(2)(B)(C)(2) have not been met. Consequently, in order to be certified as eligible to apply for TAA, the Department must determine that the petitioning worker group satisfies Section (a)(2)(B)(C)(3).

The Department obtained new information during the remand investigation that, after the Department issued its negative determination on reconsideration, the U.S. Food and Drug Administration (FDA) approved Medtronic's application for approval of a drug-eluding cardiovascular stent to be used in the United States.

On February 1, 2008, Medtronic issued a news release stating that the FDA-approved DES, Endeavor, ''provides a consistent and sustained reduction in the need for repeat procedures compared to a bare-metal stent'' and that ''The U.S. market launch of the Endeavor stent begins immediately.'' The news release further states that, prior to FDA approval of the DES, Medtronic has been ''strengthening our field and manufacturing capabilities in anticipation of considerable demand for the Endeavor stent in the United States'' and that Medtronic plans to ''ship 100,000 units to U.S. hospitals in the next 30 days to assure full availability of this next-generation technology.''

During the remand investigation, the Department conducted an industry research of cardiovascular stents. The Department's research revealed that bare-metal stents function similarly to drug-eluding stents in that both devices are tiny mesh tubes used to keep open arteries to increase or restore blood flow to the heart muscle. The two devices differ in that the DES delivers medication that reduces the probability that blockages will reform in the artery, while the bare-metal stent is a static, structural device. Accordingly, the Department determines that drug-eluding cardiovascular stents are like and directly competitive with bare-metal cardiovascular stents.

As the result of the remand investigation, the Department determined that there was a shift in production by the subject firm to a foreign country of articles like or directly competitive with the cardiovascular stents produced by the subject firm and that, following the shift of production to a foreign country, there is an increase in imports (actual or likely) by Medtronic, Inc. of articles that are like or directly competitive with the article produced at the subject firm.

In accordance with Section 246 of 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 facts generated through the remand investigation, I determine that there was a total or partial separation of a significant number or proportion of workers at the subject firm, and that there was a shift in production to a foreign country followed by likely increased imports of articles like or directly competitive with cardiovascular stents produced at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Medtronic, Inc., Cardiovascular Division, Santa Rosa, California, who became totally or partially

separated from employment on or after June 14, 2006, through two years from the issuance of this revised determination, are eligible to apply for Trade 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 25th day of March 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–8978 Filed 4–23–08; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998 (WIA); Notice of Incentive Funding Availability Based on Program Year (PY) 2006 Performance

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, in collaboration with the Department of Education, announces that eight states are eligible to apply for Workforce Investment Act (WIA) (Pub. L. 105–220, 29 U.S.C. 2801 *et seq.*) incentive awards authorized by section 503 of the WIA.

DATES: The eight eligible states must submit their applications for incentive funding to the Department of Labor by June 9, 2008.

ADDRESSES: Submit applications to the Employment and Training Administration, Office of Performance and Technology, 200 Constitution Avenue, NW., Room S–5206, Washington, DC 20210, Attention: Karen Staha and Traci DiMartini, Telephone number: 202–693–3698 (this is not a toll-free number). Fax: 202–693–3490. E-mail: *staha.karen@dol.gov* and *dimartini.traci@dol.gov.* Information may also be found at the ETA Performance Web site: *http://www.doleta.gov/performance.*

SUPPLEMENTARY INFORMATION: Eight (8) states (see Appendix) qualify to receive a share of the $9.9 million available for incentive grant awards under WIA section 503. These funds, which were contributed by the Department of Education from appropriations for the Adult Education and Family Literacy Act, are available for the eligible states to use through June 30, 2010, to support innovative workforce development and education activities that are authorized under title I (Workforce Investment Systems) or title II (the Adult Education and Family Literacy Act (AEFLA)) of WIA, or under the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV), 20 U.S.C. 2301 *et seq.*, as amended by Public Law 109–270. In order to qualify for a grant award, a state must have exceeded performance levels agreed to by the Secretaries, Governor, and State Education Officer for outcomes in WIA title I, adult education (AEFLA), and career and technical education (Perkins III) programs. The goals included placement after training, retention in employment, and improvements in literacy levels, among other measures. After review of the performance data submitted by states to the Department of Labor and to the Department of Education, each Department determined which states would qualify for incentives for its programs (the Appendix at the bottom of this notice details the eligibility of each state by program). These lists of eligible states were compared, and states that qualified under all three programs are eligible to apply for and receive an incentive grant award. The amount that each state is eligible to receive was determined by the Department of Labor and the Department of Education and is based on WIA section 503(c) (20 U.S.C. 9273(c)), and is proportional to the total funding received by these states for the three Acts.

The states eligible to apply for incentive grant awards and the amounts they are eligible to receive are listed in the following chart:

State	Amount of award
1. Arizona	$1,112,979
2. Connecticut	953,347
3. Illinois	2,148,397
4. Missouri	1,186,870
5. Montana	849,786
6. Ohio	1,783,568
7. South Carolina	1,111,549
8. South Dakota	821,995

Dated: April 17, 2008.

Brent R. Orrell,

Acting Assistant Secretary for Employment and Training.

Appendix

State	Incentive grants PY 2006–07 exceeded state performance levels			
	WIA (title I)	AEFLA (adult education)	Perkins III (vocational education)	WIA title I; AEFLA; Perkins Act
Alabama		X		
Alaska			X	
Arizona	X	X	X	X
Arkansas	X		X	
California				
Colorado		X	X	
Connecticut	X	X	X	X
District of Columbia	X	X		
Delaware		X	X	
Florida			X	
Georgia			X	
Hawaii			X	
Idaho	X		X	
Illinois	X	X	X	X
Indiana		X	X	
Iowa	X	X		
Kansas		X	X	
Kentucky	X		X	
Louisiana		X	X	
Maine		X	X	
Maryland		X		
Massachusetts		X	X	

State	Incentive grants PY 2006–07 exceeded state performance levels			
	WIA (title I)	AEFLA (adult education)	Perkins III (vocational education)	WIA title I; AEFLA; Perkins Act
Michigan	X			
Minnesota	X	X		
Mississippi		X	X	
Missouri	X	X	X	X
Montana	X	X	X	X
Nebraska			X	
Nevada		X	X	
New Hampshire		X		
New Jersey		X	X	
New Mexico			X	
New York		X		
North Carolina			X	
North Dakota		X		
Ohio	X	X	X	X
Oklahoma			X	
Oregon		X	X	
Pennsylvania			X	
Puerto Rico	X			
Rhode Island				
South Carolina	X	X	X	X
South Dakota	X	X	X	X
Tennessee		X	X	
Texas		X	X	
Utah	X		X	
Vermont			X	
Virginia		X	X	
Washington	X	X		
West Virginia		X	X	
Wisconsin		X	X	
Wyoming			X	

States in **bold** exceeded their performance levels for all three programs.

[FR Doc. E8–8861 Filed 4–23–08; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0009]

Methylene Chloride Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified by the Methylene Chloride Standard (§ 1910.1052).

DATES: Comments must be submitted (postmarked, sent, or received) by June 23, 2008.

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

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2008–0009, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., *e.t.*

Instructions: All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2008–0009). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION** .

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Jamaa Hill at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Jamaa N. Hill or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The standard entitled ''Methylene Chloride'' (MC) (29 CFR 1910.1052; the ''Standard'') protects employees from the adverse health effects that may result from their exposure to methylene chloride. The requirements in the MC Standard include employee exposure monitoring, notifying employees of their MC exposures, administering medical examinations to employees, providing examining physicians with specific program and employee information, ensuring that employees receive a copy of their medical examination results, training employees on the hazards of MC, maintaining employees' exposure monitoring and medical examination records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and their authorized representatives.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to extend the information collection requirements contained in the Methylene Chloride Standard (29 CFR 1910.1052). The Agency is requesting to increase its current burden hour total from 64,305 hours to 67,362 for a total increase of 3,057 hours. The adjustment is primarily a result of an increase in the total number of establishments (from 88,623 to 92,354) based on updated data obtained from the U.S. Census Bureau and the North American Industry Classification System (NAICS). The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Standard. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of currently approved information collection requirements.

Title: Methylene Chloride Standard.

OMB Number: 1218–0179.

Affected Public: Business or other for-profits; not-for-profit institutions; Federal government; State, local, or Tribal governments.

Number of Respondents: 92,354.

Frequency of Response: Annually; monthly; on occasion.

Total Responses: 287,899.

Average Time per Response: Varies from 1 hour for administering a medical examination to 5 minutes to maintain an employee's medical or exposure record.

Estimated Total Burden Hours: 67,362.

Estimated Cost (Operation and Maintenance): $16,753,110.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0009). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

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

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

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on April 21, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–8879 Filed 4–23–08; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

National Industrial Security Program Policy Advisory Committee: Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101.6, announcement is made for the following committee meeting:

Name of Committee: National Industrial Security Program Policy Advisory Committee (NISPPAC).

Date of Meeting: May 15, 2008.

Time of Meeting: 10 a.m.–12 p.m.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Archivist's Reception Room, Room 105, Washington, DC 20408.

Purpose: To discuss National Industrial Security Program policy matters. This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Wednesday, May 7, 2008. ISOO will provide additional instructions for gaining access to the location of the meeting.

For Further Information Contact: Patrick Viscuso, Senior Program Analyst, Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, Washington, DC 20408, telephone number (202) 357–5313.

Dated: March 31, 2008.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. E8–8914 Filed 4–23–08; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 73 FR 8907 and no substantial comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF'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; or (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: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.*

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.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation Science Honorary Awards.

OMB Control No.: 3145–0035.

Abstract: The National Science Foundation (NSF) administers several honorary awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the NSB Vannevar Bush Award, and the NSB Public Service Award.

In 2003, to comply with E-government requirements, the nomination processes were converted to electronic submission through the National Science Foundation's (NSF) FastLane system. Individuals can now prepare nominations and references through *http://www.fastlane.nsf.gov/honawards/.* First-time users must register on the Fastlane Web site using the link found in the upper right-hand corner above the ''Log In'' box before accessing any of the honorary award categories.

Use of the Information: The Foundation has the following honorary award programs:

• President's National Medal of Science. Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 (Pub. L. 86–209), which established the award and stated that ''(t)he President shall * * * award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as * * * appropriate.''

Subsequently, Executive Order 10961 specified procedures for the Award by establishing a National Medal of Science Committee which would ''receive recommendations made by any other nationally representative scientific or engineering organization.'' On the basis of these recommendations, the Committee was directed to select its candidates and to forward its recommendations to the President.

In 1962, to comply with these directives, the Committee initiated a solicitation form letter to invite these nominations. In 1979, the Committee initiated a nomination form as an attachment to the solicitation letter. A slightly modified version of the nomination form was used in 1980.

The Committee established the following guidelines for selection of candidates:

1. Principal criterion: The total impact of an individual's work on the current state of physical, biological, mathematical, engineering or social and behavioral sciences.

2. Achievements of an unusually significant nature in relation to the potential effects on the development of scientific thought.

3. Unusually distinguished service in the general advancement of science and engineering, especially when accompanied by substantial contributions to the content of science. Recognition by peers within the scientific community.

4. Contributions to innovation and industry.

5. Influence on education through publications, teaching activities, outreach, mentoring, etc.

6. Must be a U.S. citizen or permanent resident who has applied for citizenship.

In 2003, the Committee changed the active period of eligibility to three years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the Committee.

Narratives are now restricted to two pages of text, as stipulated in the guidelines at *http://www.fastlane.nsf.gov/honawards/nms.*

• Alan T. Waterman Award. Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (Pub. L. 94–86)) and authorized NSF to ''establish the Alan T. Waterman Award for research or advanced study in any of the sciences or engineering'' to mark the 25th anniversary of the National Science Foundation and to honor its first Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of $500,000 over a three-year period for scientific research or advanced study in the mathematical, physical, medical, biological, engineering, social, or other sciences at the institution of the recipient's choice.

The Alan T. Waterman Award Committee was established by NSF to comply with the directive contained in Public Law 94–86. The Committee solicits nominations from members of the National Academy of Sciences, National Academy of Engineering, scientific and technical organizations, and any other source, public or private, as appropriate.

In 1976, the Committee initiated a form letter to solicit these nominations. In 1980, a nomination form was used which standardized the nomination procedures, allowed for more effective Committee review, and permitted better staff work in a short period of time. On the basis of its review, the Committee forwards its recommendation to the Director, NSF, and the National Science Board (NSB).

Candidates must be U.S. citizens or permanent residents and must be 35 years of age or younger or not more than seven years beyond receipt of the PhD degree by December 31 of the year in which they are nominated. Candidates should have demonstrated exceptional individual achievements in scientific or engineering research of sufficient quality to place them at the forefront of their peers. Criteria include originality, innovation, and significant impact on the field.

• Vannevar Bush Award. The NSB established the Vannevar Bush Award in 1980 to honor Dr. Bush's unique contributions to public service. The award recognizes an individual who, through public service activities in science and technology, has made an outstanding ''contribution toward the welfare of mankind and the Nation.''

The *NSB ad hoc* Vannevar Bush Award Committee annually solicits nominations from selected scientific engineering and educational societies. Candidates must be a senior stateperson who is an American citizen and meets two or more of the following criteria:

1. Distinguished himself/herself through public service activities in science and technology.
2. Pioneered the exploration, charting, and settlement of new frontiers in science, technology, education, and public service.
3. Demonstrated leadership and creativity that have inspired others to distinguished careers in science and technology.
4. Contributed to the welfare of the Nation and mankind through activities in science and technology.
5. Demonstrated leadership and creativity that have helped mold the history of advancements in the Nation's science, technology, and education.

Nominations must include a narrative description about the nominee, a curriculum vitae (without publications), and a brief citation summarizing the nominee's scientific or technological contributions to our national welfare in promotion of the progress of science. Nominations must also include two reference letters, submitted separate from the nomination through *http://www.fastlane.nsf.gov/honawards/* Nominations remain active for three years, including the year of nomination. After that time, candidates must be renominated with a new nomination for them to be considered by the selection committee.

• NSB Public Service Award. The NSB Public Service Award Committee was established in November 1996. This annual award recognizes people and organizations that have increased the public understanding of science or engineering. The award is given to an individual and to a group (company, corporation, or organization), but not to members of the U.S. Government.

Eligibility includes any individual or group (company, corporation, or organization) that has increased the public understanding of science or engineering. Members of the U.S. Government are not eligible for consideration.

Candidates for the individual and group (company, corporation, or organization) award must have made contributions to public service in areas other than research, and should meet one or more of the following criteria:

1. Increased the public's understanding of the processes of science and engineering through scientific discovery, innovation and its communication to the public.
2. Encouraged others to help raise the public understanding of science and technology.
3. Promoted the engagement of scientists and engineers in public outreach and scientific literacy.
4. Contributed to the development of broad science and engineering policy and its support.
5. Influenced and encouraged the next generation of scientist and engineers.
6. Achieved broad recognition outside the nominee's area of specialization.
7. Fostered awareness of science and technology among broad segments of the population.

Nominations must include a summary of the candidate's activities as they relate to the selection criteria; the nominator's name, address and telephone number; the name, address, and telephone number of the nominee; and the candidate's vita, if appropriate (no more than three pages).

The selection committee recommends the most outstanding candidate(s) for each category to the NSB, which approves the awardees.

Nominations remain active for a period of three years, including the year of nomination. After that time, candidates must be renominated with a new nomination for them to be considered by the selection committee.

Estimate of Burden: These are annual award programs with application deadlines varying according to the program. Public burden also may vary according to program; however, it is estimated that each submission is averaged to be 15 hours per respondent for each program. If the nominator is thoroughly familiar with the scientific background of the nominee, time spent to complete the nomination may be considerably reduced.

Respondents: Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

Estimated Number of Responses per Award: 137 responses, broken down as follows: For the President's National Medal of Science, 55; for the Alan T. Waterman Award, 50; for the Vannevar Bush Award, 12; for the Public Service Award, 20.

Estimated Total Annual Burden on Respondents: 2,580 hours, broken down by 1,100 hours for the President's National Medal of Science (20 hours per 55 respondents); 1,000 hours for the

Alan T. Waterman Award (20 hours per 50 respondents); 180 hours for the Vannevar Bush Award (15 hours per 12 respondents); and 300 hours for the Public Service Award (15 hours per 20 respondents).

Frequency of Responses: Annually.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (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.

Dated: April 21, 2008.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E8–8876 Filed 4–23–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of the Availability of a Draft Programmatic Environmental Assessment

AGENCY: National Science Foundation.

ACTION: Notice of request for public comment on a Draft Programmatic Environmental Assessment (PEA) for the Ocean Observatories Initiative (OOI).

SUMMARY: The National Science Foundation (NSF) gives notice of the request for public comment on a Draft PEA for the OOI. The Division of Ocean Sciences in the Directorate for Geosciences (GEO/OCE) has prepared a Draft PEA for the OOI, a multi-million dollar Major Research Equipment and Facilities Construction effort intended to put moored and cable infrastructure in discrete locations in the coastal and global ocean. The Draft PEA is available for public comment for a 30 day period.

DATES: Comments must be submitted on or before May 16, 2008.

ADDRESSES: Copies of the Draft PEA are available upon request from: Dr. Shelby Walker, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230; Telephone: (703) 292–8580. The Draft PEA is also available under Additional OCE Resources at the following Web site: *http://www.nsf.gov/div/index.sp?djv=ocE.*

FOR FURTHER INFORMATION CONTACT: Dr. Shelby Walker, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292–8580.

SUPPLEMENTARY INFORMATION: Oceanographic research has long relied on research vessel cruises (expeditions) as the predominate means to make direct measurements of the ocean. Remote sensing (use of satellites) has greatly advanced abilities to measure ocean surface characteristics over extended periods of time. A major advancement for oceanographic research methods is the ability to make sustained, long-term, and adaptive measurements from the surface to the ocean bottom. ''Ocean Observatories'' are now being developed to further this goal. Building upon recent technology advances and lessons learned from prototype ocean observatories, NSF's Ocean Sciences Division (OCE) is proposing to fund the OOI, an interactive, globally distributed and integrated infrastructure that will be the backbone for the next generation of ocean sensors and resulting complex ocean studies presently unachievable. The OOI reflects a community-wide, national and international scientific planning effort and is a key NSF contribution to the broader effort to establish focused national ocean observatory capabilities through the Integrated Ocean Observing System (IOOS).

The OOI infrastructure would include cables, buoys, deployment platforms, moorings, junction boxes, electric power generation (solar, wind, fuel cell, and/or diesel), and two-way communications systems. This large-scale infrastructure would support sensors located at the sea surface, in the water column, and at or beneath the seafloor. The OOI would also support related elements, such as unified project management, data dissemination and archiving, modeling of oceanographic processes, and education and outreach activities essential to the long-term success of ocean science. It would include the first U.S. multi-node cabled observatory; fixed and relocatable coastal arrays coupled with mobile assets; and advanced buoys for interdisciplinary measurements, especially for data-limited areas of the Southern Ocean and other high-latitude locations.

The OOI design is based upon three main technical elements across global, regional, and coastal scales. At the global and coastal scales, moorings would provide locally generated power to seafloor and platform instruments and sensors and use a satellite link to shore and the Internet. Up to four Global Scale Nodes (GSN) or buoy sites are proposed for ocean sensing in the Eastern Pacific and Atlantic oceans. The Regional-Scale Nodes (RSN) off the coast of Washington and Oregon would consist of seafloor observatories with various chemical, biological, and geological sensors linked with submarine cables to shore that provide power and Internet connectivity. Coastal-Scale Nodes (CSN) would be represented by the fixed Endurance Array, consisting of a combination of cabled nodes and stand-alone moorings, off the coast of Washington and Oregon, and the relocatable Pioneer Array off the coast of Massachusetts, consisting of a suite of stand-alone moorings. In addition, there would be an integration of mobile assets such as autonomous underwater vehicles (AUVS) and/or gliders with the GSN, RSN, and CSN observatories.

The NSF invites interested members of the public to provide written comments on this Draft PEA. Comments can be submitted to: Dr. Shelby Walker, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230; Telephone: (703) 292–8580; or electronically at PEA *comments@nsf.gov.*

Dated: April 10, 2008.

Shelby Walker,

Associate Program Director, Ocean Technology and Interdisciplinary Coordination, Division of Ocean Sciences, National Science Foundation.

[FR Doc. E8–8138 Filed 4–23–08; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–024]

Entergy Operations, Inc.; Acceptance for Docketing of an Application for Combined License for Grand Gulf Unit 3

By letter dated February 27, 2008, as supplemented by letters dated April 9 and 11, 2008, Entergy Operations, Inc. (EOI), on behalf of itself and Entergy Mississippi, Inc., Entergy Louisiana, LLC, Entergy Gulf States Louisiana, LLC, and System Energy Resources, Inc., submitted an application to the U. S. Nuclear Regulatory Commission (NRC) for a combined license (COL) for one

economic simplified boiling water reactor (ESBWR) in accordance with the requirements contained in 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' The application references an early site permit (ESP) granted to System Energy Resources, Inc. for the Grand Gulf ESP site. The reactor will be identified as Grand Gulf Unit 3 and located at the Grand Gulf Nuclear Station (GGNS) site in Claiborne County, Mississippi. A notice of receipt and availability of this application was previously published in the **Federal Register** (73 FR 14849 on March 19, 2008).

The NRC staff has determined that Entergy has submitted information in accordance with 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR part 52 that is acceptable for docketing. The docket number established for this COL application is 52–024.

The NRC staff will perform a detailed technical review of the COL application. Docketing of the COL application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with Subpart L, ''Informal Hearing Procedures for NRC Adjudications,'' of 10 CFR part 2 and will receive a report on the COL application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.87, ''Referral to the Advisory Committee on Reactor Safeguards (ACRS).'' If the Commission finds that the COL application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue a COL, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

In accordance with 10 CFR part 51, the Commission will also prepare an environmental impact statement for the proposed action. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice.

Finally, the Commission will announce in a future **Federal Register** notice the opportunity to petition for leave to intervene in the hearing required for this application by 10 CFR 52.85.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html.* Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 17th day of April 2008.

For the Nuclear Regulatory Commission.

Eric R. Oesterle,

Senior Project Manager, ESBWR/ABWR Projects Branch 1, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–8898 Filed 4–23–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on January 14, 2008.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 64, ''Travel Voucher'' (Part 1); NRC Form 64A, ''Travel Voucher'' (Part 2); and NRC Form 64B, ''Optional Travel Voucher'' (Part 2).

3. *Current OMB approval number:* 3150–0192.

4. *The form number if applicable:* NRC Forms 64, 64A, and 64B.

5. *How often the collection is required:* On occasion.

6. *Who will be required or asked to report:* Contractors, consultants and invited NRC travelers who travel in the course of conducting business for the NRC.

7. *An estimate of the number of annual responses:* 100.

8. *The estimated number of annual respondents:* 100.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 100 (1 hour per form).

10. *Abstract:* Consultants, contractors, and those invited by the NRC to travel (e.g., prospective employees) must file travel vouchers and trip reports in order to be reimbursed for their travel expenses. The information collected includes the name, address, social security number, and the amount to be reimbursed. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 27, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0192), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 18th day of April, 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–8893 Filed 4–23–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA–08–089]

In the Matter of: Louisiana Energy Services, L.P. (National Enrichment Facility); Order Approving Indirect Transfer of License and Conforming Amendment

I

Louisiana Energy Services (LES or the Licensee) is the holder of Special Nuclear Material License No. SNM–2010 for the National Enrichment Facility (NEF), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission), pursuant to 10 CFR parts 30, 40, and 70. The Licensee is authorized, by its license, to construct and operate a uranium enrichment facility in accordance with the Atomic Energy Act of 1954 (AEA), as amended, and 10 CFR parts 30, 40, and 70. The LES license was issued on June 23, 2006, and is due to expire on June 23, 2036.

II

By letter dated October 19, 2007, the Licensee proposed to: (1) Restructure itself from a Limited Partnership (LP) to a Limited Liability Company (LLC); and (2) reorganize the ownership arrangement of Urenco Deelnemingen BV (UDE), a current limited partner of the Licensee. No physical changes to the NEF or operational changes were proposed.

The Licensee also requested approval of a conforming license amendment that would change the Licensee's name from Louisiana Energy Services, L.P., to Louisiana Energy Services, LLC.

Approval of the indirect transfer of the license and of the conforming license amendment was requested pursuant to 10 CFR 70.36. A notice of consideration of approval was published in the **Federal Register** on January 31, 2008 (73 FR 5882), including a notice of opportunity to request a hearing, or to submit written comments. No comments or requests for a hearing were submitted in response to this notice.

Pursuant to 10 CFR 30.34(b), 40.46, and 70.36, no license granted under those parts, and no right thereunder to use byproduct, source, or special nuclear material, shall be transferred, assigned, or in any manner disposed of, directly or indirectly, through a transfer of control of any license, to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the AEA, and gives its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the proposed restructuring and reorganization will not affect the qualifications of the Licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. After review of the information in the Application and other information before the Commission, and relying on the representations and agreements contained in the Application, the NRC staff determined that the proposed corporate restructuring and indirect transfer of the license is acceptable and is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further determined that the application for the proposed license amendment complies with the standards and requirements of the AEA, and the Commission's rules and regulations set forth in Title 10 Chapter I. The requested indirect transfer of the license and issuance of the conforming license amendment will not be inimical to the common defense and security or to the health and safety of the public, or the environment, and the issuance of the proposed amendment would be in accordance with 10 CFR part 51 of the Commission's regulations, and all applicable requirements have been satisfied.

III

Accordingly, pursuant to sections 161b, 161i, and 184 of the Act; 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 30.34(b), 40.46, and 70.36, *it is hereby ordered* that the Application regarding the indirect transfer of license, as described herein, is approved, subject to the following condition, which is also hereby made a condition of the license:

> The Licensee, as stated in the Application, will abide by all commitments and representations previously made by the Licensee with respect to the license.

It is further ordered that the conforming license amendment for the indirect transfer of license shall be issued and made effective at the time the proposed license transfer is completed.

It is further ordered that:

—In order to ensure that the NRC is timely notified of the transfer's completion, the Licensee shall inform the Director of the Office of Nuclear Material Safety and Safeguards, in writing, of the date of closing of the indirect transfer of License No. SNM–2010, at least one (1) business day prior to closing; and

—If the indirect transfer of license and all the above conforming conditions have not been completed within 60 days from the date of the issuance of the Order, the Order shall become null and void; however, on written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated October 19, 2007, and the Safety Evaluation Report that supports the amendment, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible, electronically, from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room, on the Internet, at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR reference staff, by telephone at 1–800–397–4209, 301–415–4737, or via e-mail, to *pdr@nrc.gov.*

Dated this 3rd day of April, 2008.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E8–8895 Filed 4–23–08; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Student Beneficiary Monitoring; OMB 3220–0123

Under provisions of the Railroad Retirement Act (RRA), there are two types of benefits whose payment is based upon the status of a child being in full-time elementary or secondary school attendance at age 18–19; a survivor child's annuity benefit under Section 2(d)(2)(iii) and an increase in the employee retirement annuity under the Special Guaranty computation as prescribed in section 3(f)(3).

The survivor student annuity is usually paid by direct deposit at a financial institution to the student's checking or savings account or a joint bank account with the parent. The requirements for eligibility as a student are prescribed in 20 CFR 216.74, and include students in independent study or home schooling.

The RRB requires evidence of full-time school attendance in order to determine that a child is entitled to student benefits. The RRB utilizes the following forms to conduct its student monitoring program. Form G–315, Student Questionnaire, obtains certification of a student's full-time school attendance. It also obtains information on a student's marital status, Social Security benefits, and employment which are needed to determine entitlement or continued entitlement to benefits under the RRA. Form G–315a, Statement of School Official, is used to obtain verification from a school that a student attends school full-time and provides their expected graduation date. Form G–315a.1, School Officials Notice of Cessation of Full-Time Attendance, is used by a school to notify the RRB that a student has ceased full-time school attendance. The RRB proposes no changes to the forms.

The estimated annual respondent burden is as follows:

Form(s): G–315, G–315a and G–315a.1.

Estimate of Annual Responses: 900 (860 Form G–315's, 20 Form G–315a's and 20 Form G–315a.1's).

Estimated Completion Time: The completion time for Form G–315 is estimated at 15 minutes per response. The completion time for Form G–315a is estimated at 3 minutes per response. The completion time for Form G–315a.1 is estimated at 2 minutes.

Estimated Annual Burden: 217 hours.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.* Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV.*

Charles Mierzwa,

Clearance Officer.

[FR Doc. E8–8962 Filed 4–23–08; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 12d3–1, SEC File No. 270–504, OMB Control No. 3235–0561.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 12(d)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a) generally prohibits registered investment companies (''funds''), and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter (''securities-related businesses''). Rule 12d3–1 (''Exemption of acquisitions of securities issued by persons engaged in securities related businesses'' (17 CFR 270.12d3–1)) permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses, but a fund may not rely on rule 12d3–1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.

A fund may, however, rely on an exemption in rule 12d3–1 to acquire securities issued by its subadvisers in circumstances in which the subadviser would have little ability to take advantage of the fund, because it is not in a position to direct the fund's securities purchases. The exemption in rule 12d3–1 is available if (i) the subadviser is not, and is not an affiliated person of, an investment adviser that provides advice with respect to the portion of the fund that is acquiring the securities, and (ii) the advisory contracts of the subadviser, and any subadviser that is advising the purchasing portion of the fund, prohibit them from consulting with each other concerning securities transactions of the fund, and limit their responsibility in providing advice with respect to discrete portions of the fund's portfolio.

The Commission staff estimates that 3,583 portfolios, of approximately 649 fund complexes, use the services of one or more subadvisers. Based on discussions with industry representatives, the staff estimates that it requires approximately 6 hours to draft and execute revised subadvisory contracts allowing funds and subadvisers to rely on the exemptions in rule 12d3–1.[1] The staff assumes that all existing funds amended their advisory contracts following amendments to rule 12d3–1 in 2002 that conditioned certain exemptions upon these contractual alterations, and therefore there is no continuing burden for those funds.[2]

Based on an analysis of fund filings, the staff estimates that approximately 600 fund portfolios enter into subadvisory agreements each year.[3] Based on discussions with industry representatives, the staff estimates that

[1] Rules 12d3–1, 10f–3, 17a–10, and 17e–1 require virtually identical modifications to fund advisory contracts. The Commission staff assumes that funds would rely equally on the exemptions in these rules, and therefore the burden hours associated with the required contract modifications should be apportioned equally among the four rules.

[2] We assume that funds formed after 2002 that intended to rely on rule 12d3–1would have included the contract provision in their initial subadvisory contracts.

[3] The use of subadvisers has grown rapidly over the last several years, with approximately 600 portfolios that use subadvisers registering between December 2005 and December 2006. Based on information in Commission filings, we estimate that 31 percent of funds are advised by subadvisers.

it will require approximately 3 attorney hours[4] to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 12d3–1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f–3, 17a–10, and 17e–1, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 12d3–1 for this contract change would be 0.75 hours.[5] Assuming that all 600 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 450 burden hours annually, with an associated cost of approximately $131,400.[6]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 12d3–1. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *Alex_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e–mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 18, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8927 Filed 4–23–08; 8:45 am]

BILLING CODE 8010–01–P

[4] The Commission staff's estimates concerning the wage rates for attorney time are based on salary information for the securities industry compiled by the Securities Industry Association. The $292 per hour figure for an attorney is from the SIA Report on Management & Professional Earnings in the Securities Industry 2006, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[5] This estimate is based on the following calculation (3 hours ÷ 4 rules = .75 hours).

[6] These estimates are based on the following calculations: (0.75 hours × 600 portfolios = 450 burden hours); ($292 per hour × 450 hours = $131,400 total cost).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 73 FR 21165, April 18, 2008.

STATUS: Open Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: April 21, 2008 at 10 a.m.

CHANGE IN THE MEETINGS: Date and Time Change.

The Open Meeting scheduled for Monday, April 21, 2008 at 10 a.m., has been changed to Wednesday, May 14, 2008 at 10 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: April 18, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–8871 Filed 4–23–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57686; File No. SR–CBOE–2008–47]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Maker Fees Applicable to DPMs on the CBOE Stock Exchange

April 18, 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 April 18, 2008, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as one establishing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its CBOE Stock Exchange (''CBSX'') Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBSX Fees Schedule lists the fees applicable to trading on CBSX. Those fees include transaction fees, which are based on whether the executing member is ''taking'' liquidity or ''making'' liquidity in connection with the transaction. CBOE recently raised the taker transaction fee for intermarket sweep orders (''ISOs'') and immediate or cancel orders (''IOC orders'') that execute on CBSX to $0.0030 per share.[5] The taker transaction fee for other order types remains unchanged at $0.0029 per share. However, the maker rebate for Designated Primary Market-Makers

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 57679 (April 17, 2008) (SR–CBOE–2008–45).

(''DPMs'') that meet the Liquidity Provider Guidelines (''LPGs'') provided for in the CBSX Fees Schedule is pegged to the taker fee amount on each trade. When CBOE raised the fee for ISO and IOC order executions to $0.0030 per share, it did not intend to increase the DPM rebate for those orders to $0.0030 per share. This filing establishes that the rebate for DPMs that meet the LPGs is $0.0029 per share.

The proposed changes take effect on Friday, April 18, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(4) of the Act [7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(2) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2008–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–47. 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–CBOE–2008–47 and should be submitted on or before May 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8926 Filed 4–23–08; 8:45 am]

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57684; File No. SR–CHX–2008–03]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change To Amend Rules Relating to Fingerprint-Based Record Checks

April 18, 2008.

I. Introduction

On February 26, 2008, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend rules relating to fingerprint-based criminal record checks of Exchange staff and other persons. The proposed rule change was published for comment in the **Federal Register** on March 18, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

As part of its trading model rule set, the Exchange included a fingerprint rule that requires the Exchange to conduct fingerprint-based criminal record checks of Exchange staff, certain independent contractors and other persons that have regular access to the Exchange's facilities and premises.[4] The Exchange proposes to amend this rule to remove the requirement that the Exchange conduct these fingerprint-based background checks. The Exchange believes that those criminal record background checks of staff and consultants may be obtained through more efficient means. This proposal has no impact on the fingerprinting obligations that apply to Exchange participants and participant firm personnel. The Exchange will continue to require its participants to adhere to applicable fingerprinting obligations.[5]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57479 (March 12, 2008), 73 FR 14516 (March 18, 2008).

[4] *See* Article 6, Rule 10(b) of the Exchange's Rules.

[5] *See* Article 6, Rule 10(a) of the Exchange's Rules; *see also* Section 17(f)(2) of the Act (15 U.S.C. 78q(f)(2)) and Rule 17f–2 thereunder (17 CFR 240.17f–2).

finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 Commission believes that the Exchange's proposal to permit it the flexibility to determine whether it conducts fingerprint-based criminal record checks of Exchange staff and other persons, or whether it obtains those background checks in another manner, is reasonable and consistent with the Act. The Commission notes that the proposed rule change has no effect on the current fingerprinting obligations of Exchange participants and participant firm personnel under the rules of the Exchange or of the Act and the rules thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–2008–03), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E8–8875 Filed 4–23–08; 8:45 am]

BILLING CODE 8010–01–P

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57681; File No. SR–FINRA–2008–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the Trade Reporting Structure and Require Submission of Non-Tape Reports To Identify Other Members for Agency and Riskless Principal Transactions

April 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 28, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a the National Association of Securities Dealers, Inc. (''NASD'')) 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 FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend its trade reporting rules applicable to over-the-counter (''OTC'') equity transactions[3] to: (1) Replace the current market maker-based trade reporting framework with an ''executing party'' framework; and (2) require that any member with the trade reporting obligation under FINRA rules that is acting in a riskless principal or agency capacity on behalf of one or more other members submit non-tape report(s) to FINRA, as necessary, to identify such other member(s) as a party to the trade. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Specifically, OTC equity transactions are: (1) Transactions in NMS stocks, as defined in Rule 600(b) of Regulation NMS under the Act, effected otherwise than on an exchange, which are reported through the Alternative Display Facility (''ADF'') or a Trade Reporting Facility (''TRF''); and (2) transactions in ''OTC Equity Securities,'' as defined in NASD Rule 6610 (*e.g.*, OTC Bulletin Board and Pink Sheets securities), Direct Participation Program (''DPP'') securities and PORTAL equity securities, which are reported through the OTC Reporting Facility (''ORF''). The ADF, TRFs and ORF are collectively referred to herein as the ''FINRA Facilities.''

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

Trade Reporting Structure

Currently, the following structure is in place for purposes of reporting most OTC equity transactions to FINRA: (1) In transactions between two market makers, the sell-side reports; (2) in transactions between a market maker and a non-market maker, the market maker reports; (3) in transactions between two non-market makers, the sell-side reports; and (4) in transactions between a member and either a non-member or customer, the member reports.[4] This reporting structure can result in confusion, delays and double-reporting, as the parties to a trade attempt to determine which party has the trade reporting obligation. Today, a firm's status as a market maker may not always be apparent to the contra-party to a trade and, increasingly, firms' proprietary desks (other than their market making desks) are handling and executing transactions in equity securities. In addition, members are required to report whether any applicable exception or exemption to Rule 611 of Regulation NMS (the Order Protection Rule) applies to a transaction, which is information that may not be readily known to the party with the reporting obligation if it is not the executing broker to the transaction, *e.g.*, whether the executing broker has routed

[4] *See* NASD Rules 4632(b) and 6130(c) relating to the NASD/Nasdaq TRF; 4632A(b) relating to the ADF; 4632C(b) and 6130C(c) relating to the NASD/NSX TRF; 4632E(b) and 6130E(c) relating to the NASD/NYSE TRF; and 6130(c) and 6620(b) relating to the ORF.

For purposes of reporting transactions in DPP securities to FINRA, NASD Rule 6920(b) requires that in a transaction between two members, the member representing the sell-side report and in a transaction between a member and customer, the member report.

intermarket sweep orders in compliance with Rule 611(b)(6).

Accordingly, FINRA is proposing to adopt a simpler, more uniform structure for purposes of reporting OTC equity transactions to FINRA. Specifically, FINRA is proposing to amend NASD Rules 4632(b), 4632A(b), 4632C(b), 4632E(b), 6620(b) and 6920(b) to require that for transactions between members, the ''executing party'' report the trade to FINRA. For transactions between a member and a non-member or customer, the member would report the trade.[5]

FINRA is proposing to define ''executing party'' as the member that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. In certain limited circumstances, it may not be clear which member should be deemed the executing party for trade reporting purposes (e.g., manually negotiated trades via the telephone). Accordingly, FINRA is proposing to require expressly that for transactions between two members where both members may satisfy the definition of executing party, the member representing the sell-side shall report the transaction to FINRA, unless the parties agree otherwise and the member representing the sell-side contemporaneously documents such agreement. In such instances, the sell-side will be presumed to be the member with the trade reporting obligation unless it can demonstrate there was an agreement to the contrary, *e.g.*, contemporaneous notes of a telephone conversation or notation on the order ticket. FINRA believes that this approach will establish an objective standard for determining the reporting obligation in these circumstances, while affording the parties flexibility if, for example, the member representing the buy-side is the party that knows the material terms and details of the trade and thus is in the better position to report the trade.

Under the proposed rule change, alternative trade systems (''ATSs''), including electronic communications networks (''ECNs''), would be the executing party and have the reporting obligation where the transaction is executed on the ATS. If an ATS routes an order to another member for handling and/or execution, then the other member would be the executing party and have the reporting obligation under the proposed rule change. If an ATS routes an order to a non-member that is executed OTC, then the ATS would report the trade. Accordingly, FINRA is proposing to delete subparagraphs (5) through (7) from NASD Rules 6130(c), 6130C(c) and 6130E(c) relating to trade reporting by a ''Reporting ECN.''[6] Under the current rules, a Reporting ECN is required to ensure that trades are reported in accordance with one of three enumerated methods and must notify FINRA in writing of the method of reporting for each of its subscribers.[7] FINRA notes that today, most ATSs elect to report transactions to FINRA using the first reporting method, i.e., the ATS submits the trade report and identifies itself as the Reporting Party. Thus, FINRA believes that the proposed rule change would clarify the reporting requirements for ATSs and would better align the rules with current trade reporting practices.

Finally, FINRA is proposing to make certain technical conforming changes, including to (1) delete NASD Rules 4632(b)(5), 4632C(b)(5), 4632E(b)(5), 6620(b)(5) and 6920(b)(3) relating to reporting by a Reporting ECN; (2) delete the definitions of, and references to, ''Reporting ECN,'' ''Reporting Market Maker'' and ''Reporting Order Entry Firm'' in NASD Rules 6110, 6110C and 6110E, which terms would be obsolete as a result of the proposed rule change; and (3) amend NASD Rules 6130(d)(5), 6130C(d)(5) and 6130E(d)(5) to replace the terms ''Market Maker side'' and ''Order Entry side'' with ''MMID or Reporting Party side'' and ''OEID or non-Reporting Party side,'' respectively.

FINRA believes that the proposed rule change would result in more accurate and timely trade reporting and make the trade reporting process less cumbersome for members. The proposed rule change would ensure that the member with the trade reporting obligation is the party that knows the material terms and details of the transaction, including any exceptions or exemptions to the Order Protection Rule that may apply to the trade. Furthermore, many members have entered into agreements to permit the executing party to report on behalf of the member with the reporting obligation under FINRA's current rules. Thus, FINRA believes that, to a large extent, the proposed rule change would be consistent with current trade reporting practices.

Submission of Non-Tape Reports To Identify Other Members for Agency and Riskless Principal Transactions

As a general matter, FINRA trade reporting rules require that a member that is a party to an OTC trade be identified in trade reports submitted to FINRA. Each trade report submitted for public dissemination purposes (or ''tape report'') generally only allows for the identification of two parties. Thus, where a FINRA member executes a trade in a riskless principal[8] or agency capacity on behalf of another member, or matches, as agent, the orders of two or more members, the tape report will not identify all members involved in the trade. In such circumstances, additional ''non-tape reports,'' *i.e.*, reports that are not submitted to the tape for public dissemination,[9] would need to be submitted to identify all members involved in the trade.

Today, some members submit non-tape reports to FINRA identifying the other members involved in the trade, while other members do not. FINRA trade reporting rules generally are not specific in this regard because, for the most part, they reflect the traditional two-party trade model where a broker-dealer acts as principal or as agent for a non-broker-dealer customer. Industry business models have evolved to include more trades where one broker-dealer acts as agent or riskless principal for another broker-dealer and order management systems and ATSs can simultaneously match one or more broker-dealer orders on one or both sides of a trade.

To address these changes, FINRA is proposing to adopt NASD Rules 4632(d)(4), 4632A(e)(1)(D), 4632C(d)(4), 4632E(d)(4), 6620(d)(4) and 6920(d)(5) to require that any member with the

[5] In addition, FINRA is proposing to amend NASD Rules 6130(c), 6130C(c) and 6130E(c) to delete the duplicative rule provisions in subparagraphs (1) through (4) and cross-reference NASD Rules 4632(b) and 6620(b), 4632C(b) and 4632E(b), respectively.

FINRA also notes that the proposed executing party reporting structure would apply to the reporting of transactions in PORTAL equity securities to FINRA. Pursuant to NASD Rule 6732(a)(3), the member with the obligation to report such transactions to FINRA is determined in accordance with NASD Rule 6620(b).

[6] ''Reporting ECN'' generally is defined in NASD Rules 6110, 6110C and 6110E as an electronic communications network or alternative trading system, as those terms are defined in SEC Rule 600(b) of Regulation NMS.

[7] FINRA notes that the three reporting methods apply only for purposes of reporting trades to a TRF or the ORF. There is no comparable provision relating to reporting trades to the ADF.

[8] For purposes of FINRA trade reporting rules applicable to equity securities, a ''riskless principal'' transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal and satisfies the original order by selling (buying) as principal at the same price.

[9] Non-tape reports can be (1) ''non-tape, non-clearing,'' meaning that the report is submitted to FINRA solely for regulatory purposes, or (2) ''clearing-only,'' meaning that the report is submitted to FINRA for clearing, *i.e.*, for submission by FINRA to the National Securities Clearing Corporation (and perhaps also regulatory purposes).

obligation to report the trade under FINRA rules that is acting in a riskless principal or agency capacity on behalf of one or more other members submit to FINRA one or more non-tape report(s) identifying such other member(s) as a party to the transaction, if such other member(s) is not identified on the initial trade report or a report submitted to FINRA to reflect the offsetting leg of a riskless principal transaction. In addition, FINRA is proposing to amend NASD Rule 6732(a)(3), which currently cross-references the trade reporting structure in NASD Rule 6620(b), to also cross-reference NASD Rule 6620(d), thereby making the proposed reporting requirement applicable to PORTAL equity security transactions. A member that matches, as agent, the orders of multiple members on one or both sides of the trade would be required to submit multiple non-tape reports, as necessary, to identify all members on whose behalf the member was acting.

For example, where Member A, as agent or riskless principal on behalf of Member B, executes an OTC trade with Member C, and Member A has the obligation to report the trade to FINRA, Member A also would be required to submit a non-tape report to FINRA to indicate that it was acting on behalf of Member B. By way of further example, where Member A matches, as agent, the orders of Member B and Member C and submits to FINRA a tape report between Member A and Member C, Member A also would be required to submit a non-tape report to identify Member B as a party to the trade. In this example, if Member A were to report the trade to the tape as an agency cross (such that neither Member B nor Member C is identified on the tape report), then Member A would be required to submit two non-tape reports to identify Members B and C. In these examples, Member A can satisfy its reporting obligation under the proposed rule change by submitting a clearing-only report, if necessary to clear the offsetting leg(s) of the transaction through a FINRA Facility. However, if the parties do not need to clear the offsetting leg(s) of the transaction through a FINRA Facility, then Member A would be required to submit a non-tape, non-clearing report(s). Additionally, if Member A is required to submit a non-tape report to comply with applicable riskless principal reporting requirements under FINRA rules [10] and such report identifies Member B, then Member A would have no separate reporting obligation under the proposed rule change.

The proposed reporting requirement would only apply to the member that has the responsibility under FINRA rules to report the trade to FINRA (i.e., the ''executing party'' in a trade between two members, as discussed above). For example, where Member A, as agent on behalf of Member B, and Member C execute an OTC trade, and Member C has the obligation to report the trade to FINRA, Member A would not be required under the proposed rule change to submit a non-tape report to indicate that it was acting on behalf of Member B.

However, the proposed rule change expressly would not negate or modify the requirements for reporting riskless principal transactions under FINRA rules. Thus, drawing on the example in the paragraph above, if Member A is acting as riskless principal (as opposed to agent) on behalf of Member B, Member A currently is required to submit a non-tape report to reflect the offsetting leg of the transaction under FINRA riskless principal rules, if the tape report does not properly reflect Member A's capacity as riskless principal.[11] This requirement would not change under the proposed rule change. Additionally, the proposed rule change would not change the reporting requirements applicable to riskless principal transactions with a customer.

FINRA notes that the proposed reporting requirement would not apply to transactions that are executed on and reported through an exchange. Today, where the initial leg of a riskless principal or agency transaction is executed on an exchange, members are not required to report either leg of the transaction to FINRA. The initial leg of the transaction is reported through the exchange (and therefore must not be reported to FINRA), and members have the option of submitting a non-tape (typically, a clearing-only) report to FINRA for the offsetting leg of the transaction. Pursuant to the proposed rule change, members would continue to have the option of submitting a non-tape report for riskless principal and agency transactions where the initial leg is executed on an exchange; however, there would continue to be no obligation to submit a non-tape report for such trades. Thus, for example, where Member A, as agent or riskless principal on behalf of Member B, executes a trade on an exchange, the trade will be reported to the tape by the exchange and, under the proposed rule change, Member A would not be required to submit a non-tape report to FINRA to indicate that it was acting on behalf of Member B. However, Member A would be permitted to submit a clearing-only report to clear the offsetting leg of the transaction between Member A and Member B through a FINRA Facility.[12]

To clarify the scope and application of the proposed reporting requirement, FINRA is proposing to include several examples in the proposed rule text. FINRA notes that these examples are not intended to represent all possible trade reporting scenarios under the proposed rule change. Additionally, consistent with the definition of ''riskless principal'' in other FINRA rules applicable to OTC equity trade reporting, FINRA is proposing to amend the definition of ''riskless principal transaction'' in NASD Rule 6910 to clarify that a member may act in a riskless principal capacity on behalf of another broker-dealer as well as a customer.[13]

Finally, FINRA notes that because members would be submitting non-tape reports, the 90-second reporting requirement under FINRA trade reporting rules would not apply. Thus, members generally would have until the end of the day on trade date to submit the requisite non-tape reports.[14]

FINRA believes that the proposed rule change would enhance FINRA staff's ability to create a complete and accurate audit trail and assist in the automated surveillance of various customer protection and market integrity rules.

Many members today submit clearing-only reports to FINRA in instances where the proposed reporting requirement would apply, *e.g.*, if a member needs to clear the offsetting leg of an agency transaction through a FINRA Facility or if a member elects under FINRA rules to report an OTC riskless principal trade in related tape and non-tape reports. Thus, for some

[10] If an OTC riskless principal transaction is not reported to FINRA in a single tape report properly marked as riskless principal, then two separate reports must be submitted: (1) A tape report to reflect the initial leg of the transaction and (2) a non-tape report to reflect the offsetting, ''riskless'' leg of the transaction, with the correct capacity of riskless principal. *See* NASD Rules 4632(d)(3)(B), 4632A(e)(1)(C)(ii), 4632C(d)(3)(B), 4632E(d)(3)(B) and 6620(d)(3)(B).

[11] If Member A's capacity is properly marked as riskless principal on the tape report, Member A would not be required to submit a non-tape report to FINRA.

[12] *See* FINRA *Regulatory Notice* 07–38 (August 2007).

[13] FINRA also is proposing a technical change to insert paragraph headings for ease of reference in NASD Rules 4632(d), 4632A(e)(1), 4632C(d), 4632E(d), 6620(d) and 6920(d).

[14] In certain circumstances, however, members must submit non-tape reports contemporaneously with trade execution, *e.g.*, to qualify for the exemption from the requirements of IM–2110–2 (Trading Ahead of Customer Limit Order) for riskless principal transactions.

members, the proposed rule change may not require any changes to current reporting practices and systems. For other members, however, the proposed rule change would require systems changes, *e.g.*, if a member does not need to clear the offsetting leg of an agency transaction through a FINRA Facility. Additionally, where a member reports a riskless principal transaction to FINRA in a single properly marked tape report, a non-tape report would be required under the proposed rule change if the member is acting on behalf of another member.

FINRA will announce the operative date of the proposed rule change on its website. In recognition of the technological changes that the proposed rule change will require, the operative date will be (1) at least 90 days following Commission approval for transactions executed on ATSs, including electronic communications networks; and (2) at least 180 days following Commission approval with respect to all other transactions. FINRA believes that a shorter implementation period is appropriate for ATSs because, as noted above, most ATSs currently are the reporting party for transactions executed on the ATS and some voluntarily submit non-tape reports to reflect all FINRA members that are parties to a trade.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules 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 to amend the trade reporting structure will result in more accurate and timely trade reporting and thus enhance market transparency. Additionally, FINRA believes that the proposed rule change to require the submission of non-tape reports to identify other members for agency and riskless principal transactions will promote a more complete and accurate audit trail.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[15] 15 U.S.C. 78o–3(b)(6).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In September 2007, FINRA published *Regulatory Notice* 07–46 (''Notice'') soliciting comment on a proposal to adopt a simpler and more uniform trade reporting structure. Nine comment letters were received in response to the Notice.[16]

All of the commenters support the adoption of a new trade reporting structure, asserting that the current structure can be confusing and create delays and reporting errors. Seven of the nine commenters support the proposed executing party reporting structure, asserting that this structure is the most logical and efficient approach.[17] These commenters assert that the executing party knows the material terms and details of the transaction, as well as any Order Protection Rule exceptions or exemptions that apply to the trade,[18] and thus is in the best position to report in a timely manner[19] and to correct reporting errors.[20] In addition, several commenters note that industry practice is for executing parties to trade report; most executing parties already have established systems to trade report and many firms have entered give-up agreements to replicate the executing party reporting structure.[21]

One commenter states that it is unclear whether the advantages of Qualified Service Representative (QSR) agreements would remain under the proposed executing party reporting structure and strongly urges that any changes continue to keep the QSR process intact.[22] FINRA notes that a QSR agreement is a National Securities Clearing Corporation agreement and, for FINRA purposes, merely establishes that one party can send a trade to clearing on behalf of the other party. A give up agreement still is required for a member to report trade information to a FINRA Facility on behalf of another member, even if the parties have a QSR agreement in effect.[23] This proposed rule change would not change the QSR process or member obligations with respect to give up agreements.

In the Notice, FINRA specifically requested comment on how ''executing party'' should be defined. The commenters generally suggest that the ''executing party'' should be defined as the party that receives the order electronically for execution, does not subsequently re-route the order, and agrees to execute the trade, or in other words, the broker that is the ''final recipient'' and determines the price.[24] One commenter states that in the electronic marketplace, the identity of the order entry broker generally will be readily apparent based on which party is initiating or seeking an execution, and the executing party's identity will be equally apparent based on which party is receiving the order for execution.[25] This commenter provides the following example: A displays a limit order to sell 100 shares at $10. B routes an order to buy 100 shares against A's displayed order. In this example, it is clear that A is the executing broker and B is the order entry broker; B initiated and sought out an execution against A's displayed limit order.[26] As discussed above, FINRA is proposing to define ''executing party'' substantially as proposed by these commenters.

In instances of telephone orders, three commenters believe that the same approach should be followed (*i.e.*, the executing party is the ''answering'' or ''receiving'' or ''responding'' broker), unless the parties agree to the contrary.[27] One commenter believes that in the case of telephone trades, the sell-side member should be the reporting party,[28] while another commenter

[16] *See* Letters from Liquidnet, Inc., to Office of the Corporate Secretary, FINRA, dated October 26, 2007 (''Liquidnet''); Archipelago Trading Services, Inc., to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 6, 2007 (''ArcaEdge''); Financial Information Forum, to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 8, 2007 (''FIF''); Pipeline Trading Systems LLC, to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 12, 2007 (''Pipeline''); Automated Trading Desk, LLC, to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 12, 2007 (''ATD''); TD AMERITRADE, Inc., to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 15, 2007 (''TD AMERITRADE''); UBS Securities LLC, to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 15, 2007 (''UBS''); The Securities Industry and Financial Markets Association, Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 16, 2007 (''SIFMA''); and BNY ConvergEx Execution Solutions LLC, Charles Schwab & Co., Inc., National Financial Services LLC and Pershing LLC, to Barbara Z. Sweeney, Office of the Corporate Secretary, FINRA, dated November 30, 2007 (''BNY'').

[17] FIF, Pipeline, ATD, TD AMERITRADE, UBS, SIFMA and BNY.

[18] FIF, ATD, UBS and SIFMA.

[19] Pipeline and UBS.

[20] ATD.

[21] ATD, TD AMERITRADE and BNY.

[22] TD AMERITRADE.

[23] *See* NASD *Member Alert:* Notice to All TRF, ADF and Other NASD Facility Participants Regarding AGU and QSR Relationships (January 25, 2007).

[24] FIF, ATD, UBS, SIFMA and BNY.

[25] ATD.

[26] ATD.

[27] ATD, SIFMA and BNY.

[28] FIF.

asserts that the current trade reporting structure should apply in such instances.[29] Additionally, one commenter asserts that the executing party may not be clear when a member requests a quote from another member, receives a quote and then agrees to trade at the quoted price, and suggests that the member responding to the request for a quote (*i.e.*, the price-making firm) should be deemed the executing party.[30] As discussed above, FINRA is proposing to require that where it may be difficult to determine which member satisfies the definition of ''executing party,'' such as telephone and other manually negotiated trades, the member representing the sell-side report, unless the parties agree otherwise. Several commenters note that in today's market, the number of telephone negotiated trades is relatively small compared to the number of trades involving the routing of electronic orders, and thus the instances where it would not be clear which member is the executing party should be limited.[31] In the words of one commenter, ''[a]ll but a tiny fraction of orders in the current marketplace are routed electronically'' and as such, ''in the vast majority of transactions, there is no doubt about which entity is the Executing Broker.'' [32]

Two commenters support a sell-side reporting structure, whereby the member representing the sell-side would report a trade between members.[33] One commenter asserts that in all cases, it would be clear which party is selling and which party is buying, but the distinction between the executing party and introducing broker could be unclear in certain cases.[34] FINRA disagrees and believes that where Member A, an introducing broker, routes an order for handling and/or execution to Member B, and Member B does not re-route the order and executes the trade, it is clear that Member B is the executing party. This commenter also asserts that in a trade between two brokers, the selling broker should be the reporting party, but the brokers should have full flexibility to override this default rule and designate the buyer as the reporting party.[35] FINRA believes that the determination of which member has the trade reporting obligation should not be subject to agreement between the parties, except in limited circumstances as discussed above, as that approach would result in confusion and possible under or double reporting. FINRA notes, however, that members can enter into give up agreements under FINRA rules, whereby one member can trade report on behalf of the other member, while the member with the reporting obligation under FINRA rules remains responsible for trades submitted on its behalf.

The second commenter supports sell-side reporting in light of the problems with the current market maker-based reporting structure, noting that these problems are compounded in the context of ATS trades, where non-subscribers may not recognize that the reporting responsibility lies with the ATS.[36] As discussed above, under the proposed executing party structure, it would be clear that an ATS has the reporting responsibility where the trade is executed on the ATS.

The commenters opposing the sell-side reporting structure assert that this approach would be less efficient and could increase the rate of unreported or inaccurately reported trades.[37] These commenters further assert that a sell-side broker that is not also the executing party will not have access to necessary information, such as exceptions and exemptions under the Order Protection Rule, may not be able to easily obtain this information and will not be able to independently verify this information.[38] Additionally, another commenter asserts that while an originating broker would be the seller if its sale were executed by the first broker to whom it routed its orders, frequently re-routed orders could make it difficult to determine which party has the reporting responsibility under a sell-side structure.[39] Furthermore, the commenters assert that a sell-side reporting structure would be costly because it would require members that currently do not trade report to implement trade reporting systems.[40] FINRA agrees with these commenters, and as discussed above, is proposing to adopt the executing party trade reporting structure.

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 FINRA 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–FINRA–2008–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–011. 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 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

[29] UBS.

[30] BNY.

[31] UBS, SIFMA and BNY.

[32] BNY.

[33] Liquidnet and ArcaEdge.

[34] Liquidnet.

[35] Liquidnet.

[36] ArcaEdge.

[37] FIF, Pipeline and BNY.

[38] FIF, SIFMA and BNY.

[39] Pipeline.

[40] TD AMERITRADE and BNY.

available publicly. All submissions should refer to File Number SR–FINRA–2008–011 and should be submitted on or before May 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Nancy M. Morris,

Secretary.

[FR Doc. E8–8872 Filed 4–23–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57685; File No. SR–NASDAQ–2008–013]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Adoption of Additional Initial Listing Standards for Special Purpose Acquisition Vehicles

April 18, 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 14, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The proposed rule change adopts additional listing criteria that Nasdaq proposes to apply when listing acquisition vehicles. Nasdaq will implement the proposed rule upon approval.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in brackets.[3]

[IM–4300.] *IM–4300–1.* Use of Discretionary Authority

No changes.

IM–4300–2. Listing of Companies Whose Business Plan Is To Complete One or More Acquisitions

Generally, Nasdaq will not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

However, in the case of a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, Nasdaq will permit the listing if the company meets all applicable initial listing requirements, as well as the conditions described below.

(a) *Gross proceeds from the initial public offering must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an ''insured depository institution,'' as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act or in a separate bank account established by a registered broker or dealer (collectively, a ''deposit account'').*

(b) *Within 36 months of the effectiveness of its IPO registration statement, the company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.*

(c) *Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the company's independent directors.*

(d) *Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the shares of common stock voting at the meeting at which the combination is being considered.*

Until the company completes a business combination where all conditions in paragraph (b) above are met, the company must notify Nasdaq on the appropriate form about each proposed business combination. Following each business combination, the combined company must meet the requirements for initial listing. If the company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth above, Nasdaq will issue a Staff Determination under Rule 4804 to delist the company's securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the past, Nasdaq has applied its discretionary authority under Rule 4300 to deny listing to companies whose business plan is to complete an initial public offering and engage in a subsequent, unidentified merger or acquisition (an ''acquisition vehicle'').[4] However, Nasdaq has observed that a number of such recent offerings have included investor protections that serve to mitigate Nasdaq's past concerns about listing such companies.[5] As a result, Nasdaq has reconsidered its prior policy and determined to list acquisition vehicles provided they do not otherwise raise public interest concerns.[6] In order to provide transparency to that change in policy, and to describe certain additional criteria that Nasdaq will require for acquisition vehicles, Nasdaq proposes to adopt IM–4300–2, which will set out criteria designed to afford investors in acquisition vehicles additional protection.

First, these companies must meet all applicable initial listing requirements. Thus, for initial listing, companies seeking to list on the Nasdaq Global Market must have a minimum market value of listed securities of $75 million and companies seeking to list on the

[41] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaq.complinet.com.*

[4] Nasdaq Rule 4300 provides Nasdaq with broad discretionary authority over the initial and continued listing of securities in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, even though the securities meet all enumerated criteria for initial or continued listing.

[5] In addition, while some of Nasdaq's past denials were based, in part, upon concerns surrounding the underwriter or sponsor of the company, Nasdaq has observed that the underwriters and sponsors of recent offerings do not raise similar concerns.

[6] As it does with any initial listing, Nasdaq will evaluate the reputation of the company's sponsors and underwriters pursuant to Nasdaq Rule 4300 in determining whether listing is appropriate.

Nasdaq Capital Market must have a minimum market value of listed securities of $50 million.[7] In addition, Nasdaq has determined to impose the following additional criteria for listing a company whose business plan is to complete an initial public offering and engage in a subsequent, unidentified merger or acquisition:[8]

(a) Gross proceeds from the initial public offering must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an ''insured depository institution,'' as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act or in a separate bank account established by a registered broker or dealer (collectively, a ''deposit account'').

(b) Within 36 months of the effectiveness of its IPO registration statement, the company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.

(c) Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the company's independent directors.

(d) Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the shares of common stock voting at the meeting at which the combination is being considered.

Nasdaq will also review such a company in connection with each acquisition to assure that it remains appropriate to continue to list the company. In that regard, Nasdaq will require that the company meet the initial listing requirements upon conclusion of the transaction[9] and will conduct a regulatory review of any individuals that become newly involved with the company as a result of the transaction. If the company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth above, Nasdaq will issue a Staff Determination under Rule 4804 to delist the company's securities.[10]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general and with Sections 6(b)(5) of the Act,[12] in particular. Section 6(b)(5) requires, among other things, that a registered national securities exchange's 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. The proposed rule change is consistent with these requirements in that it imposes additional requirements on acquisition vehicles, which are designed to protect investors and the public interest and prevent fraudulent and manipulative acts and practices on the part of acquisition vehicles and their promoters.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Nasdaq–2008–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090

All submissions should refer to File Number SR–Nasdaq–2008–013. 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

[7] Nasdaq Rules 4310(c)(2)(B) and 4420(c). Note that given the nature of these companies, they will not satisfy the alternative initial listing requirements because of the income and operating history requirements of those standards. If the company chooses to list a unit, then Rule 4310(c)(10) or 4420(h) would also be applicable. As noted below, these companies will be required to satisfy the initial listing requirements following subsequent business combinations.

[8] These criteria were derived from protections Nasdaq has observed built into recent transactions and Rule 419 under the Securities Act of 1933, 17 CFR 230.419.

[9] Companies will not be required to pay a new listing fee in connection with such a review.

[10] The Commission notes acquisition companies listed on Nasdaq would need to meet the applicable Nasdaq's continued listing standards. *See* Telephone conversation between Steve L. Kuan, Special Counsel, Division of Trading and Markets, Commission and Arnold Golub, Associate General Counsel, Nasdaq, on April 4, 2008. For example, acquisition companies that list on the Nasdaq Global Market would need to meet the Global Market continued listing standards in Nasdaq Rule 4450. Further, the Commission notes that units would need to meet the listing standards in Nasdaq Rule 4310(c)(10), which requires all component parts to meet the applicable initial and continued listing standards.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

you wish to make available publicly. All submissions should refer to File Number SR–Nasdaq–2008–013 and should be submitted on or before May 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–8912 Filed 4–23–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57682; File No. SR–NYSE–2008–29]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 92(c)(3)

April 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 April 11, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change 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 the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the operative date of NYSE Rule 92(c)(3) from May 14, 2008 to March 31, 2009. There is no new rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the delayed operative date of NYSE Rule 92(c)(3) from May 14, 2008 to March 31, 2009. The Exchange believes that this extension is necessary to allow it, and the Financial Industry Regulatory Authority, Inc. (''FINRA''), sufficient time to assess their respective rules concerning trading ahead, for the purpose of harmonizing these rules, and to make any necessary changes to achieve a standardized industry practice.

Background

On July 5, 2007, the Commission approved amendments to NYSE Rule 92 to permit riskless principal trading at the Exchange.[5] These amendments were filed, in part, to begin the process of harmonizing NYSE Rule 92 and FINRA's so-called ''Manning Rule.''[6] In connection with these amendments, the Exchange implemented NYSE Rule 92(c)(3), which permits Exchange member organizations to submit riskless principal orders to the Exchange, but requires them to submit a report of the execution of the facilitated order to a designated Exchange database. Exchange member organizations must also submit to the same database, within such time frame and in such format as the Exchange may from time to time require, an electronic report containing data elements sufficient to provide an electronic link of the execution of the facilitated order to all of the underlying orders.

For purposes of NYSE Rule 92(c)(3), the Exchange informed its member organizations that when executing riskless principal transactions, they must submit order execution reports to the Exchange's Front End Systemic Capture (''FESC'') database, linking the execution of the riskless principal order on the Exchange to the specific underlying orders. The information provided must be sufficient for both member firms and the Exchange to reconstruct in a time-sequenced manner all orders, including allocations to the underlying orders, with respect to which a member organization is claiming the riskless principal exception.

Because the rule change required both the Exchange and its member organizations to make certain changes to their trading and order management systems, the NYSE filed for immediate effectiveness to delay to May 14, 2008 the operative date of the NYSE Rule 92(c)(3) requirements, including submitting end-of-day allocation reports for riskless principal transactions and using the riskless principal account type indicator.[7]

Request for Extension

The Exchange has been working diligently to develop its FESC database to accept riskless principal order types and the underlying batch orders. As part of this process, the Exchange has been in contact with its member organizations regarding how to program their respective systems to meet the new reporting requirements. It has become evident, however, that the differences between the NYSE and FINRA reporting systems for riskless principal transactions is causing member organizations that trade at the Exchange and in other markets to have to make challenging programming changes in order to comply with disparate reporting requirements.

For example, Exchange member organizations have informed the Exchange that they often do not know to which market center an order will be routed until the time of entry, and that determination is often made electronically. These firms have advised the NYSE that it is not possible for them to implement by May 14, 2008 the required changes that will enable them to choose among multiple market centers for routing a riskless principal order and yet also meet the differing reporting standards.

Because the Exchange and FINRA are in the process of fully harmonizing their respective rules, including reviewing the possibilities for a uniform reporting standard for riskless principal transactions, the Exchange believes that at this stage, it would be premature to require firms to meet the FESC reporting requirements.

Accordingly, to provide the Exchange and FINRA the time necessary to review their respective rules and to develop a harmonized rule set that would apply

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 56017 (July 5, 2007), 72 FR 38110 (July 12, 2007) (SR–NYSE–2007–21).

[6] *See* NASD Rule 2111 and IM–2110–2.

[7] *See* Securities Exchange Act Release No. 56968 (December 14, 2007), 72 FR 72432 (December 20, 2007) (SR–NYSE–2007–114).

across their respective marketplaces, the Exchange is proposing to delay the operative date for NYSE Rule 92(c)(3) from May 14, 2008 to March 31, 2009.

Pending the harmonization of the two rules, the Exchange will continue to require that, as of the date each Exchange member organization implements its riskless principal routing, the Exchange member organization must have in place systems and controls that allow it to easily match and tie riskless principal execution on the Exchange to the underlying orders, and that it be able to provide this information to the Exchange upon request. Moreover, the Exchange will coordinate with FINRA to examine for compliance with the rule requirements.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5) of the Act,[9] in particular, insofar as 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. The Exchange believes the proposed extension will provide the Exchange and FINRA the time necessary to develop a harmonized rule concerning trading ahead that will enable Exchange member organizations to participate in the national market system without unnecessary impediments.

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 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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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–NYSE–2008–29 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–2008–29. 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 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–2008–29 and should be submitted on or before May 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E8–8873 Filed 4–23–08; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested and the Commission has determined to waive this five-day pre-filing notice requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57688; File No. SR–NYSE–2008–30]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Amend Exchange Rule 13 (Definitions of Orders) To Add a New Order Type To Be Known as a Reserve Order and To Amend Exchange Rule 70 (Bids and Offers)

April 18, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the NYSE. The NYSE has designated the proposed rule change as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. On April 18, 2008, NYSE 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend NYSE Rule 13 (Definitions of Orders) to extend to off-Floor participants the ability to directly enter orders that use reserve functionality (''Reserve Order''), an ability currently available only to Exchange Floor brokers and specialists. The Exchange intends to institute this new order type in 100 Exchange-listed securities traded on the Exchange as a pilot program that would last up to six months beginning in the second quarter of 2008. The Exchange also proposes to amend NYSE Rule 70 (Bids and Offers) to allow Floor broker agency interest excluded from the aggregated agency interest information available to the specialist to participate in manual executions. The text of the proposed rule change is available at *http://www.nyse.com,* NYSE's principal office, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE 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

In this filing, the Exchange proposes to amend NYSE Rule 13 to adopt a new order type available to all market participants to be known as a Reserve Order. The Exchange proposes to implement this order type in a pilot program that will be established in two phases. The instant filing seeks to establish Phase 1 of the Reserve Order type. The Exchange will submit a separate filing to the Commission at a later date in order to establish Phase 2 of the Reserve Order. The Exchange states that, in Phase 2, it intends to propose to initiate a second Reserve Order type that does not require any displayed quantity and therefore will not be eligible for manual executions or have any portion of the order published in NYSE OpenBook®.[5]

In connection with the adoption of the Reserve Order type, the Exchange further proposes to amend NYSE Rule 70[6] to allow Floor broker agency interest excluded from the aggregated agency interest information made available to the specialist to be able to participate in manual executions. This will have the effect of placing reserve interest of Floor brokers and reserve interest entered from off-Floor on an equal footing.

Reserve Orders

In Phase 1, the NYSE seeks to provide customers with the ability to directly enter orders that use reserve functionality, an ability currently available only to Exchange Floor brokers[7] and specialists.[8] The Reserve Order will allow all market participants to maintain non-displayed liquidity on the Exchange's Display Book system® (''Display Book'') for execution.[9] The Exchange intends to institute this new order type in 100 Exchange-listed securities as a pilot to end no later than the earlier of September 30, 2008 or Commission approval of a proposed rule change to make the instant pilot permanent for all securities (''Reserve Order Pilot''). The Exchange states that a list of the 100 securities proposed for participation in the pilot will be available on the NYSE Web site (*http://www.nyse.com*).

Current Ability to Use Reserve Function

Currently, Floor brokers' interest may be represented electronically by including these orders in a separate file, known as the Floor broker agency interest file, within Display Book®. Floor brokers are permitted to place the liquidity representing customer orders at or outside the best bid or offer on the Exchange (''Exchange BBO''). Similarly, specialists have the ability to place in a separate file, known as the specialist interest file, within Display Book® their dealer interest at prices at or outside the Exchange BBO. Pursuant to NYSE Rules 70.20(c)(ii) and 104(d)(i), some of the interest in either of these files that is at the Exchange BBO may, at the choice of the Floor broker or specialist, be non-displayed interest. That is, the Floor broker or specialist may decide to hold additional interest in ''reserve'' and not have it be part of the published bid or offer. Both specialists and Floor brokers are required to have a minimum of one round lot (which for most securities trading on the Exchange is 100 shares) displayed (*i.e.*, designated to be published in the Exchange quote or ''displayable'') whenever their interest is at the Exchange BBO. The specialist or Floor broker may choose to display more than the required minimum. If an execution occurs at the Exchange BBO that reduces the displayed amount below the amount designated to be displayed, the displayed interest is automatically replenished from the specialist's or Floor broker's respective reserve interest. Reserve interest is eligible to participate in automatic executions on the Exchange after displayed interest on the same side of the market trades. Reserve Floor broker and specialist interest participate on parity with each other when trading with contra-side interest.

The ability to have reserve interest was designed, in part, to allow Floor brokers flexibility to determine the best way in which to represent customer orders, especially larger customer orders. One way in which they can do this is to decide what portion of customer interest should be displayed based on the Floor broker's sense of the market in a particular security. The reserve gives Floor brokers the advantage of both auction market and automatic execution capability, without the risk of missing the market.

For specialists, the reserve function allows the possibility of more liquidity at the best bid or offer price and facilitation of single-price executions on behalf of customers.

The Exchange notes that other market centers also utilize reserve order types.[10]

[4] 17 CFR 240.19b–4(f)(6).

[5] NYSE OpenBook® provides aggregate limit order volume that has been entered on the Exchange at price points for all NYSE-traded securities.

[6] *See* proposed amendment to NYSE Rule 70.20(k).

[7] *See* NYSE Rule 70.20(c)(ii).

[8] *See* NYSE Rule 104(d)(i).

[9] The Display Book® system is an order management and execution facility. The Display Book system receives and displays orders to the specialists, contains the Book, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems.

[10] *See, e.g.*, NASDAQ Rule 4751(f)(2), and NYSE Arca Equities Rule 7.31(h)(3).

Proposed Reserve Order

The proposed amendment to NYSE Rule 13 will create a Reserve Order type that is a limit order for which a portion of the order is to be displayed and a portion of the order, at the same price, is in reserve.[11] Market participants that choose to enter Reserve Orders must enter specified order information in relation to the price and size of the order and the amount to be displayed. The displayable portion of a Reserve Order will be published in NYSE OpenBook® and will be available to the specialist on the Floor. However, both the displayable and the non-displayable portion will be unavailable to the specialist's algorithm and therefore not eligible for price improvement by the specialist. Such interest will be made available to the specialist manually in certain situations, as discussed below. Both the displayable and the non-displayable portions are available for automatic execution against incoming contra-side orders.

Interest represented through Reserve Orders will trade according to Exchange rules governing priority and parity.[12] Under current Exchange rules, the first bid or offer made at a particular price is entitled to priority at that price.[13] Once a trade occurs with a bid or offer that has priority, other bids or offers at that price representing customer orders (DOT orders) and Floor broker agency interest files (e-Quotes and d-Quotes) trade on parity. Specialist interest (s-Quotes) yields to DOT orders; once DOT orders are satisfied, s-Quotes trade on parity with e-Quotes and d-Quotes.

For example, assume that immediately following a Floor clearing event, the bid on the Exchange is $20.05 for 1,000 shares, consisting of a DOT order of 300 shares, Floor broker agency interest file (e-Quote) volume of 400 shares representing interest of two Floor brokers for 200 shares each, and specialist interest of 300 shares. This is all displayed interest, *i.e.*, there is no reserve interest involved. There is no priority as all bids were reentered following the Floor clearing event. An incoming market order to sell 400 shares is executed against the DOT bid and the e-Quotes since the specialist interest (s-Quote) must yield to DOT interest. If the incoming order had been for 800 shares, the DOT orders and Floor broker interest would be executed in full and the specialist would receive 100 shares.

The displayable portion of the Reserve Order interest will be executed first in accordance with the above rules governing priority and parity. Once all displayable interest, including DOT orders, e-Quotes, d-Quotes, and s-Quotes that is quoted at the Exchange BBO has been traded, any remainder of an incoming order will be executed against any reserve, *i.e.*, non-displayable interest at the Exchange BBO. Such non-displayable interest trades on parity except that specialist reserve interest at the Exchange BBO will yield to all DOT Reserve and CAP orders. Outside the Exchange BBO, e-Quotes and d-Quotes will trade with all interest represented by DOT orders, including DOT Reserve Orders, both displayable (*i.e.*, the interest that will be published if such interest becomes the Exchange best bid or offer) and non-displayable, on parity. Reserve interest represented by s-Quotes outside the Exchange BBO will yield to reserve interest represented by Reserve Orders and CAP orders. Within DOT orders, interest that would be displayable will be allocated on a time priority basis. After displayable DOT order interest is completely executed, any remaining shares are allocated to eligible non-displayable Reserve Order interest in time priority. Interest represented by a Floor broker is allocated equally among the Floor broker's customers without regard to whether that interest was displayable or non-displayable.

To illustrate how this will work for a trade at the quote, assume the same scenario as above, but in addition to the displayed interest of 1,000 shares, there is reserve interest for the DOT order of 600 shares, 400 for each Floor broker (total of 800 shares) and 700 shares for the specialist for a total of 2,100 shares in reserve. An incoming order to sell 2,500 shares would be executed as follows:

- 1,000 shares trade with the displayed bid and is allocated 300 shares to the DOT order, 200 shares to each Floor broker (400 shares total), and 300 shares to the specialist, leaving 1,500 shares to be executed.
- The 1,500 remaining shares execute against the reserve portion of the DOT Reserve Order (600 shares), and 400 shares of reserve interest for each of the Floor brokers and 100 shares for the specialist.

A trade outside the quote will occur when the displayed and reserve interest volume at the Exchange BBO is not sufficient to completely fill the incoming contra side order. Assume the same condition exists as in the second example, but the incoming order to sell is for 4,800 shares, thus out-sizing the displayed and non-displayed interest at the bid by 1,700 shares. At the next bid price of 20.03, there is 400 shares of a DOT Reserve Order, of which 100 shares is displayable, three Floor brokers using the reserve function bidding for 400 shares each, with 100 shares displayable and 300 shares in reserve and 1,000 shares of specialist interest, 100 shares displayable and 900 shares in reserve. After the execution at the bid price of 20.05, the execution of the remaining 1,700 shares at 20.03 would be as follows:

- 400 shares each to the DOT Reserve Order and the Floor brokers, since they trade on parity with each other outside the Exchange best bid (offer) for a total of 1,600 shares.
- 100 shares to the specialist, since the DOT Reserve Order was executed in full.

If there had been additional volume in the DOT Reserve Order of 100 shares, the specialist would not have traded at all.

Reserve Orders will have the ability to automatically replenish the displayable amount of interest at the Exchange BBO when trades reduce or exhaust such displayable interest; however, the Exchange proposes to allow customers to determine the specific amount to be included as displayable above a minimum requirement of one round lot. In this way customers will have the flexibility to replenish liquidity that is in keeping with the market need at the specific time and at that price point. Moreover, if customers are able to display liquidity in keeping with the current trading characteristics of the security, then there is more incentive for them to use the reserve function and thus provide additional liquidity to the market.

When the displayable size of a Reserve Order is replenished from reserve, the replenished displayable quantity will be assigned a time sequence based on the time it is replenished. The remaining original displayed quantity, if any, will retain its original time sequence.

[11] The Exchange represents that this functionality is equivalent to the functionality currently available to Floor brokers and specialists with respect to the entry of reserve interest. In order for Floor brokers' reserve interest not to be visible by the specialists, a Floor broker must designate his or her reserve interest as ''Do Not Display'' interest. Reserve Orders in contrast are never shown to the specialist except when included in aggregate quantities for manual executions.

[12] Reserve Orders will also be subject to federal securities regulations, including the order entry requirements of Section 11(a) of the Securities Exchange Act of 1934.

[13] *See* NYSE Rule 72 I(a) through (g). While a priority bid or offer may be established it is usually broken by a ''Floor clearing'' event. ''Floor clearing'' events include a trade or an update of the NYSE quote. After such an event, all bids and offers at the price are on parity.

Execution of Reserve Interest During a Manual Transaction

While the majority of transactions on the Exchange are executed electronically, there are times when manual execution is required. In these situations, specialists seek information on the available interest at various price points to determine the appropriate price at which to complete the manual execution. As with reserve interest in a Floor broker's agency interest file, information on reserve interest entered directly into Exchange systems through Reserve Orders will be made available to the specialist only in the aggregate at each price point for the express purpose of the specialist effecting a manual execution.[14] The reserve interest is not distinguished from other interest available to be executed at a specific price point. Rather, Exchange systems display to the specialist the total number of shares available for execution at the price point and include reserve interest in the total number. In this manner such reserve interest will be available for trades that take place on the Floor of the Exchange that will not be conducted automatically. Such trades take place at the opening and close of the Exchange, during the trading day in situations involving auction market transactions that are not automatic trades, and in certain specific trading situations, such as trades conducted when a Liquidity Replenishment Point[15] is reached after an automatic execution or in a ''gap'' quote situation.

Similarly, today, interest in the Floor broker agency interest file is not publicly disseminated except for the amount of interest designated by the Floor broker to be displayed when the interest is priced at or becomes the Exchange best bid or offer. Any reserve interest in the Floor broker agency interest file that is priced at or becomes the Exchange best bid or offer is displayed to the specialist on an aggregated basis along with any other interest that is available at the same price. However, pursuant to NYSE Rule 70.20(g), a Floor broker has the discretion to exclude his or her agency interest, including any reserve interest at the best bid (offer), from the aggregate information available to the specialist. At the present time, however, Exchange systems are not enabled to provide this function. The Exchange represents, however, that this functionality will be enabled upon effectiveness of the instant filing.

Floor broker agency interest excluded from the aggregate information available to the specialist would not be included in a specialist's response to a member's market probe in accordance with NYSE Rule 115.[16] Floor broker agency interest removed from the aggregate information is eligible to participate in automatic executions and sweeps; however, it is not eligible to participate in manual executions. The Floor broker is responsible for ensuring that agency interest removed from the aggregate information is properly represented with respect to any manual trade that may occur because the specialist will not have any knowledge of such interest. As a result, excluded interest may be executed at an inferior price because that information is not visible to the specialist.

The Exchange has concluded that it is not in the public interest to have agency interest removed from the aggregate information excluded from manual executions. In order to provide its customers with the best possible execution experience, the Exchange proposes to amend NYSE Rule 70.20(h) to permit agency interest removed from the aggregated agency interest information to participate in manual executions. As such, those orders will no longer be at the risk of being executed at inferior prices.

In order to permit agency interest removed from the aggregated agency interest information to participate in manual executions, Exchange systems will include excluded interest in the aggregated agency interest displayed to the specialist only during the execution of the manual trade. This information is maintained in the template used by specialist to execute trades in the Display Book. As such, aggregate Floor broker agency interest visible to the specialist will include agency interest designated to be excluded from the aggregate Floor broker agency interest file.

The Exchange further proposes to amend NYSE Rule 70.20[17] to prohibit specialists, trading assistants and anyone acting on their behalf from using the Display Book to access information about Floor broker agency interest excluded from the aggregated agency interest other than in situations where there is a reasonable expectation on the part of such specialist, trading assistant or other person acting on their behalf that a transaction will take place imminently for which such agency interest information is necessary to effect such transaction. A pattern and practice of specialists accessing reserve order information without trading may constitute a violation of NYSE Rule 70.20.

The amendments to NYSE Rule 70.20 are proposed as permanent changes and will not be a part of the pilot program.

Reserve Order Pilot

As previously stated above, the Exchange intends to initiate use of the Reserve Order type for the off-Floor participants as a pilot program in approximately 100 Exchange-listed securities. This will allow the Exchange to test its viability from a business and technological viewpoint. The Exchange will announce to its membership the 100 securities that will be in the pilot program. The Exchange proposes to expand the Reserve Order function to additional securities during the pilot period, based on how successful the results of the pilot are. The Exchange proposes that the pilot program operate until September 30, 2008, or such earlier time that the Exchange determines that the pilot is operating successfully and files with the Commission to have it extended to all securities trading on the NYSE.

Execution Logic Amendments Prior to Completion of the Reserve Order Pilot

The Exchange represents that it intends to submit a formal proposal prior to the completion of the Reserve Order Pilot to modify how interest is allocated during an execution outside the Exchange BBO to provide for the allocation of shares to displayable quantities of interest, including the displayable portion of a Reserve Order and displayable reserve order interest represented by Floor brokers, prior to any share allocation to the non-displayable portion thereof.[18]

Specifically, Reserve Order interest and the portion of reserve interest represented by Floor brokers that is designated to be displayed, (*i.e.*, designated to be published in the Exchange quote or ''displayable'') will be executed first on parity. The

[14] As previously indicated, subject to Commission approval, in Phase 2 customers will have a choice of whether to use a zero display Reserve Order, which will not be eligible for execution in manual trades.

[15] *See* NYSE Rule 1000(a)(iv) for a description of Liquidity Replenishment Points and functionality surrounding automatic and manual executions.

[16] Pursuant to NYSE Rule 115(iii) a specialist may provide information about orders contained in the Display Book referred to also as a market probe, ''to provide information about buying or selling interest in the market, including aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest in response to an inquiry from a member conducting a market probe in the normal course of business.''

[17] *See* proposed NYSE Rule 70.20(h)(ii).

[18] *See* email from Deanna Logan, Associate General Counsel, NYSE, to David Liu, Assistant Director, Division of Trading and Markets, Commission, on April 18, 2008.

incoming order will be divided equally among each participant's (*e.g.*, DOT orders and each Floor broker) displayable interest at that price point on parity. Once all displayable interest has been completely executed, any remainder of an incoming order will be executed against any reserve, *i.e.*, non-displayable, interest at that price point. Such non-displayable interest will also be executed on parity.[19]

To illustrate how this will work for a trade, assume that the bid on the Exchange is $20.05 for 1,000 shares, consisting of a DOT order of 600 shares and Floor broker agency interest file (e-Quote) volume of 400 shares representing interest of two Floor brokers for 200 shares each. There is no interest at $20.04, but at $20.03 the same amount of displayable interest of 1,000 shares exists and there is reserve interest for the DOT order of 600 shares and 600 for each Floor broker (total of 1,200 shares) for a total of 1,800 shares in reserve. An incoming order to sell 2,800 shares would be executed as follows:

- 1,000 shares trade with the displayed bid of $20.05 and is allocated 600 shares to the DOT order and 200 shares to each Floor broker (400 shares total), leaving 1,800 shares to be executed.
- There is no interest at $20.04. The 1,800 shares remaining will be executed first against the 1,000 shares that has been designated as displayable interest at the price of $20.03, leaving 800 shares to be executed.
- Then the reserve portion of the DOT Reserve Order receives an allocation of 300 shares, 300 shares of interest is allocated to the reserve interest of the Floor broker who was next in line and 200 shares to the reserve interest of the other Floor broker for a total of 800 shares, completing the incoming order.

Conclusion

The Exchange believes that by providing all market participants with the ability to maintain non-displayed liquidity on the Display Book, market participants will be encouraged to post liquidity and thus offer Exchange customers additional opportunities for price improvement by expanding the interest available to execute against incoming orders at a single price. The Exchange further believes that the amendment of NYSE Rule 70.20 will result in a better execution experience for its customers by allowing them to participate in manual executions.

[19] *Id.*

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under section 6(b)(5)[20] of the Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change also is designed to support the principles of section 11A(a)(1)[21] in that it seeks to assure economically efficient execution of securities transactions, fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and provide an opportunity for investors' orders to be executed without the participation of a dealer. The Exchange believes that the instant proposal is in keeping with these objectives in that extending reserve order functionality will provide an opportunity for all market participants to receive efficient, low cost executions available through the use of this order type, and promote fair competition among markets which already provide for entry of Reserve Orders by all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A)[22] of the Act and Rule 19b–4(f)(6) thereunder.[23] As required under Rule 19b–4(f)(6)(iii),[24] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), which would make the rule change operative upon filing. 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 immediately allow off-Floor participants to directly enter orders that use reserve functionality that is currently available to Floor brokers and specialists. In addition, the proposed reserve functionality is currently available on other exchanges.[25] The Commission also believes that the proposed amendment to NYSE Rule 70.20(h) to allow participation by Floor broker interest in manual executions should provide investors with the opportunity to receive economically efficient executions of their securities transactions. Accordingly, the Commission designates the proposed rule change to be operative upon filing with the Commission.

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.[26]

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1(a)(1).

[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).

[25] *See, e.g.*, Nasdaq Rule 4751(f)(2); Securities Exchange Act Release No. 54155 (July 14, 2006), 71 FR 41291 (July 20, 2006) (NASDAQ–2006–001).

[26] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on April 18, 2008, the date on which the NYSE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–30 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–2008–30. 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 NYSE. 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–2008–30 and should be submitted on or before May 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Nancy M. Morris,

Secretary.

[FR Doc. E8–8878 Filed 4–23–08; 8:45 am]

BILLING CODE 8010–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57683; File No. SR–Phlx–2008–27]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Access to XLE on Phlx's Options Floor

April 18, 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 April 11, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been substantially prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete Phlx Rule 1014(e)(iii), which limits the actions of Registered Options Traders (''ROTs'') related to trading in Phlx's equity market in certain situations, and adopt Phlx Rule 175 prohibiting an XLE Market Maker from acting as an options specialist or option market maker in options overlying the securities in which the XLE Market Maker is registered.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.phlx.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify that members and member organizations on the Phlx options floor are permitted to have connectivity to XLE, Phlx's electronic equity trading system. XLE provides to those Phlx member organizations and their Sponsored Participants authorized to enter orders on the system (''XLE Participants'') a system for the entry and execution of NMS Stock orders. XLE is the sole means on Phlx to enter and execute NMS Stock orders; the physical equity trading floor has been discontinued.[3] The Exchange states that, in the past, Phlx's physical equity and options floor were separated by a wall, which required a member to leave one floor and walk to the other floor in order to participate on the other floor. In addition, the wall prevented any line of sight or line of hearing between the two floors. Specifically, the wall helped to prevent someone on one floor from using information gained there on the other floor without first physically leaving the one floor and walking to the other, thereby mitigating the ''time and place'' advantage gained from being on that floor.[4]

When XLE started, the trading of NMS Stocks on Phlx ceased to take place on a physical floor and, instead, now takes place electronically according to the algorithms programmed in the software that operates XLE.[5] XLE Participants cannot alter these algorithms, nor does the identity of a XLE Participant affect the execution of the order. Access to XLE is available to XLE Participants through an Exchange electronic interface by means of their own communication lines or through lines established by service providers in the business of maintaining connectivity in the securities marketplace. In addition, XLE Participants may access XLE for the entry of two-sided orders through

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx Rule 160.

[4] Phlx Rule 606 regulates the use of electronic and telephonic means of communication on the floor.

[5] *See* Securities Exchange Act Release No. 54538 (September 28, 2006), 71 FR 59184 (October 6, 2006).

technology provided by the Exchange.[6] The Exchange states that all information about the price and size of executions on XLE is made available to both XLE Participants and non-XLE Participants at the same time and in the same manner; it may be accessed by means of the consolidated tape plans or by means of Phlx's own depth of book feed, both of which are available to XLE Participants and non-XLE Participants in a non-discriminatory manner. Phlx further states that, with the discontinuation of the physical equity floor, there is no longer any time and place advantage to any XLE Participant using XLE. All information about the price and size of executions on XLE is made available simultaneously to anyone, including XLE Participants and to those persons who may be on the Phlx options floor.

Therefore, the Exchange submits that connectivity to trading on XLE from the Phlx options floor does not present an advantage for either trading on XLE or to trading on the Phlx options floor. In fact, options floor participants currently have access to other execution venues and order routing mechanisms for the underlying securities. Possession of XLE order entry technology does not give the possessor any special information advantage that could be used on the Phlx options floor because access to XLE information is available to all on a non-discriminatory basis. In addition, physical presence on the Phlx options floor does not provide an advantage in priority for orders entered into XLE from the Phlx options floor because XLE executes orders in price-time priority based on a pre-set algorithm that is unalterable by the XLE Participant entering the order and does not take into account the location where an order is entered. In order to further facilitate connectivity to trading on XLE in all securities, Phlx proposes to delete Phlx Rule 1014(e)(iii), which places restrictions on ROTs trading in options after trading in the underlying security.

To address concerns about Integrated Market Making,[7] in particular possession by options Specialists or Registered Options Traders of non-public information in the options market that could be used if they were also a Market Maker on XLE[8] in the underlying equity security,[9] the Exchange proposes new Phlx Rule 175, which prohibits Integrated Market Making to prevent the potential misuse non-public information. Specifically, proposed Phlx Rule 175 prohibits Market Makers on XLE, or any member, limited partner, officer, or associated person thereof, from acting as an options Specialist, Registered Options Trader or functioning in any capacity involving market making responsibilities, in any option overlying a security in which the Market Maker on XLE is registered as such. For example, an affiliate of a Market Maker on XLE registered in equity security IBM would be prohibited from becoming the options Specialist in options on IBM. In addition, proposed Phlx Rule 175 would prohibit a member organization whose member was a Registered Options Trader in options on IBM from becoming a Market Maker on XLE registered in the equity security IBM. This would be prohibited because that Market Maker on XLE would then have an associated person who is a Registered Options Trader in an option overlying a security in which the Market Maker on XLE would be registered.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[10] in general, and furthers the objectives of section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing another venue for persons on the Phlx options floor to execute orders in NMS Stocks. Currently, persons on the Phlx options floor have access to other execution venues and order routing mechanisms for the underlying securities. This proposed rule change would permit those persons access to XLE, thereby increasing the markets available for execution of their orders. Additionally, this proposal would prohibit a Market Maker on XLE or any member, limited partner, officer, or associated person thereof from acting as an options Specialist, Registered Options Trader or function in any capacity involving market making responsibilities, in any option overlying a security in which the Market Maker on XLE is registered as such. This prohibition would prevent the use of non-public information in the options market by options Specialists or Registered Options Traders that could be used if they were also a Market Maker on XLE in the underlying security.

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

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 shall:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2008–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

[6] The technology provided by the Exchange does not disseminate any information about orders or executions on XLE other than those of the XLE Participant entering the orders.

[7] Integrated Market Making involves making market in both options and the securities underlying those options.

[8] *See* Phlx Rule 1(l). Market Makers must be member organizations. *See* Phlx Rule 170(b).

[9] The information available to options Specialist and Registered Options Traders from XLE does not raise similar concerns. XLE is electronic and does not operate as a traditional physical trading floor where physical presence could provide a participant with information that is not otherwise publicly available. All information about orders and trades on XLE is available to everyone simultaneously over the consolidated tape and over XLE's market data feed.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–27 and should be submitted on or before May 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E8–8874 Filed 4–23–08; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Advanced Precision Technology, Inc. (n/k/a Exact Identification Corp.), Alta Gold Co., Decisionlink, Inc., Dover Petroleum Corp., Enviro Energy Corp., Languageware.net Co. Ltd., Playstar Wyoming Holding Corp. (n/k/a Playstar Corp.), Uncle B's Bakery, Inc. (n/k/a Ise Blu Equity Corp.), and Wavo Corp.; Order of Suspension of Trading

April 21, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advanced Precision Technology, Inc. (n/k/a Exact Identification Corp.) because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alta Gold Co. because it has not filed any periodic reports since the period ended September 30, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Decisionlink, Inc. because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Dover Petroleum Corp. because it has not filed any periodic reports since the period ended March 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Enviro Energy Corp. because it has not filed any periodic reports since the period ended March 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Languageware.net Co. Ltd. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Playstar Wyoming Holding Corp. (n/k/a Playstar Corp.) because it has not filed any periodic reports since the period ended June 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Uncle B's Bakery, Inc. (n/k/a Ise Blu Equity Corp.) because it has not filed any periodic reports since the period ended April 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wavo Corp. because it has not filed any periodic reports since the period ended September 30, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 21, 2008, through 11:59 p.m. EDT on May 2, 2008.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 08–1178 Filed 4–21–08; 3:39 pm]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6196]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Timor Leste and South Pacific Scholarship Programs

Announcement Type: New Cooperative Agreement(s).

Funding Opportunity Number: ECA/A/E/EAP–08–01.

Catalog of Federal Domestic Assistance Number: 00.000.

Application Deadline: May 28, 2008.

Executive Summary: The Office of Academic Programs of the Bureau of Educational and Cultural Affairs announces an open competition to administer the United States-Timor Leste (USTL) Scholarship Program and the United States-South Pacific (USSP) Scholarship Program. Eligible applicants may submit a proposal to administer one or both of the scholarship programs. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to organize and carry out academic exchange program activities for students from Timor Leste and/or the sovereign island nations of the South Pacific (eligible nations are listed below in the Overview section). The recipient(s) will

be responsible for all aspects of the programs, including publicity and recruitment of applicants; merit-based competitive selection; placement of students at an accredited U.S. academic institution; student travel to the U.S.; orientation; up to 4 years of U.S. degree study at the bachelor's or 2 years at the master's level; enrichment programming; advising, monitoring and support; pre-return activities; evaluation; and follow-up with program alumni. The duration of the award(s) will be up to 5 years, beginning in late summer 2008. The Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Div. J, P.L. 110–161) provides $496,000 to support the USTL Scholarship Program and $496,000 to support the USSP Scholarship Program, which reflects the impact of the FY–2008 rescission which has been applied to all programs.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: In response to Public Law 103–236, which directed the Bureau of Educational and Cultural Affairs (ECA) to provide scholarships to students from Timor Leste and from the sovereign island nations of the South Pacific region, ECA created the USTL Scholarship Program and the USSP Scholarship Program for academic study at accredited colleges and universities in the United States.

United States—Timor Leste Scholarship Program Overview: The goal of the USTL Scholarship Program is to support undergraduate level study at accredited higher education institutions in the United States for a select cadre of academically talented Timorese who are expected to assume future leadership roles in Timor Leste's development. As Timor Leste makes the transition to independence and democratic government, it is essential to develop the human resource capacity of the Timorese people, especially in fields such as agriculture, business, communications, computer science, economics, education, environmental science, international relations, political science, psychology and urban planning. The eligible academic fields of study were selected to emphasize the areas of critical development need in Timor Leste. USTL scholarships are typically offered for four years total including up to one year of English language and pre-academic training followed by up to three years for the completion of the undergraduate degree in designated fields. In some cases, USTL students will have undergraduate credits for transfer from their home institutions to their U.S. institutions.

United States—South Pacific Scholarship Program Overview: The USSP Scholarship Program was established by the United States Congress to provide opportunities for U.S. study to students from South Pacific nations in fields important for the region's future development. Public Law 103–236 authorized academic scholarships to qualified students from the sovereign island nations of the South Pacific region to pursue undergraduate and graduate study at institutions of higher education in the United States.

This program supports increased mutual understanding between the people of the U.S. and those of the South Pacific Islands. Students from the following nations are eligible to apply for these scholarships: Cook Islands, Fiji, Kiribati, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

Fields of study under the program are based on recommendations from Department of State regional bureau representatives, ECA and the Public Affairs Section (PAS) at the U.S. embassy, and have included agriculture, business, computer science, education, environmental studies, journalism, political science, public administration, urban planning and other fields. The recipient organization should arrange for the students' enrollment at accredited U.S. institutions of higher education where a full liberal arts curriculum (including social sciences, humanities and sciences) is available. Students selected for these scholarships enroll in 4-year undergraduate degree programs, or in master's degree programs. The latter have generally involved 1 year of preparatory U.S. study followed by up to 2 years of formal master's degree study.

The requirements for administration of these programs are outlined in further detail in this document and in the Program Objectives, Goals and Implementation (POGI) document. The proposal should respond to each item in the POGI.

In a cooperative agreement, the Bureau is substantially involved in program activities above and beyond routine grant monitoring. Bureau activities and responsibilities for this program include:

(1) Participation in the design and direction of program activities;

(2) Approval of key personnel;

(3) Approval and input on program timelines and agendas;

(4) Guidance in execution of all program components;

(5) Review and approval of all program publicity and recruitment materials;

(6) Participation in student interview and selection panels;

(7) Review of selection decisions prior to offer of award;

(8) Consultation on and approval of academic placement assignments;

(9) Approval of changes to students' proposed academic field or institution;

(10) Approval of decisions related to special circumstances or problems throughout duration of program;

(11) Assistance with SEVIS-related issues;

(12) Assistance with participant emergencies;

(13) Liaison with relevant U.S. Embassies and country desk officers at the State Department.

II. Award Information

Type of Award: Cooperative Agreement ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: 2008

Approximate Total Funding: $992,000

Approximate Number of Awards: 1–2

Anticipated Project Start Date: late summer 2008

Anticipated Project Completion Date: August 2013

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is the Bureau's intent to renew the Cooperative Agreement(s) for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1 Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2 Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, the recipient must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110 (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3 Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award in an amount up to $992,000, or two awards of up to $496,000 each, to support program and administrative costs required to implement the exchange program(s). Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the East Asia and Pacific Programs Branch, ECA/A/E/EAP, Room 208, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, phone: (202) 453–8102, fax: (202) 453–8107, e-mail: *augustinevr@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number *ECA/A/E/EAP–08–01* located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

IV.2 To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3 Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The original and *10* copies of the application should be sent per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government.

This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c You must have nonprofit status with the IRS at the time of application.

Please note: Effective March 14, 2008, all applicants for ECA federal assistance awards must include with their application, a copy of page 5, Part V-A, ''Current Officers, Directors, Trustees, and Key Employees'' of their most recent Internal Revenue Service (IRS) Form 990, ''Return of Organization Exempt From Income Tax.'' If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of Exchange Visitor (J visa) Programs and adherence by recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements. The Recipient will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating

diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3 Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it: (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of 3 years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: Sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. In addition, the proposal must include a comprehensive budget narrative demonstrating how costs were derived. The budget format should break out costs on a year-by-year basis. If applying to administer both the USTL and USSP programs, the applicant's budget proposal should include a budget summary page that breaks out program and administrative costs. The total amount of funding requested from ECA may not exceed $992,000 if applying to administer both the USTL and USSP programs; or $496,000 if applying to administer one of the two programs. At this level of funding, applicants are encouraged to budget for at least ten (10) students for degree study, i.e., at least five (5) each under the USTL and USSP programs. The number of participants that the organization proposes to sponsor should be clearly stated. ECA reserves the right to reduce, revise or increase the proposed budget in accordance with funding availability and the needs of the program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets.

IV.3e.2. Allowable costs for the program include the following:

(1) Publicity, recruitment, selection, placement and communication with applicants and participants.

(2) Travel for student participants between home and program location.

(3) Tuition and fees, stipends for living costs, book allowances, and other necessary maintenance costs and expenses for the students.

(4) Advising and monitoring of students.

(5) Academic and cultural support and enrichment activities.

(6) Pre-return activities and evaluation.

(7) Staff and administrative expenses to carry out the program activities. Administrative and overhead costs should be as low as possible.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: May 28, 2008.

Reference Number: ECA/A/E/EAP–08–01.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service

(i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1—Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than 7 days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EAP–08–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support. Contact Center Phone: 800–518–4726. Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time. E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Applicants must follow all instructions in the Solicitation Package.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 Does Not Apply to This Program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the program goals and mission. Proposals should demonstrate understanding of the participating nations and of the needs of students from the region(s) as related to the program goals.

(2) Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Each component of the program should be addressed.

(3) Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should explain how objectives will be met through specific activities to be carried out in the U.S., and in Timor Leste and/or the South Pacific region.

(4) Multiplier effect/impact: Programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Anticipated results of the program in Timor Leste and/or the South Pacific region as well as in the U.S. should be addressed.

(5) Support of Diversity: Proposals should demonstrate substantive support for the Bureau's policy on diversity. To the full extent possible, scholarship recipients for this program should be representative of diversity in the following categories: Country of origin/residence within country(ies); gender; ethnic community of origin within country(ies), where relevant; urban and rural regions (with emphasis on outreach beyond capital cities); and proposed fields of study within the general parameters outlined in this solicitation. Proposals should explain what efforts will be undertaken to achieve these goals. The U.S. study and enrichment programs should also incorporate and demonstrate the

diversity of the American people, regions and culture.

(6) Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. Proposal should explain how the recipient organization will meet the requirements of students on this specific program. Proposals should describe the applicant's knowledge of, or prior experience with, students from Timor Leste, and/or the South Pacific nations, and/or other developing countries.

(7) Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

(8) Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau-supported programs are not isolated events.

(9) Project Evaluation: Proposals should include a plan to evaluate the program's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus a description of a methodology that will link outcomes to original project objectives is recommended. The recipient will be expected to submit quarterly program reports.

(10) Cost-effectiveness and Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) Quarterly financial and program reports, the latter of which should include record and analysis of program activities from that period.

Recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VI.4. Program Data Requirements

Recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the award or who benefit from the funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Victoria Augustine, Program Officer, East Asia and Pacific Programs Branch (ECA/A/E/EAP), Room 208, *ECA/A/E/EAP–08–01,* U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, phone: (202) 453–8102, fax: (202) 453–8107, e-mail: *augustinevr@state.gov.*

Individual students interested in applying for either the USTL or USSP scholarship should not contact the Office of Academic Programs. Instead they should visit the following Web site for more information on the current programs: *http://www.eastwestcenter.org/edu-sp.asp.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/E/EAP–08–01.*

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice:

The terms and conditions published in this RFGP are binding and may not

be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 18, 2008.

Goli Ameri,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–8943 Filed 4–23–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6197]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: American Documentaries Showcase

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/PE/C–CU–08–70.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: May 27, 2008.

Executive Summary

The Cultural Programs Division in the Office of Citizen Exchanges in the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for a cooperative agreement to administer the American Documentaries Showcase program. Through this program, ECA seeks to showcase and promote American documentaries and their filmmakers at international venues, including U.S. Embassy-organized events and/or U.S. Embassy-supported international documentary film festivals. ECA therefore seeks an organization to identify and select a thematic collection of twenty (20) to thirty (30) American documentaries that offer a broad overview of the best in American documentary filmmaking. The documentaries should demonstrate high artistic quality, illustrate diverse viewpoints, address a variety of social issues, and reflect the creativity inherent in an open, democratic society. The collection should include documentaries addressing universal themes and issues such as—but not limited to—nature and the environment, human rights, HIV/AIDS, and other subjects that reflect contemporary American society and culture. The documentary collection will be available to U.S. Embassies to program in its entirety or in part. U.S. Embassies also may choose to submit appropriate documentaries from the collection to local documentary festivals. This program will also provide for travel by the documentary filmmakers in conjunction with the presentation of their documentaries overseas at U.S. Embassy programs or local festivals. Travel by film experts will include public presentations, workshops, master classes, interviews, and outreach activities designed to address underserved and younger audiences overseas. Applicants should submit proposals that show how they will identify and select the collection of American documentaries outlined here and how they will assist ECA in programming the documentaries and their filmmakers in eighteen (18) to thirty (30) U.S. Embassies overseas.

U.S. public and non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that support the goals of American Documentaries Showcase: To promote mutual understanding and cross-cultural awareness. The program accomplishes this by providing an opportunity for international audiences to view American documentaries; become exposed to American viewpoints on socially relevant issues; gain an understanding of the role of filmmaking as a catalyst for dialogue and for exploring solutions to contemporary problems; and allow American documentary filmmakers to learn about life and culture in the foreign host countries.

The Bureau is particularly interested in proposals that will facilitate the organization of programs in countries with significant Muslim or underserved populations, and youth. No guarantee is made or implied that programming will be made in any particular region.

For this competition, all organizations must demonstrate sufficient experience successfully exhibiting, distributing, or otherwise promoting American documentaries. They also should demonstrate extensive knowledge of the documentary field in general both in the U.S. and overseas. Proposals from organizations with significant international experience will be more competitive. Organizations with less than four years experience in conducting international exchanges are ineligible to apply.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

The Bureau seeks proposals that will showcase and promote American documentaries and their filmmakers at international venues such as U.S. Embassy-organized events and U.S. Embassy-supported documentary film festivals. These events will help engage audiences overseas that do not normally have regular access to American documentaries. The applicant will be responsible for identifying and assembling a collection of approximately 20 to 30 American documentaries on diverse social themes and whose filmmakers will be available for overseas travel and programming by U.S. Embassies in connection with the presentation of their documentaries at Embassy events or local documentary festivals. In addition to presentations, American Documentary Showcase filmmakers will be expected to conduct or participate in master classes, lectures, workshops, radio and TV appearances, and other activities with local cultural institutions, other filmmakers, media, and students.

Guidelines

The successful applicant must fully demonstrate a capacity to achieve the following:

(1) Identify the film professionals, subject matter specialists, and other experts who will be members of the panel selecting the documentaries. Provide credentials to illustrate the film and international expertise of the review panelists.

(2) Identify the specific selection criteria the review panel will use to select the documentaries and

participating filmmakers. The panel will include an ECA representative as an observer.

As documentaries will be presented abroad as part of ECA's public diplomacy outreach, they should be balanced, represent the diversity of American political, social and cultural life, and take political and cultural sensitivities into consideration. ECA will review and approve nominated documentaries in consultation with other Department officials.

(3) Identify, select, and obtain approximately twenty (20) to thirty (30) American documentaries appropriate for overseas presentation. The collection should include documentaries reflecting universal themes and issues such as nature and the environment, human rights, HIV/AIDS awareness, and women's issues as well as categories such as history and social documentaries, ethnographic films, biographies, animation, and the arts. The collection should include films appropriate for entry into international documentary festivals if requested by U.S. embassies. It should also include a mix of feature length and short documentaries to allow for flexible programming at various venues.

(4) Identify the film professionals, subject matter specialists or other experts who will travel overseas to present the documentaries. Filmmakers must be U.S. citizens who are at least 21 years old; demonstrate the highest artistic ability; be conversant with broader aspects of contemporary American society and culture; be conversant with the other documentaries in the collection, as well as his/her own, and be adaptable to unescorted, rigorous touring through regions where travel and performance situations may be difficult.

(5) Ensure documentaries are available in appropriate formats for various kinds of screening venues and that sufficient copies of the entire collection are available for multiple bookings in various geographic areas.

(6) Ensure documentaries meet all festival criteria, in the event they are to be submitted for presentation at a U.S. Embassy-supported festival.

(7) Ensure rights to the documentaries are cleared to permit flexibility in programming.

(8) Work with ECA and PAS to develop program models for Embassy sponsored or Embassy organized film events. This includes identifying documentaries from the collection menu that could be used to demonstrate different approaches to the same social issue or challenge.

(9) Develop discussion guides and public relations and educational materials to support the documentaries. The educational materials should be developed to be used either with individual documentaries or to support proposed thematic groupings.

(10) Working in coordination with ECA, engage Public Affairs Officers at U.S. Embassies in the project to ensure they concur with suitability of documentaries for their programming.

Proposals should reflect a practical understanding of global issues, and demonstrate sensitivity to cultural, political, economic, and social differences in regions where the documentaries will be shown and the film experts programmed. Special attention should be given to describing the applicant organization's experience with documentary film and with planning and implementing logistical scenarios overseas. Applicants should outline their project team's capacity for doing projects of this nature and provide a detailed sample program to illustrate planning capacity and ability to achieve program objectives. Applicants must identify all U.S. and foreign partner organizations and/or venues with whom they are proposing to collaborate, and describe previous cooperative projects in the section on ''Institutional Capacity.'' For this competition, applicants must include in their proposal supporting materials or documentation that demonstrate a minimum of four years experience in conducting international exchange programs. Proposals must include references with name and contact information for other assistance awards the applicant has received, in the event the Bureau chooses to be in touch directly.

ECA intends to give one assistance award to a qualified institution or organization to administer the American Documentary Showcase program globally. Activities funded through this cooperative agreement support the organization and implementation of between 20 to 30 overseas programs. Activities must include, but are not limited to:

—Selection of documentaries with associated filmmakers.
—Production of documentary packages in appropriate formats for multiple exhibition overseas.
—Development of promotional and corollary support material, including educational and media packets.
—Shipping overseas.
—Travel overseas by documentary filmmakers or other experts.
—Advance program planning.
—Programming educational, media, and other outreach activities in consultation with U.S. embassies.
—Assisting filmmakers with passport, visa, immunizations, and other pre-travel preparations.
—Arranging and providing orientation sessions and pre-travel briefings, producing press materials, and providing support for publicity while the filmmakers are overseas.
—Evaluating program activities.
—Reporting on program activities to ECA.
—Providing suggestions for follow-on program development, including the option of bringing foreign filmmakers to the United States.

Applicants must have experience in documentary filmmaking aspects and in planning and implementation of programs, with particular emphasis on overseas programs and should address these elements in the proposal. The grantee must be highly responsive and able to work in close consultation with ECA and the Public Affairs Sections of the participating U.S. embassies.

Successful applicants will include with their proposal specific criteria for the selection of American documentaries and documentary filmmakers.

The Cultural Programs Division's activities and responsibilities for this program are as follows:

—Participation in the final selection of documentaries and filmmakers.
—Determination of the countries to which the documentary collection and filmmakers will travel. Priority countries will be those in all world regions of greatest importance to the Department of State's public diplomacy mission to build mutual understanding.
—Final approval of all program arrangements.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY 2008.

Approximate Total Funding: $400,000.

Approximate Number of Awards: 1.

Approximate Average Award: $400,000.

Ceiling of Award Range: $400,000.

Anticipated Award Date: September 1, 2008.

Anticipated Project Completion Date: December 29, 2009.

Additional Information: Pending successful implementation of this program and the availability of funds in

subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. In-kind cost-sharing is acceptable for certain aspects of the budget. For example, a grantee's existing inherent professional expertise is considered in-kind cost sharing. This can be reflected as a contribution of honoraria fees that might otherwise have to be spent to hire experts.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates giving one award, in an amount not to exceed $400,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b) Technical Eligibility: All proposals must comply with the following: (1) Full adherence to the guidelines stated herein and in the Solicitation Package; (2) proposal submission deadline date; (3) non-profit organization status, and; (4) for purposes of this competition, a demonstrated track record in documentary programming and at least four years experience in international exchanges, or your proposal will be declared technically ineligible and given no further consideration in the review process. Eligible applicants may submit only ONE proposal (TOTAL) in response to this RFGP. If multiple proposals are received, all submissions will be declared technically ineligible and will be given no further consideration in the review process.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact the Cultural Programs Division (ECA/PE/C/CU) in the Office of Citizen Exchanges, Room 568, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202/203–7488; fax 202/203–7525; e-mail *ProctorLM@state.gov* to request a Solicitation Package.

Please refer to the Funding Opportunity Number ECA/PE/C–CU–08–70 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

For questions about this announcement, please contact: Susan Cohen, Cultural Programs Division, ECA/PE/C/CU, 202/203–7509; fax 202/203–7525; *CohenSL@state.gov.* Please refer to the Funding Opportunity Number ECA/PE/C–CU–08–70 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The original and 14 copies (15 proposals total) of the application should be sent per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application.

Please note: Effective March 14, 2008, all applicants for ECA federal assistance awards must include with their application, a copy of page 5, Part V–A, ''Current Officers, Directors, Trustees, and Key Employees'' of their most recent Internal Revenue Service (IRS) Form 990, ''Return of Organization Exempt From Income Tax.'' If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing The J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the ''Responsible Officer'' for the program under the terms of 22 CFR 62, which covers the administration of the Exchange Visitor Program (J visa

program). Under the terms of 22 CFR 62, organizations receiving grants under this RFGP will be third parties ''cooperating with or assisting the sponsor in the conduct of the sponsor's program.'' The actions of grantee program organizations shall be ''imputed to the sponsor in evaluating the sponsor's compliance with'' 22 CFR 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 e*t seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, recordkeeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 203–5029. FAX: (202) 453–8640.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.
2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.
3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.
4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected,

including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. The award may not exceed $400,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. For budgeting purposes, applicants should estimate costs based on selection of approximately 20 to 30 documentaries, packaging of multiple copies of the collection as well as administration of travel abroad and programming of documentary filmmakers to 18 to 30 U.S. Embassies overseas. Final determination of participating regions and countries will be made by ECA in collaboration with U.S. embassies and the successful applicant after the assistance award has been given.

IV.3e.3. Allowable costs for the program include the following:

(1) Program Expenses, including but not limited to: Costs involved in the identification and selection of an American documentary collection, including organization of selection panel; costs of producing multiple copies of the documentary collection; domestic and international travel for the selected filmmakers (per The Fly America Act) to approximately 20 or more venues overseas for an average of one week of programming; visas and immunizations; airport taxes and country entrance fees; honoraria for the filmmakers; educational materials and presentation items; excess and overweight baggage fees for educational material; trip itinerary booklets; press kits and promotional materials; follow-on activities; monitoring and evaluation; and international travel for program implementation and/or evaluation purposes. The following guidelines may be helpful in developing a proposed budget:

A. Travel Costs. International and domestic airfares (per The Fly America Act), transit costs, ground transportation, and visas for American Documentary Showcase Abroad participants to travel to the program destinations.

B. Per Diem: For any U.S. portion of the travel, organizations should use the published Federal per diem rates. The Public Affairs Sections of the participating U.S. embassies and consulates are responsible for per diem abroad. Domestic per diem rates may be accessed at: *http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC%20.*

C. Sub-grantees and Consultants. Sub-grantee organizations may be used, in which case the written agreement between the prospective grantee and sub-grantee should be included in the proposal. Sub-grants must be itemized in the budget under General Program Expenses. Consultants may be used to provide specialized expertise. Daily honoraria cannot exceed $250 per day, and applicants are strongly encouraged to use organizational resources, and to cost share heavily in this area.

D. Health Insurance. Each American Documentary Showcase Abroad participant will be covered under the terms of the ECA-sponsored COINS health insurance policy. The cost for international travel insurance for staff travel may be included in the proposal budget.

E. Honoraria for American Documentary Showcase Abroad filmmakers. Daily honorarium is $200 per day for each filmmaker or film expert, including rest and travel days.

F. Educational and Promotional Items. ECA funds for educational and promotional items should not exceed $200 per filmmaker or film expert per program.

G. Excess Baggage. For brochures, educational and other support material related to overseas programming.

H. Immunizations/Visas. For purposes of a proposed budget, line items for immunizations should be estimated at $400 per filmmaker, and visas/visa photos should be estimated at $600 per filmmaker or film expert.

I. Press Kits. Each relevant U.S. embassy should receive appropriate contents for press kits. Items may be sent electronically with the understanding that in some cases, embassies may not be able to access large files or attachments. This line item may include funds for shooting and duplicating publicity photos and duplicating documentary clips.

J. Staff Travel. Allowable costs include domestic staff travel for one staff member to attend recruitment/selection events in approximately two U.S. cities. International staff travel will be allowable, especially if associated with monitoring and evaluation. Cost-sharing for staff travel is strongly encouraged.

2. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grantee organization employees, benefits, and other direct and indirect costs per detailed instructions in the Solicitation Package. While there is no rigid ratio of administrative to program costs, proposals in which the administrative costs do not exceed 25% of the total requested from ECA grant funds will be more competitive on cost effectiveness. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3F. Application Deadline and Methods of Submission

Application Deadline Date: Thursday, May 27, 2008.

Reference Number: ECA/PE/C–CU–08–70.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and

place it in an envelope addressed to ''ECA/EX/PM''.

The original and 14 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–CU–08–70, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) or Microsoft Word format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*). Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Planning and Ability To Achieve Objectives: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

2. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Institutional Capacity: Proposals should include (1) The institution's mission and date of establishment; (2) an outline of prior awards—U.S. government and/or private support received for tours abroad; (3) descriptions of experienced staff members who will be part of the team implementing the program, and; (4) all other documentation requested herein. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The proposal should reflect the institution's expertise in documentary exhibition, promotion, and programming. (5) Institution's Record/Ability: Proposals should demonstrate an institutional record of at least four years of international exchanges. (6) Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

5. Cost-effectiveness and Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

Should any proposals include programming for Iranian audiences or include follow-on activities involving Iranian grantees, the following additional requirements would apply to this project:

A critical component of the Administration's Iran policy is the support for indigenous Iranian voices. President Bush himself has pledged this support and the State Department has made the awarding of grants for this purpose a key component of its Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) has requested the Department of State to follow certain procedures to effectuate the goals of Sections 481(b), 531(a), 571, 582, and 635(b) of the Foreign Assistance Act of 1961 (as amended); 18 U.S.C. 2339A and 2339B; Executive Order 13224; and Homeland Security Presidential Directive 6. These licensing conditions mandate that the Department conduct a vetting of potential Iran grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting the Department will collect information from grantees and sub-grantees regarding the identity and background of their key employees and Boards of Directors.

Note: To assure that planning for the inclusion of Iran complies with requirements, please contact the Office's Iran Policy Coordinator, Lea Perez, at (202) 453–8156 for additional information. Or in her absence, please contact Sheila Casey at (202) 453–8150.

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact program officer Susan Cohen (202) 203–7509, e-mail: *cohensl@state.gov* for additional information.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus two copies of the following reports:

(1) A final program and financial report no more than 90 days after the expiration of the award;

(2) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements;

(3) Quarterly program and financial reports showing activities carried out and expenses incurred in the calendar quarter.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.)

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Susan Cohen, Cultural Programs, ECA/PE/C/CU, Room 568, Ref. # ECA/PE/C–CU–08–70, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, tel: 202/203–7509; fax: 202/203–7525; e-mail: *CohenSL@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C–CU–08–70.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: April 18, 2008.

Goli Ameri,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. E8–8958 Filed 4–23–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below regarding motorcycle helmet labels has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on February 1, 2008 [73 FR 6554]. The docket number is NHTSA–2008–0023.

The agency received eight comments on this collection item. Two comments

questioned the effectiveness of motorcycle helmet laws. This notice is not intended to address state or local helmet laws and therefore the comments are not relevant to this notice. Three comments were related to testing specifications of FMVSS No. 218. This notice does not change FMVSS No. 218 testing specifications. Consequently these comments are outside the scope of this notice. One comment recommended doing away with motorcycle helmet labels and two other comments suggested that collection of this information by NHTSA was unnecessary. The agency does not agree that motorcycle helmet labels or the information collection should be eliminated. These labels provide consumers with the assurance that the helmet meets FMVSS No. 218 minimum performance requirements. Assurance that a helmet meets FMVSS No. 218 is important to consumers because the standard specifies minimum performance requirements that are designed to reduce deaths and injuries to motorcyclists. The agency believes that it is important for consumers to be able to distinguish between helmets that meet FMVSS No. 218 requirements and those that do not.

DATES: Comments must be submitted on or before May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Sean Doyle, National Highway Traffic Safety Administration, Office of Crash Worthiness W43–414, 202–493–0188, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR 571.1218, Motorcycle Helmets (Labeling).

OMB Number: 2127–0518.

Type of Request: Extension of a currently approved collection.

Abstract: The National Traffic Vehicle Safety statute at 49 U.S.C. subchapter II standards and compliance, sections 30111 and 30117, authorizes the issuance of Federal motor vehicle safety standards, rules and regulations as he/she deems necessary. The Secretary is also authorized to require manufacturers to provide information in the form of printed matter placed in the vehicle or attached to the motor vehicle or motor vehicle equipment to first purchasers of motor vehicles or motor vehicle equipment when the vehicle equipment is purchased.

Using this authority, the agency issued the initial FMVSS No. 218, Motorcycle Helmets, in 1974. Motorcycle helmets are devices used to protect motorcyclists from head injury in motor vehicle accidents. FMVSS No. 218 S5.6 requires that each helmet shall be labeled permanently and legibly in a manner such that the label(s) can be read easily without removing padding or any other permanent part.

Affected Public: Motorcycle helmet manufacturers.

Estimated Burden Hours: 5,000 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503. Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Comments to OMB are most effective if received by OMB within 30 days of publication.

Issued in Washington, DC, on April 18, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–8867 Filed 4–23–08; 8:45 am]

BILLING CODE 4910–59–P

Federal Register

Thursday,
April 24, 2008

Part II

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 1, 2, 3 et al.
Regulatory Review Amendments; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 16, 19, 21, 22, 23, 24, 26, 27, 28, 31, 32, 34, 37, and 40

[Docket ID OCC–2008–0004]

RIN 1557–AC79

Regulatory Review Amendments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its rules in order to reduce unnecessary regulatory burden, update certain rules, and make certain technical, clarifying, and conforming changes to its regulations. These revisions result from the OCC's most recent review of its regulations to ensure that they effectively advance our mission to promote the safety and soundness of the national banking system, ensure that national banks can compete efficiently in the financial services marketplace, and foster fairness and integrity in national banks' dealings with their customers, without imposing regulatory burden unnecessary to the achievement of those objectives. The revisions also further the purposes of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which, among other provisions, directs the OCC to identify and, if appropriate, eliminate regulations that are outdated, unnecessary, or unduly burdensome.

DATES: This rule is effective on July 1, 2008. National banks, and foreign banks taking actions with respect to Federal branches and agencies, may elect to comply voluntarily with any applicable provision of the rule at any time prior to this effective date.

FOR FURTHER INFORMATION CONTACT: Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874–5090 or Heidi M. Thomas, Special Counsel, Legislative and Regulatory Activities, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, you may also contact the following OCC staff for further information regarding specific amendments: licensing/corporate applications-related amendments: Colleen Coughlin, Senior Licensing Analyst, Licensing Activities Division, (202) 874–4465, Jan Kalmus, NBE-Senior Licensing Analyst, Licensing Activities Division, 202–874–4608, and Yoo Jin Na, Licensing Analyst, Licensing Activities Division, 202–874–4604; electronic banking-related amendments: Aida Plaza Carter, Director, Bank Information Technology, (202) 874–4593, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Introduction and Summary of Proposed Rule

On July 3, 2007, the OCC published a notice of proposed rulemaking [1] to amend a variety of our regulations to reduce or eliminate unnecessary regulatory burden, incorporate prior OCC interpretive opinions, harmonize our rules with those issued by other Federal agencies, make technical and conforming amendments to improve clarity and consistency, and conform our rules with the statutory changes made by the Financial Services Regulatory Relief Act of 2006 (FSRRA) [2] and section 8 of the 2004 District of Columbia Omnibus Authorization Act (DC Bank Act).[3]

This rulemaking results from our most recent review of our regulations to identify opportunities to streamline our rules or regulatory processes. The rulemaking also furthers the purposes of section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[4] which directed the OCC and the other member agencies of the Federal Financial Institutions Examination Council to identify regulations that are outdated, unnecessary, or unduly burdensome, and to eliminate them if appropriate.[5]

The OCC received 8 comment letters in response to this proposal. Two of the commenters, a large bank and a bank trade association, expressed support for all, or almost all, of the proposed changes. Another commenter, also a bank trade association, commended the OCC for proposing ''modest changes'' and expressed its hope that the OCC would seek to make more significant regulatory improvements in the future. One commenter, an individual, opposed any lessening of regulatory supervision of national banks. Six of the 8 comment letters focused on specific provisions of the proposal—those relating to part 1, investment securities (§ 1.1), operating subsidiaries (§ 5.34(e)), financial guarantees (§ 7.1017), sales of nonconvertible debt (§ 16.6), and adjustable rate mortgages (§ 34.22). These comments, and the OCC's response to them, are discussed where relevant in the section-by-section description of the final rule.

Commenters suggested changes to only a few of our proposed amendments and the OCC is adopting the remaining amendments in final form as proposed, with minor clarifying or technical changes to a few provisions, as noted in the section-by-section description.

The most significant of the amendments made by this final rule include the following:

- Amendments to part 1, which pertains to investment securities, to provide the OCC with additional flexibility in administering part 1 as investment products evolve, codify existing precedent, and clarify applicable standards.
- Amendments to part 5, which governs national banks' corporate activities, to:
  - Codify prior OCC interpretive opinions recognizing that national bank operating subsidiaries may take the form of limited partnerships;
  - Update the standards the OCC uses to determine when an entity qualifies as an operating subsidiary;
  - Clarify when a national bank may file an after-the-fact notice to establish or acquire an operating subsidiary and when the bank must file an application; and
  - Expand the list of operating subsidiary activities eligible for after-the-fact notice.
- Amendments to part 5 to eliminate multiple, repetitive applications when a national bank opens an intermittent branch to provide branch banking services for one or more limited periods of time each year at a specified site during a specified recurring event, such as during a college registration period or a State fair.
- Amendments to part 7, which pertains to national banks' activities and operations, to provide national banks with greater flexibility to facilitate customers' financial transactions by

[1] 72 FR 36550.

[2] *Public Law* 109–351, 120 Stat. 1966 (Oct. 13, 2006).

[3] *Public Law* 108–386, 118 Stat. 2228 (2004). The DC Bank Act took effect on October 30, 2004.

[4] *See* EGRPRA, *Public Law* 104–208, § 2222, 110 Stat. 3009–394, 3009–314–315 (Sept. 30, 1996), *codified at* 12 U.S.C. 3311.

[5] Pursuant to EGRPRA's regulatory review requirement, the OCC, together with the Board of Governors of the Federal Reserve System (Federal Reserve Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS), published six notices seeking comment on ways to reduce unnecessary regulatory burden and has conducted outreach meetings with bankers and consumer groups. On November 1, 2007, the Federal Financial Institutions Examination Council, which includes these agencies and the National Credit Union Administration, published a Joint Report to Congress on this regulatory review process, as required by EGRPRA. 72 FR 62036 (Nov. 1, 2007). For additional information about the agencies' EGRPRA review, *see http://www.EGRPRA.gov.*

issuing financial guarantees, provided the financial guarantees are reasonably ascertainable in amount and consistent with applicable law.

• Amendments to part 7, to codify OCC electronic banking precedent and adapt the OCC's rules to certain current developments.

• Amendments to part 16, the OCC's securities offering disclosure rules, to eliminate unnecessary filing requirements and clarify the exemptions to the OCC's registration requirements for certain transactions.

• Amendments to part 34, which pertains to real estate lending and appraisals, to provide national banks with additional flexibility in selecting indices from which adjustments to interest rates in adjustable rate mortgages (ARMs) are derived. The final rule also includes certain technical and conforming amendments to our rules, including:

• Changes to part 4 (the OCC's organizational rules) and part 5 to reflect the OCC's most current organizational structure.

• Changes to conform the OCC's regulations—at parts 5, 23 (leasing), 31 (extensions of credit to insiders and transactions with affiliates), and 32 (lending limits)—to Regulation W issued by the Federal Reserve Board,[6] which governs transactions between Federal Reserve member banks and their affiliates and implements sections 23A and 23B of the Federal Reserve Act.[7]

• Amendments to part 9 (fiduciary activities of national banks) and part 12 (Securities Exchange Act disclosure rules) to reflect changes in certain regulations adopted by the Securities and Exchange Commission (SEC).

• Amendments to part 31 to remove an obsolete interpretation relating to loans to third parties secured by both affiliate-issued securities and nonaffiliate collateral.

• Amendments to parts 1, 2, 3, 5, 10, 11, 16, 19, 21, 22, 26, 27, 28, and 40 to implement the DC Bank Act, which removed the OCC as the appropriate Federal banking agency for financial institutions established under the Code of Law for the District of Columbia (DC banks) and substituted the FDIC or the Federal Reserve Board, as appropriate to the bank's charter type.[8]

• Amendments to conform our regulations to the changes made by the FSRRA, including:

○ Amendments to part 5 that simplify a national bank's authority to pay a dividend and that remove the geographic limits with respect to bank service companies.

○ Amendments to the OCC's Change in Bank Control Act (CBCA) regulation, § 5.50, that: (1) Require a CBCA notice to include information on the future prospects of the national bank to be acquired, (2) permit the OCC to consider the future prospects of the bank as a basis to issue a notice of disapproval, and (3) permit the OCC to impose conditions on its action not to disapprove a CBCA notice.

○ Amendments to part 7 that permit national banks to choose whether to provide for cumulative voting in the election of their directors.

○ Amendments to part 19 that reflect changes to the OCC's enforcement authority with respect to institution-affiliated parties.

○ Amendments to part 24 (community development investments) that implement section 305 of the FSRRA.

Description of Comments Received and Final Rule

Part 1—Investment Securities

Part 1 of our regulations (12 CFR part 1) prescribes the standards under which a national bank may purchase, sell, deal in, underwrite, and hold securities, consistent with the National Bank Act (12 U.S.C. 24 (Seventh)) and safe and sound banking practices. This final rule clarifies the applicable standards by codifying existing precedent and provides the OCC with additional flexibility to administer part 1 as investment products evolve.

Authority, Purpose, and Scope (§ 1.1)

National banking law explicitly authorizes the OCC to determine the types of investment securities a national bank may purchase.[9] Part 1 currently provides a general definition of the term ''investment security,'' describes several categories or types of permissible investment securities, and prescribes such limitations as apply to a national bank's investment in each type. To complement these specific categories, we proposed a new provision to recognize that the OCC also may determine, on a case-by-case basis, that a national bank may acquire an investment security that is not specifically listed in the regulation, provided the OCC determines that bank's investment is consistent with the character of investment securities permitted under section 24 (Seventh) and with safe and sound banking practices. We received no substantive comments on this provision and, accordingly, it is adopted essentially as proposed, with a minor revision clarifying that investments found by the OCC to be permissible under Section 1.1(d) constitute eligible investments under 12 U.S.C. 24.

In making a determination under amended § 1.1, the OCC will consider all relevant factors, including an evaluation of the risk characteristics of the particular instrument compared to those of investments that the OCC has previously authorized, as well as the bank's ability effectively to manage such risks. In approving such an investment, the OCC may impose such limits or conditions as are appropriate under the circumstances.

In addition, this final rule removes the now-obsolete reference to DC banks from the scope of part 1 (§ 1.1(c)), thus eliminating the applicability of part 1 to DC banks.

One commenter requested that the OCC continuously update the electronic version of our annual publication of permissible activities for national banks, ''*Significant Legal, Licensing, and Community Development Precedents,*'' [10] to add precedents issued pursuant to § 1.1, as well as other activities, more frequently than once a year. We note, however, that, in addition to this annual, cumulative summary of significant precedents, we also publish the full text of these precedents in *Interpretations and Actions*, consistent with the OCC's policy of providing public notice of significant legal opinions and other important precedents. *Interpretations and Actions* is published monthly and is available both in printed form and on the OCC's internet site at *http://www.occ.treas.gov.* We believe this method of publicizing our precedent adequately serves the purpose of providing prompt notice of our opinions and decisions to national banks and the public and, accordingly, are making no changes at this time to our schedule of updating our ''*Significant Legal,*

[6] 12 CFR part 223.

[7] 12 U.S.C. 371c and 371c-1.

[8] Under the DC Bank Act, the FDIC is the appropriate Federal banking agency for an insured bank chartered under District of Columbia law that is not a member of the Federal Reserve System, and the Federal Reserve Board is the appropriate Federal banking agency for a bank chartered under District of Columbia law that is a member of the Federal Reserve System, whether or not insured. Thus, while DC banks are no longer covered by these OCC regulations, they are subject to comparable regulatory regimes administered by the FDIC or the Federal Reserve Board.

[9] 12 U.S.C. 24 (Seventh).

[10] Our most recent *Significant Legal, Licensing, and Community Development Precedents document,* dated June 2007, is available on our Web site at *http://www.occ.gov/sigpre.pdf.*

Licensing, and Community Development Precedents'' publication.

Pooled Investments (§ 1.3(h))

Current § 1.3(h) allows a national bank to purchase and sell shares in an investment company provided that the portfolio of the investment company is limited to investment securities authorized in part 1. However, as explained in the preamble to the proposed rule, markets increasingly are offering securitized, pooled investment vehicles that hold bank-permissible assets not limited to investment securities. For example, a bank may seek to purchase investment grade shares in an investment company where the underlying assets are loans. In that case, the bank's risk exposure may be comparable to its exposure when it purchases shares of identically rated and marketable pooled vehicles composed of part 1 investment securities.

The proposal amended § 1.3(h) to codify OCC precedents that permit a national bank to purchase shares in investment vehicles where the underlying assets are not limited to investment securities permissible under part 1, so long as the underlying assets otherwise are bank permissible.[11] Specifically, the proposal deleted the phrase ''under this part'' both times it appears in § 1.3(h) and revised the heading to read ''Pooled investments'' to clarify that banks have the authority to invest in entities holding pooled assets, provided that the underlying assets are those that a national bank may purchase and sell for its own account. The proposal also provided that pooled investments made pursuant to § 1.3(h) must meet certain credit quality and marketability standards generally applicable to investment securities. We received no comments on this amendment and are adopting it in final form with the addition of the following clarifying language.

Specifically, the final version of § 1.3(h) includes an explicit reminder that pooled investments under this section must comply with § 1.5 and conform with applicable published OCC precedent.[12] Under, 12 CFR 1.5, when conducting investment activities described in § 1.3, a national bank must adhere to safe and sound banking practices and the specific requirements of part 1. Thus, the bank must consider, as appropriate, the interest rate, credit, liquidity, price, foreign exchange, transaction, compliance, strategic, and reputation risks presented by a proposed activity; the particular activities undertaken by the bank must be appropriate for that bank; and the bank must conclude that the obligor can satisfy its obligations.

Securities Held Based on Estimates of Obligor's Performance (§ 1.3(i))

Part 1 defines an investment security in terms of both asset quality and marketability.[13] Section 1.2(f) further defines a ''marketable'' security as one that is: (1) Registered under the Securities Act of 1933 (Securities Act),[14] (2) a municipal revenue bond exempt from registration under the Securities Act, (3) offered or sold pursuant to Securities and Exchange Commission (SEC) Rule 144A [15] and rated investment grade or the credit equivalent, or (4) ''can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.'' [16]

Section 1.3(i), in contrast, articulates different asset quality and marketability standards. That section permits a national bank to treat a debt security as an investment security ''if the bank concludes, on the basis of estimates that the bank reasonably believes are reliable, that the obligor will be able to satisfy its obligations under that security,'' and the bank believes that the security may be sold with reasonable promptness at a price that corresponds reasonably to its fair value.[17] The standard of marketability in the ''reliable estimates'' provision differs from, and is more limited than, the marketability definition in § 1.2(f) in that it does not contain all of the elements of the definition in § 1.2(f). We proposed to harmonize these marketability standards by amending § 1.3 to reflect the same standard as in § 1.2. We received no comments on this proposal, and therefore adopt it as proposed.

Part 2—Sales of Credit Life Insurance

Part 2 sets forth the principles and standards that apply to a national bank's provision of credit life insurance and the limitations that apply to the receipt of income from those sales by certain individuals and entities associated with the bank. This final rule removes DC banks from the definition of ''bank'' set forth in § 2.2(a) to conform to the DC Bank Act.

Part 3—Minimum Capital Ratios; Issuance of Directives

Part 3 establishes the minimum capital ratios that apply to national banks, sets out in appendices the rules governing the computation of those ratios, and provides procedures for the issuance of individual minimum capital requirements and capital directives. The current rule provides that local currency claims on, or unconditionally guaranteed by, central governments that are not members of the Organization for Economic Development (OECD) receive a zero percent risk weight to the extent the bank has local currency liabilities in that country. To align the rule more closely with foreign exchange risk, we proposed to amend Appendix A to part 3 by removing the current restriction on the location of the offsetting liability, thus providing a zero percent risk weight to the extent the bank has liabilities in that *currency*. We received no comments on this amendment and are adopting the changes as proposed, with a conforming technical amendment.

This final rule also removes DC banks from the definition of ''bank'' in § 3.2(b). Pursuant to the DC Bank Act, DC banks now will be subject to the regulatory capital requirements prescribed either by the FDIC or the Federal Reserve Board, depending on whether the DC bank is a member of the Federal Reserve System.

Part 4—Organization and Functions, Availability and Release of Information, Contracting Outreach Program, Post-Employment Restrictions for Senior Examiners

The proposed rule updated § 4.4 to reflect that the Large Bank Supervision Department supervises the largest national banks under the OCC's current organizational structure. It also amended § 4.5 by updating OCC district office addresses and the geographical coverage of those offices resulting from the OCC's district office realignments. We received no comments on these changes and are adopting the changes as proposed, with additional updates to the geographical coverage of OCC district offices.

Part 5—Rules, Policies, and Procedures for Corporate Activities

Part 5 establishes rules, policies, and procedures for national banks' corporate activities and corporate structure. It also contains procedural requirements for

[11] *See, e.g.*, Interpretive Letter No. 911 (June 4, 2001) (national bank may purchase interests in loan fund either pursuant to lending authority or as securities on the basis of reliable estimates of the issuer).

[12] See, *e.g.* OCC Interpretive Letters No. 779 (April 3, 1997) and 911 (June 4, 2001). *See also* OCC BC 181 (Rev), ''Purchases of Loans In Whole or In Part—Participations'' (Aug. 2, 1984), and ''Interagency Policy Statement on Investment Securities,'' 63 FR 20191 (April 23, 1998).

[13] 12 CFR 1.2(e).

[14] 15 U.S.C. 77a, *et. seq.*

[15] 17 CFR 230.144A.

[16] 12 CFR 1.2(f).

[17] *See* 12 CFR 1.3(i)(1).

the filing of corporate applications, including the circumstances under which applications or notices are required, and the required content of the filing. A description of our amendments to part 5 is set forth below, with substantive amendments presented first, followed by technical or conforming amendments.

Fiduciary Powers (§ 5.26)

The OCC's current rule requires a national bank filing an application for approval to offer fiduciary services to provide an opinion of counsel that the proposed fiduciary activities do not violate applicable Federal or State law. However, an opinion of counsel is not required for expedited applications filed by ''eligible banks.'' [18] Because our experience has been that an opinion of counsel often is not necessary to enable the OCC to conclude that the proposed fiduciary activities are permissible, we proposed to eliminate this requirement for all applications to exercise fiduciary activities, unless the OCC specifically requests an opinion. We received no comments on this amendment and adopt it as proposed. We note that the removal of this requirement does not relieve the bank of its responsibility to ensure that its fiduciary activities comport with applicable Federal and State law.

Establishment, Acquisition, and Relocation of a Branch—Intermittent Branches (§ 5.30)

Section 5.30 describes the procedures and standards governing OCC review and approval of a national bank's application to establish a new branch or to relocate a branch. As the preamble to our proposed rule noted, it is unclear under the current regulation whether a bank must refile an application under § 5.30 each year to operate branches on a recurring basis at the *same* location or event (such as an annual State fair or at a specific college campus during registration periods) even where all of the facts relevant to the branch application remain the same as those previously approved. As a result, some banks have filed for approval of such branches each time the bank seeks to operate the branch.

To reduce the regulatory burden associated with these multiple filings, we proposed to eliminate subsequent applications for recurring, temporary branches that serve the same site at regular intervals. We received no comments on this amendment, and we adopt it as proposed.

Specifically, the final rule adds to § 5.30 the new term, ''intermittent branch,'' which is defined to mean a branch that provides branch banking services, where legally permissible under the national bank branching statute,[19] for one or more limited periods of time each year at a specified site during a specified recurring event. Under this final rule, if the OCC grants a national bank approval to operate an intermittent branch, no further application or notice to the OCC is required. This amendment does not affect the legal requirements prescribing the conditions under which a national bank may establish or retain branches pursuant to the national bank branching statute at 12 U.S.C. 36.

Operating Subsidiaries (§ 5.34)

Section 5.34 of the OCC's rules authorizes national banks to establish or acquire operating subsidiaries as a means through which to exercise their powers to conduct the business of banking. The final rule makes several changes to § 5.34 to update the standards for determining whether a subsidiary is controlled by the parent bank in light of changes in accounting standards, to clarify the type of entity that may qualify as an operating subsidiary, and to modify the standards under which transactions to establish or acquire operating subsidiaries qualify for after-the-fact notice procedures rather than the filing of an application. None of the proposed revisions alters the fundamental characteristics of an operating subsidiary, that is, that an operating subsidiary may conduct only bank-permissible activities and conducts those activities pursuant to the same ''authorization, terms and conditions'' as apply to the parent bank.[20]

Qualifying standards. Under current § 5.34(e)(2), an entity qualifies as an operating subsidiary only if the parent bank ''controls'' the subsidiary. The rule provides for two alternative means of establishing control. First, a national bank controls an operating subsidiary if the bank owns more than 50 percent of the voting interest (or similar type of controlling interest) in the subsidiary. Second, control may be established if the parent bank ''otherwise controls'' the operating subsidiary and no other party controls more than 50 percent of the voting interest (or similar type of controlling interest) in the subsidiary.

The proposal would have revised this standard to provide that a national bank may invest in an operating subsidiary if it satisfies the following requirements: (1) The bank has the ability to control the management and operations of the subsidiary by owning more than 50 percent of the voting interest in the subsidiary, or otherwise; *and* (2) the operating subsidiary is consolidated with the bank under Generally Accepted Accounting Principles (GAAP). The OCC received two comments that addressed this issue. One commenter asserted that the proposal was too broad and that there are many structures that have legitimate business purposes where the bank controls a majority of the voting and operational rights but other passive or non-controlling investors have economic rights. Another commenter noted that the requirement to consolidate under GAAP would narrow the circumstances under which national banks may establish operating subsidiaries.

The OCC continues to believe that these changes are appropriate to clarify that the requirement that a national bank control its operating subsidiary encompasses the bank's control of the business activities of the subsidiary to appropriately reflect the status of the operating subsidiary as a vehicle used by the bank to exercise its powers to engage in the business of banking, the operations of which are consolidated with those of the bank as an accounting matter. Therefore, the OCC has adopted the rule essentially as proposed, with a few revisions to resolve ambiguity in the proposed text.

As noted above, the first element of the proposed rule required the bank to have the ability to control the management and operations of the subsidiary by owning more than 50 percent of the voting interest in the subsidiary, or otherwise. The proposal could have been read to mean that a 50 percent voting interest in the subsidiary, without more, would have satisfied that criterion. The final rule revises the proposal to make clear that the standard has three elements: (i) The parent bank has the ability to control the management and operations of the subsidiary; (ii) the bank owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent bank otherwise controls the operating subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary; *and* (iii) the operating subsidiary is

[18] An ''eligible bank'' is a national bank that is well capitalized, has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System, has a CRA rating of ''Outstanding'' or ''Satisfactory,'' and is not subject to a cease and desist order, consent order, formal written agreement, or prompt corrective action directive. 12 CFR 5.3(g).

[19] 12 U.S.C. 36.

[20] 12 CFR 5.34(e).

consolidated with the bank under GAAP.[21] These changes help to ensure that in all circumstances a parent bank must have true operating control over an entity for it to be an operating subsidiary.

Two commenters also suggested grandfathering operating subsidiaries that were established prior to these changes. These commenters noted that to do otherwise could disrupt existing arrangements and impose administrative burdens on banks to restructure their subsidiaries to comply with the new rule.

The final rule adds a grandfathering provision responsive to these concerns. The provision makes clear that, unless otherwise notified by the OCC with respect to a particular operating subsidiary, an operating subsidiary a national bank lawfully acquired or established and operated as an operating subsidiary before the publication date of this rule will not be treated as in violation of § 5.34 as revised, provided that the bank and the operating subsidiary are, and continue to be, in compliance with the standards and requirements applicable when the bank established or acquired the operating subsidiary. This grandfathering applies only to operating subsidiaries in existence and conducting authorized activities on April 24, 2008.

Form of operating subsidiary. Current § 5.34(e)(2) permits national banks to conduct activities through operating subsidiaries organized in a variety of forms, including as a corporation or limited liability company. In recent years, national banks have sought to hold limited partnerships as operating subsidiaries as States have amended their limited liability company and limited partnership laws to provide more structural flexibility. The OCC has recognized this and previously permitted a limited partnership to qualify as an operating subsidiary where the parent bank exercised ''all economic and management control over the activities'' of the partnership.[22] Therefore, the proposal clarified that a bank may invest in an operating subsidiary organized as a limited partnership, provided it satisfies the other requirements of § 5.34.

We did not receive any comments on that provision and are adopting the change as proposed.

After-the-fact notice procedures. Current § 5.34(e)(5) provides that a well capitalized and well managed national bank may establish or acquire an operating subsidiary, or conduct a new activity in an existing operating subsidiary, by providing the OCC written notice within 10 days after doing so if the activity to be conducted in the subsidiary is specified in the rule as eligible for notice processing. The proposal would have permitted a bank to use the after-the-fact notice procedures if the financial statements of the bank and subsidiary were consolidated under GAAP, and the bank had the ability to control the management and operations of the subsidiary by holding: (i) More than 50% of the voting interests in the subsidiary; or (ii) voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management.

The final rule slightly revises the criteria for after-the-fact notices to permit the bank to use that procedure when the bank and proposed subsidiary meet (1) all the requirements for a notice that do not pertain to control, (2) the financial statements of the bank and subsidiary are consolidated under GAAP, and (3) the bank has the ability to control the management and operations of the subsidiary by holding: (i) More than 50% of the voting interests in the subsidiary; and (ii) voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management. These control arrangements are the most suitable for the after-the-fact notice procedures because the OCC generally is familiar with these structural arrangements and they do not ordinarily present unusual control or safety and soundness concerns. Other arrangements will be reviewed under the full application process.

The proposal also contained an additional standard for a national bank seeking to hold a limited partnership as an operating subsidiary through an after-the-fact notice. Under that additional standard, the proposed limited partnership operating subsidiary would qualify for the after-the-fact notice procedure only in the limited circumstance where the bank controls, directly or indirectly, all of the ownership interests in the limited partnership (and the other requirements of § 5.34 are satisfied). We explained that this approach would allow the OCC to review more complex arrangements through the application process.

We received two comments that addressed the after-the-fact notice procedure for limited partnerships. These commenters expressed concern that limiting after-the-fact notice in this manner would inappropriately require an application process in situations that do not present heightened complexity or risk. We agree with the commenters that the after-the-fact notice process could be modestly expanded without presenting new operational risks or policy considerations. Accordingly, we have revised the standard for investments in limited partnership operating subsidiaries to qualify for after-the-fact notice.

Under the final rule, the after-the-fact notice eligibility standards for limited partnerships are similar to those for corporate entities, except that, in the case of a limited partnership, the bank or its operating subsidiary must be the sole general partner of the limited partnership and, under the partnership agreement, the limited partners must have no authority to bind the partnership by virtue solely of their status as limited partners. This will allow banks to use the less burdensome after-the-fact notice procedures while still ensuring that transactions that raise issues of potential liability for general partners are subject to the higher scrutiny available under the application process.

In addition, the final rule adds the following to the list of activities eligible for after-the-fact notice:

- Providing data processing, and data transmission services, facilities (including equipment, technology, and personnel), data bases, advice and access to such services, facilities, data bases and advice, for the parent bank and for others, pursuant to 12 CFR 7.5006, to the extent permitted by published OCC precedent. Currently, only data processing activity provided to the bank itself or its affiliates qualifies for after-the-fact notice treatment under § 5.34(e)(5)(v)(H).
- Providing bill presentment, billing, collection, and claims-processing services.[23]
- Providing safekeeping for personal information or valuable confidential trade or business information, such as encryption keys, to the extent permitted by published OCC precedent.[24]
- Payroll processing.[25]

[21] The OCC will address on a case-by-case basis the appropriate treatment of a national bank's investment in a subsidiary in which the bank satisfies (i) and (ii), but not (iii) because the subsidiary is not consolidated with the bank under GAAP.

[22] *See* Corporate Decision No. 2004–16 (Sept. 10, 2004).

[23] *See* OCC Interpretive Letter No. 712 (Feb. 29, 1996).

[24] *See* 12 CFR 7.5002(a)(4).

[25] *See* Conditional Approval No. 384 (April 25, 2000) and Corporate Decision No. 2002–2 (Jan. 9, 2002).

- Branch management services.[26]
- Merchant processing except when the activity involves the use of third parties to solicit or underwrite merchants.[27]
- Administrative tasks involved in benefits administration.[28]

The OCC has previously found these activities to be permissible for a national bank and generally to pose low safety and soundness risks. We did not receive any comments on these additional activities eligible for after-the-fact notice and are adopting the above changes as proposed.

We have determined, however, not to add to this list those activities approved for a non-controlling investment by a national bank or its operating subsidiary pursuant to 12 CFR 5.36(e)(2) because the circumstances of such non-controlling investment activities could be such that they should be evaluated on a case-by-case basis when proposed to be conducted by an operating subsidiary controlled by a national bank.

Application procedures. Current § 5.34(e)(5)(i) sets forth the rules for when a national bank must file an operating subsidiary application. The final rule modifies these provisions to make them consistent with the changes to the qualifying subsidiary and after-the-fact notice provisions of § 5.34 discussed previously. In particular, the final rule requires the bank to describe in full detail structural arrangements where control is based on a factor other than bank ownership of more than 50 percent of the voting interest of the subsidiary and the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management. The final rule also requires, in the case of an application to establish a limited partnership as an operating subsidiary, that a bank provide a statement explaining why it is not eligible for the after-the-fact notice procedures. Finally, the final rule makes conforming changes to § 5.34(e)(5)(vi), which sets forth the circumstances under which an application or notice is waived, to reflect the changes discussed above.

Bank Service Companies (§ 5.35)

Section 602 of the FSRRA amended the Bank Service Company Act[29] to repeal the geographic limits that prohibited a bank service company from performing services for persons other than depository institutions in any State except the State where its shareholders and members are located. Section 602 retains the requirements that the services and the location at which these services are provided must be otherwise permissible for all depository institution shareholders or members and that Federal Reserve Board approval be obtained before a bank service company engages in activities that are only authorized under the Bank Holding Company Act. Section 602 also permits savings associations to invest in bank service companies under the same rules that apply to banks.

The proposal amended 12 CFR 5.35 to reflect this change in the statutory geographic restrictions on the operations of bank service companies. It also changed ''insured bank'' to ''insured institution'' throughout the section, where relevant, to reflect the fact that savings associations now may invest in bank service companies. We received no comments on these amendments and adopt them as proposed.

Other Equity Investments (§ 5.36)

Section 5.36(e) provides an expedited process for OCC review of a non-controlling investment by a national bank. Under this section, a national bank may make, directly or through an operating subsidiary, certain non-controlling investments in entities by filing an after-the-fact written notice in which the bank certifies, among other things, that it is well capitalized and well managed and will account for its investment under the equity or cost method of accounting.[30] This section currently does not, however, provide a procedure for a national bank to follow when it cannot provide the certifications needed for after-the-fact notice. Our proposal revised the accounting requirements needed for after-the-fact notice, added an application procedure where a bank or the proposed non-controlling investment do not qualify for the after-the-fact procedure, and made two changes to expedite non-controlling investments involving assets acquired through foreclosure or otherwise in good faith to compromise a doubtful claim or in the ordinary course of collecting a debt previously contracted (DPC assets). We received no comments on any of these amendments to § 5.36 and adopt them as proposed, with some minor technical changes in terminology for clarification purposes and a revision to a clarifying amendment to § 5.36(b).

Representations concerning accounting treatment. Current § 5.36(e)(5) requires a national bank to certify in its notice that it will account for its non-controlling investment under the equity or cost method of accounting. The OCC had adopted this requirement because an investment accounted for in this manner was not previously considered under then current GAAP standards to be controlled by the parent bank and, accordingly, the parent bank did not consolidate the investment on its books. Thus, the unconsolidated entity could be considered a non-controlling investment and not an operating subsidiary. However, as we have noted, under FIN 46R this assumption is no longer valid in all cases and an investment previously accounted for using the equity or cost method today may in some instances result in consolidation of the investment with the bank, depending on which party holds the majority of risks or rewards.

As in the proposal, the final rule addresses this issue by removing the requirement that a bank certify in its notice that it will account for its non-controlling investment under the equity or cost method of accounting. The final rule also accordingly removes the requirement in current § 5.36(e)(7) that a bank certify that its loss exposure related to the non-controlling investment is limited as an *accounting* matter. The final rule retains the requirement in paragraph (e)(7) that the bank certify that as a *legal* matter its loss exposure is limited and that it does not have open-ended liability for the obligations of the enterprise.

Application procedure. Current § 5.36(e) permits use of the after-the-fact notice procedure only when the bank can make the representations and certifications required by that section.[31]

[26] *See* Conditional Approval No. 612 (Dec. 21, 2003).

[27] *See* Conditional Approvals Nos. 582 (March 12, 2003) and 583 (March 12, 2003).

[28] *See* Corporate Decision No. 98–13 (Feb. 9, 1998).

[29] 12 U.S.C. 1861 *et seq.*

[30] Under the equity method, the carrying value of the bank's investment is originally recorded at cost but subsequently adjusted periodically to reflect the bank's proportionate share of the entity's earnings and losses and decreased by the amount of any cash dividends or similar distributions received from the entity.

[31] Section 5.36(e) currently requires that a written after-the-fact notice contain the following eight elements, set out in numbered paragraphs, as follows: (1) A description of the proposed investment; (2) identification of the regulatory provision or prior precedent that has authorized an activity that is substantively the same as the proposed activity; (3) certification that the bank is well capitalized and well managed; (4) a statement of how the bank can control the activities of the

Continued

The rule provides no procedure for a national bank to follow when it cannot provide all of the required representations and certifications. The final rule revises § 5.36 to establish an application procedure that a national bank may use to seek approval for non-controlling investments that do not qualify for after-the-fact notice either because the proposed activity does not qualify under the standards set forth in the rule (as described in § 5.36(e)(2)), or because the bank is not well capitalized or well managed (as described in § 5.36(e)(3)). The final rule does not require a national bank to file either an application or notice under this section if the investment is authorized by a separate provision of OCC regulations, such as 12 CFR part 1 (investment securities) or part 24 (community development). In these cases, a national bank would follow the procedures required by these provisions.

The final rule specifically requires the application to provide the other representations and certifications required in paragraph (e) for after-the-fact notices as well as the representation required by (e)(2) (pertaining to the OCC's prior determination that the investment is permissible) or the certification required by (e)(3) (pertaining to the bank's capital level and rating for management), as appropriate. A bank may not make a non-controlling investment in an entity if the bank cannot provide the representations or certifications that the rule requires, other than those in paragraphs (e)(2) or (e)(3). In addition, if the bank is unable to make the representation described in paragraph (e)(2), the bank's application must explain why the activity is a permissible activity for a national bank and why the bank should be permitted to hold a non-controlling investment in an enterprise engaged in that activity.

This application requirement would fill the gap in the current rule for investments where a national bank cannot meet all of the after-the-fact notice requirements. The use of an application procedure provides certainty to the applicant and also permits the OCC to ensure that all non-controlling investments comport with applicable legal standards and appropriate supervisory requirements.

The proposal made two conforming changes to the scope of § 5.36(b) to conform to these changes. We have revised one of these changes in the final rule. This change would have removed the last sentence of § 5.36(b), which currently provides that other investments authorized under § 5.36 may be reviewed on a case-by-case basis. After further review, we have decided to maintain this sentence with minor technical revisions, as the scope section covers all equity investments not governed by other OCC regulations, not solely non-controlling investments.

DPC assets. As in the proposal, the final rule makes two changes to expedite non-controlling investments involving assets acquired through foreclosure or otherwise in good faith to compromise a doubtful claim or in the ordinary course of collecting a debt previously contracted (DPC assets). Under the current rule, a national bank making a non-controlling investment in an entity that holds or manages DPC assets for the bank must meet all of the requirements in § 5.36, including the required certifications. However, under § 5.34, a national bank investing in an operating subsidiary engaged in the same activity need only file a written notice within 10 days after acquiring or establishing the subsidiary or commencing the activity. These procedural differences can be disruptive in workouts involving a jointly-held entity to resolve loans with multiple lenders where each lender will hold minority interests in the joint venture. The final rule harmonizes these provisions by providing that a national bank making a non-controlling investment in an entity that holds or manages DPC assets for the bank need only file a simplified written notice with the appropriate district office [32] no later than 10 days after making the non-controlling investment. The notice must contain a complete description of the bank's investment in the enterprise and the activities conducted, a description of how the bank plans to divest the non-controlling investment or the DPC assets within the statutory time frames, and a representation and undertaking that the bank will conduct the activities in accordance with OCC policies contained in guidance issued by the OCC regarding the activities.

The final rule also amends § 5.36 to clarify that an application or notice is not required when a national bank acquires DPC assets. This change conforms this section with § 5.34, which provides that a subsidiary in which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted is not an operating subsidiary for purposes of § 5.34 and, therefore, no application or notice is required.

Changes in Permanent Capital (§ 5.46)

The final rule streamlines the application process for a national bank seeking OCC approval of a change in its permanent capital. The OCC did not receive any comments on this change and we are adopting it as proposed.

The OCC's rules at § 5.46(i)(1) and (2) currently require a national bank to submit an application and obtain prior approval for a change in permanent capital. Under the expedited review procedures in § 5.46(i)(2), the application of an eligible bank is deemed approved within 30 days of receipt, unless the OCC notifies the applicant otherwise. The final rule amends § 5.46(i)(2) to change the expedited review period from 30 days to 15 days.

The final rule also simplifies the certification process for a national bank that increases its permanent capital. Section 5.46 currently requires a national bank that increases permanent capital to submit a letter of notification to the OCC in order to receive a certification of the increase as required by 12 U.S.C. 57.[33] Under the final rule, a national bank seeking to increase permanent capital continues to be required to send a notice to the OCC, but the bank will no longer receive a paper certification from the OCC. The OCC will deem the transaction approved and certified by operation of law seven days after our receipt of the bank's notice. The OCC intends to update the notification and certification procedures for increases in permanent capital in the Capital and Dividends Booklet of the *Comptroller's Licensing*

enterprise in which it is investing or ensure its ability to withdraw its investment; (5) the accounting certification described in the preamble text (which this final rule removes); (6) a description of how the investment relates to the bank's business; (7) certification that the bank's loss exposure is limited as a legal and accounting matter (the final rule removes this accounting certification); and (8) certification that the enterprise in which the bank is investing agrees to be subject to OCC examination and supervision, subject to limits provided elsewhere in Federal law.

[32] Part 5 defines ''appropriate district office'' as the Licensing Department for all national bank subsidiaries of those holding companies assigned to the Washington, DC, licensing unit; the appropriate OCC district office for all national bank subsidiaries of certain holding companies assigned to a district office licensing unit; the OCC's district office where the national bank's supervisory office is located for all other banks; or the licensing unit in the Northeastern District Office for Federal branches and agencies of foreign banks. 12 CFR 5.3.

[33] Section 57 provides that increases to permanent capital are not effective until the bank provides notice to the OCC and the OCC certifies the amount of the increase and approves it. The precise terms of the bank's notification and the OCC's approval vary slightly depending on whether the increase to permanent capital occurs through the declaration of a stock dividend or otherwise. *See* 12 U.S.C. 57.

Manual and on E-Corp (the OCC's electronic filing system) to reflect this final rule.

Change in Bank Control (§ 5.50)

Section 5.50 sets forth the OCC's procedures for change in bank control transactions. Under this rule, any person seeking to acquire control of a national bank, *i.e.*, acquire the power, directly or indirectly, to direct the management or policies or to vote 25 percent or more of any class of voting securities of a national bank, must provide 60 days prior written notice of the proposed acquisition to the OCC, with certain exceptions. Currently, the OCC has the burden of proof in establishing that a group of persons are acting in concert and will control, as a group, the bank after the acquisition of shares. When a member of a family acquires stock in a national bank in which other family members own or control substantial interests, the OCC frequently will review potential control issues by requesting additional documentation from, and making additional inquiries of, the family members. These additional steps can delay the notice process and increase the burden associated with the transaction for these individuals.

We proposed to amend § 5.50(f)(2) to establish a rebuttable presumption that immediate family members are acting in concert when acquiring shares of a bank. The proposal also amended § 5.50(d) to define immediate family as a person's spouse, father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, children, stepchildren, grandparent, grandchildren, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and the spouse of any of the foregoing. We did not receive any comments on these amendments and adopt them unchanged in the final rule.

As noted in the preamble to the proposed rule, establishing a clear, but rebuttable, presumption provides notice to prospective investors of their filing obligations and reduces delays in processing the notice associated with repeat requests for information. In addition, this amendment conforms our regulations to the procedures regarding control by family members in these transactions set forth in OTS and Federal Reserve Board regulations. We intend to amend the *Comptroller's Licensing Manual* to address the process by which an applicant can rebut this presumption.[34]

[34] *See* 12 CFR 574.4 (OTS) and 12 CFR 225.41(b)(3) and 225.41(d) (Federal Reserve Board).

The proposed rule also made two amendments to § 5.50 to implement provisions of the FSRRA. We received no comments on these amendments and adopt them as proposed. First, section 705 of the FSRRA amended the CBCA to allow the OCC and the other Federal banking agencies to extend the time period for considering a CBCA notice so that the agency may consider the acquiring party's business plans and the future prospects of the institution and use that information in determining whether to disapprove the notice. The final rule amends § 5.50(f) of our regulations to implement this amendment by providing that the CBCA notice must include information on the future prospects of the institution and that the OCC may consider the future prospects of the institution as a basis to issue a notice of disapproval.

Second, sections 702 and 716 of the FSRRA amended the Federal Deposit Insurance Act (FDI Act) to provide that the OCC and the other Federal banking agencies may enforce under 12 U.S.C. 1818 the terms of: (1) Conditions imposed in writing by the agency on a depository institution, including a national bank, or an institution-affiliated party in connection with an application, notice, or other request, and (2) written agreements between the agency and the institution or the institution-affiliated party. The amendment also clarifies that a condition imposed by a banking agency in connection with the nondisapproval of a notice, *e.g.*, a notice under the CBCA, can be enforced under the FDI Act. Accordingly, the final rule amends § 5.50(f) to provide that the OCC may impose conditions on its nondisapproval of a CBCA notice to assure satisfaction of the relevant statutory criteria for nondisapproval of the notice.

Technical and Conforming Amendments to Part 5

The proposed rule made the following conforming and technical changes to part 5. None of the commenters addressed these changes and we adopt them in the final rule as proposed.

Definition of national bank (§ 5.3(j)). This amendment removes the reference to DC banks from the definition of ''national bank'' found in § 5.3(j). As a result, DC banks are no longer subject to the OCC's rules, policies, and procedures for corporate activities and transactions, including the OCC's filing requirements.

Filing required (§ 5.4). The final rule replaces the terms ''Licensing Manager'' with ''Director for District Licensing'' and replaces ''Bank Organization and Structure'' with the term ''Licensing Department.'' This reflects the OCC's current organizational structure.

Decisions (§ 5.13). Section 5.13 sets forth the procedures for OCC decisions on corporate filings. Paragraph (c) of § 5.13 requires a filing with the OCC to contain all required information. The OCC may require additional information if necessary to evaluate the application, and may deem a filing abandoned if the information required or requested is not furnished within the time period specified by the OCC. The OCC also may return an application that it deems materially deficient when filed. The final rule amends § 5.13(c) to define ''materially deficient'' to mean filings that lack sufficient information for the OCC to make a determination under the applicable statutory or regulatory criteria. Examples of material deficiencies that could cause the OCC to return a filing include failure to provide answers to all questions or failure to provide required financial information.

Paragraph (f) of this section provides that an applicant may appeal an OCC decision to the Deputy Comptroller for Licensing or to the OCC Ombudsman. In some cases, however, the Deputy Comptroller for Licensing is the deciding official for OCC licensing decisions or has personal and substantial involvement in the decision-making process. Accordingly, we are amending this paragraph to provide that an appeal may be referred instead to the Chief Counsel when the Deputy Comptroller for Licensing was the deciding official of the matter appealed or was involved personally and substantially in the matter.

In addition, the final rule replaces the title ''Deputy Comptroller for Bank Organization and Structure'' with the title ''Deputy Comptroller for Licensing'' to reflect the OCC's current organizational structure.

Organizing a bank (§ 5.20). Section 5.20 sets forth the procedures and requirements governing OCC review and approval of an application to establish a national bank. Paragraph (i)(5) of this section requires a proposed national bank to be established as a legal entity before the OCC grants final approval. As currently drafted, our regulations may be read to imply that organizers must receive OCC preliminary approval before they may raise capital, which is not required by OCC policy or the terms of the National Bank Act.[35]

[35] The Comptroller's Licensing Manual permits organizers of a national bank to raise capital prior to preliminary OCC approval. *See Comptroller's Licensing Manual,* Charters, pgs. 20–21, March 2007.

Accordingly, the final rule amends § 5.20(i)(5) to make clear that OCC preliminary approval is not required prior to a securities offering by a proposed national bank, provided that the proposed national bank qualifies as a body corporate under the National Bank Act by filing articles of association and an organization certificate, has filed a completed charter application, and the bank complies with the OCC's securities offering regulations set forth in Part 16. These requirements are explained in greater detail in the *Comptroller's Licensing Manual*.

The final rule also amends paragraph (i)(3) of § 5.20, which requires the organizing group to designate a spokesperson to represent the group in its contacts with the OCC, by replacing the term ''spokesperson'' with the term ''contact person'' each time that term appears. This change aligns the wording of this section with the terminology used on the Interagency Charter and Deposit Application and in the ''Charters'' booklet of the *Comptroller's Licensing Manual*.

Business combinations (§ 5.33). Section 5.33 contains the provisions governing business combinations involving national banks. Section 5.33(e)(1) sets forth factors used by the OCC in evaluating applications for ''business combinations,'' including factors required pursuant to the Bank Merger Act (BMA) [36] and the Community Reinvestment Act of 1977 (CRA).[37] As currently worded, this section could be read incorrectly to imply that the BMA and CRA apply to all business combinations even though these laws do not apply to certain business combinations, such as the merger of two uninsured national banks. The final rule revises the wording of § 5.33(e)(1) to make clear that the OCC considers the factors under the BMA and the CRA for transactions that are subject to those laws. The factors as set out in the current rule are substantively unchanged.

Section 5.33 also requires a national bank with one or more classes of securities subject to the registration provisions of sections 12(b) or 12(g) of the Securities Exchange Act of 1934 (the Exchange Act) [38] to file preliminary proxy materials or information statements with both the OCC's Director of Securities and Corporate Practices Division in Washington, DC and the appropriate district office. The final rule streamlines the OCC's filing process by eliminating the requirement in § 5.33(e)(8)(ii) that a registered national bank also file proxy materials with the district office. This change is consistent with the instructions in the OCC's Business Combinations Booklet of the *Comptroller's Licensing Manual*.

Section 5.33(g)(2)(ii) provides the rules for a national bank consolidation and merger with a Federal savings association when the resulting institution is a national bank. The final rule removes the reference to merger transactions in paragraph (g)(2)(ii), which provides for appraisal or reappraisal of dissenters' shares, because there are no dissenters' rights for national bank shareholders in a merger between a national bank and a Federal savings association when the resulting institution is a national bank. In addition, the final rule corrects a statutory citation in paragraph (g)(3)(i).

The final rule also makes clarifying changes to § 5.33(h), which sets forth the standards, requirements, and procedures that apply to mergers between insured banks with different home States pursuant to 12 U.S.C. 1831u. Although this paragraph references the standards, requirements, and procedures applicable to transactions that result in a national bank, it currently does not do so for transactions that result in a State bank. The final rule adds a reference in this paragraph to 12 U.S.C. 214a, 214b, and 214c to cover these transactions. It also amends § 5.33(h) to include a reference to 12 U.S.C. 1831u to clarify that an interstate, single-branch acquisition is treated as the acquisition of a bank only for purposes of determining compliance with the Riegle-Neal Act.[39] This change eliminates any implication in this paragraph that the procedures of 12 U.S.C. 215 or 215a are intended to apply to branch acquisitions.

Finally, we are amending § 5.33 to specify that the definitions set forth in § 5.33(d) are only applicable to § 5.33, and are revising the headings of paragraphs (g), (g)(1) and (g)(3) to conform to the heading format used in other paragraphs in the regulation.

Financial subsidiaries (§ 5.39). Section 5.39 sets forth authorized activities, approval procedures, and conditions for a national bank engaging in activities though a financial subsidiary. The final rule makes a number of technical changes to § 5.39 to conform this section to the Federal Reserve Board's Regulation W, which governs transactions between Federal Reserve member banks and their affiliates and implements sections 23A and 23B of the Federal Reserve Act.[40]

In general, under sections 23A and 23B and Regulation W, a financial subsidiary of a national bank is treated as an affiliate of the bank. Regulation W, however, excepts from its definition of a financial subsidiary a subsidiary that would be a financial subsidiary only because it is engaged in insurance sales as agent or broker in a manner not permitted to a national bank. Such a financial subsidiary is not an affiliate for Regulation W purposes (unless it falls into another category of affiliate). The final rule adds a cross-reference to Regulation W in the definition of ''affiliate'' at § 5.39(d)(1) and amends § 5.39(h)(5) to reflect this exception in Regulation W's definition of financial subsidiary.

In addition, the final rule updates § 5.39(h)(5), which describes how sections 23A and 23B apply to financial subsidiaries, by conforming these provisions to Regulation W. Specifically, in addition to adding a cross-reference to Regulation W in § 5.39(h)(5), we are amending § 5.39(h)(5)(iii) to state that a bank's purchase of, or investment in, a security issued by a financial subsidiary of the bank must be valued at the greater of: (a) The total amount of consideration given (including liabilities assumed) by the bank, reduced to reflect amortization of the security to the extent consistent with GAAP, or (b) the carrying value of the security (adjusted so as not to reflect the bank's *pro rata* portion of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the security).

We also are adding a new reference to the requirement in Regulation W that any extension of credit to a financial subsidiary of a bank by an affiliate of the bank is treated as an extension of credit by the bank to the financial subsidiary if the extension of credit is treated as capital of the financial subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

Change in bank control (§ 5.50). Twelve U.S.C. 1817(j) provides the standards and procedures for a change in control of insured depository institutions. As we have discussed, § 5.50 of our rules implements section 1817(j) in the case of a change in control of a national bank.[41] Section 5.50, however, does not include one of the procedures required by section 1817(j) relating to changes in management

[36] 12 U.S.C. 1828(c).

[37] 12 U.S.C. 2901 *et seq.*

[38] 15 U.S.C. 78l(b) or 78l(g).

[39] *Public Law* 103–328, 108 Stat. 2338 (Sept. 29, 1994).

[40] 12 U.S.C. 371c and 371c–1.

[41] Section 5.50 covers uninsured national banks as well as insured national banks.

officials following a change in control. This omission may be misleading to banks that consult our rules to ascertain what change in control procedures apply. Specifically, section 1817(j)(12) provides that whenever a change in control occurs, the bank will promptly report to the appropriate Federal banking agency any changes or replacements of its chief executive officer or of any director occurring in the next 12-month period, including in this report a statement of the past and current business and professional affiliations of the new chief executive officer or director. The final rule adds a new paragraph to § 5.50(h) to incorporate this statutory requirement in order to provide clearer notice for national banks of their reporting obligation under section 1817(j)(12).

Earnings limitations under 12 U.S.C. 60 (§ 5.64). Section 302 of the FSRRA amended 12 U.S.C. 60 to simplify dividend calculations and provide a national bank more flexibility to pay dividends as deemed appropriate by its board of directors. The final rule amends § 5.46 (governing changes in permanent capital) and § 5.64 (governing dividend earnings limitations) to conform to the new language of section 60. In addition, the OCC is codifying and clarifying the interpretation of 12 U.S.C. 60 contained in Interpretive Letter No. 816, issued December 22, 1997.

Prior to its amendment by FSRRA, section 60 provided that a national bank could only declare a dividend if its surplus fund was at least equal to its common capital or, in accordance with a computation prescribed by the statute, it transferred 10 percent of its net income to surplus. Historically, stock was assigned a par value equivalent to its estimated market value and the purpose of the transfer requirement was to provide an additional cushion. This requirement is obsolete under modern securities issuance practices because stock is issued with a nominal par value and most of the proceeds received are credited to the issuer's surplus account. Section 302 of the FSRRA eliminated this requirement and makes other minor changes to clarify and simplify dividend calculations.

The final rule makes conforming changes to § 5.64 (earnings limitation under 12 U.S.C. 60) and § 5.46 (changes in permanent capital) by eliminating references to the surplus fund requirement. The final rule also reorganizes and renumbers § 5.64 and adds new paragraphs (a) and (c)(2). New paragraph (a) adds several defined terms to make the description of the national bank dividend calculation clearer. New paragraph (c)(2) codifies Interpretive Letter No. 816, which discussed the treatment of dividends in excess of a single year's current net income and concluded that a national bank may offset certain excess dividends against retained net income from each of the prior two years. The final rule also clarifies how to calculate permissible dividends applying the carry-back interpretation described in Interpretive Letter No. 816. The amendment is intended to eliminate confusion by providing that excess dividends may be offset by retained net income in the two years immediately preceding the year in which the excess occurred.

Specifically, paragraph (c)(2)(i) describes how to calculate permissible dividends for the current year if a bank has declared a dividend in excess of net income in the first or second years immediately preceding the current year. For example, when the excess dividend occurs in current year minus one, the excess is offset by retained net income first in current year minus three and then in current year minus two. When the excess dividend occurs in current year minus two, the excess is offset by retained net income first in current year minus four and then in current year minus three. This paragraph limits the availability of offsets to a maximum of four years prior to the current year, consistent with the carry-back concept in Interpretive Letter No. 816. The Interpretive Letter was not intended to permit a bank to restate retroactively its dividend paying capacity beyond the four-year period prior to the current year.

Paragraph (c)(2)(ii) clarifies that if a bank still has excess dividends remaining even after permissible offsets have been applied in accordance with paragraph (c)(2)(i), the bank must use the remaining excess dividend amount in calculating its dividend paying capacity. Paragraph (c)(2)(iii) also clarifies that the carry-back applies only to retained net loss that results from dividends declared in excess of a single year's net income, not any other type of current earnings deficit. As part of the reorganization of § 5.64, information on how to request a waiver of the dividend limitation was moved to new paragraph (c)(3) to make it easier to locate.

The final rule also makes a technical amendment to 12 CFR 5.46, governing changes in permanent capital, to reflect that section 60 as amended by the FSRRA no longer requires transfers to the surplus fund as a condition of declaring a dividend.

Part 7—Bank Activities and Operations

National Bank as Guarantor or Surety (§ 7.1017)

Section 7.1017 of the OCC's rules currently provides that a national bank may act as guarantor or surety when it has a substantial interest in the performance of the transaction *or* when the transaction is for the benefit of a customer and the bank obtains from that customer a segregated deposit account sufficient to cover the amount of the bank's potential liability. The proposed rule added a new subsection authorizing national banks to guarantee financial obligations of a customer, subsidiary, or affiliate under additional circumstances, provided the amount of the bank's obligation is reasonably ascertainable and otherwise consistent with applicable law.

As explained in the preamble to the proposed rule, a financial guaranty or suretyship is essentially a promise to pay if the primary obligor defaults on its obligation. A guarantor or surety that makes good on its promise is entitled to reimbursement by the primary obligor. National banks have authority to ''promise to pay'' or ''guarantee'' the obligations of their customers through bankers' acceptances and letters of credit. In these transactions, the bank substitutes its credit for that of its customer and participates in exchanges of payments as a financial intermediary. These activities involve the core banking powers of both lending and acting as financial intermediary.[42]

In approving various types of guarantees in the past, and in approving a number of arrangements that are functionally similar to guarantees, the OCC has emphasized that banks must be able to respond to the evolving needs of their customers, provided always that such guarantees be issued and managed in a safe and sound manner.[43] Permitting national banks to exercise their broad authority to act as guarantor or surety benefits customers by giving banks greater ability to facilitate customers' financial transactions and by providing banks with greater flexibility

[42] *See* OCC Interpretive Letter No. 937 (June 27, 2002).

[43] *See, e.g.*, OCC Interpretive Letter No. 177 (Jan. 14, 1981) (national bank guaranty/reimbursement of third-party payors in connection with direct deposit pension fund program was permissible; a contrary holding ''would directly inhibit the growth and development of direct deposit programs.'') and OCC Interpretive Letter No. 1010 (Sept. 7, 2004) (national bank may issue financial warranties on the investment advice and asset allocation services provided by the bank in the creation and operation of a mutual fund).

to provide financial services in evolving markets.[44]

In the preamble to the proposed rule, we described the regulatory change as authorizing a national bank to act as a guarantor or surety provided the guaranty or surety is financial in nature, reasonably ascertainable, and otherwise consistent with applicable law. One commenter asked that we define or modify the terms ''financial in nature,'' ''reasonably ascertainable in amount,'' and ''complies with applicable law.'' Specifically, it recommended that we define ''financial in nature'' to reference only those activities determined by the Federal Reserve Board and Treasury Department to be ''financial in nature'' as required under 12 U.S.C. 1843(k)(2)(A), require that the risk in such transactions be ''ascertainable as to amount'' rather than ''reasonably ascertainable in amount,'' and specifically list those laws that apply to financial guarantees. For the following reasons, we have not incorporated these suggestions in the regulatory text.

First, the regulatory text as proposed, and in this final rule, provides that a national bank may ''*guarantee financial obligations* of a customer, subsidiary, or affiliate'' provided that the other elements of the standard are satisfied (emphasis added). The text does not use the phrase ''financial in nature.'' That phrase appears only in the preamble and was intended merely to distinguish the types of guarantees referenced in the amendment which are of a financial character from other non-financial guarantees, which are not made permissible by the amendment. The phrase was not intended to connote the range of activities made permissible for financial holding companies or financial subsidiaries pursuant to the Gramm-Leach-Bliley Act,[45] and our preamble reference to the Gramm-Leach-Bliley Act was intended only to demonstrate that guaranteeing a financial obligation is itself an activity that Congress has recognized as permissible and appropriate for a financial services firm. However, to eliminate any uncertainty about the scope of the guaranty authority described in subsection (b), we have added to the regulation language clarifying that only an obligation that is financial in character is permissible.

The final rule also retains the requirements, without change, that the amount of the bank's obligation is ''reasonably ascertainable in amount'' and ''otherwise consistent with applicable law.'' The requirement that the guaranty or surety be ''reasonably ascertainable in amount'' is intended to ensure that the issuing bank can determine the extent of its exposure and engage in the activity in a safe and sound manner. Moreover, the statement that the guaranty or surety must be ''consistent with applicable law'' recognizes that other provisions of law may be applicable to particular transactions. As mentioned in the preamble to the proposal, these provisions of law include, among others, limitations on the amount of loans and extensions of credit a national bank may lend to a borrower (12 CFR part 32) and limitations on transactions between a bank and its affiliates (sections 23A and 23B of the Federal Reserve Act). It is not feasible to inventory all laws that could apply to the financial guaranty transactions permitted under the amendment as the commenter requested, and we believe the examples suffice to make clear that other laws may restrict this type of transaction. Finally, we reiterate the point made in the preamble to the proposal that the limitations on transactions that would constitute ''insurance'' as principal pursuant to section 302 of the Gramm-Leach-Bliley Act are unaffected by the amendment.[46]

The preamble to the proposal also indicated that the OCC would consider whether to provide guidance on risks and risk management in connection with the issuance of guarantees by national banks. One commenter responded by requesting that we stipulate specific risk management standards for any financial guaranty and surety powers we approve, including, among other things, requirements that the financial guaranty is prudently priced and appropriately capitalized and reserved. Another commenter noted that guidance on risks and risk management would be helpful to the extent that regulatory expectations vary depending on the method by which a national bank acts as guarantor or surety. However, this commenter recommended that we narrowly tailor this guidance to focus on related regulatory expectations and not dictate terms of agreements entered into by private parties.

We agree that adequate risk measurement and management processes tailored to manage and control the risks of financial guaranty activities are necessary to ensure that a bank is conducting its financial guaranty activity in a safe and sound manner. These include appropriate standards set by the board of directors, managerial and staff expertise, policies and operating procedures, risk identification and measurement, and ongoing evaluation of the specific guarantees issued; management information systems; and an effective risk control function that oversees and ensures the appropriateness of the risk management process. Such risk measurement and risk management processes should be of a scope and scale appropriate for the nature and complexity of the bank's financial guaranty activities.

Another commenter suggested that we require national banks to conduct financial guaranty business through separately capitalized affiliates that are prohibited from accepting deposits. The OCC declines to adopt this approach. As indicated above, acting as a guarantor involves the core banking powers of both lending and acting as financial intermediary and is therefore a permissible banking activity that need not be conducted only in a separate legal entity. OCC rules prescribe the appropriate regulatory capital treatment for guarantor activities. Moreover, the circumstances under which the revised provision authorizes guarantor activities—the financial guaranty is reasonably ascertainable in amount and complies with applicable law—are safeguards promoting the conduct of these transactions in a safe and sound manner. Accordingly, it is not necessary to require national banks to conduct this activity in a separately capitalized affiliate.

Two commenters specifically addressed capital requirements for guarantees permitted under this amendment. One commenter recommended that, because of the ''financial equivalence'' of financial guarantees and letters of credit, the capital requirements for a financial guaranty issued by a national bank should be the same as the capital requirements applicable to a letter of credit in a stated amount equal to the maximum, as opposed to the expected or ''reasonably anticipated,'' obligation of the bank under the financial guaranty. Another commenter asked us to clarify that current capital standards governing recourse and direct credit substitutes apply to financial guarantees.

Under the current risk-based capital guidelines, the risk associated with a bank's guarantees is generally based on the face amount of the guaranty, where the face amount is usually measured as

[44] *See NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Insurance Co.,* 513 U.S. 251 (1995).

[45] *Public Law* 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[46] *Public Law* 106–102, 113 Stat. 1338, 1407 (Nov. 12, 1999), codified at 15 U.S.C. 6712.

the stated maximum contractual amount of that guaranty.[47] However, there are instances where the exposure measure might be less than the face amount; for example, when the guaranty is conditional or contingent upon the fulfillment of other criteria.

As to recourse and direct credit substitutes, the OCC notes that the capital regulation for securitization exposures applies to all direct credit substitutes, which are defined to include guarantees and financial standby letters of credit that provide credit support to securitizations. Also, with respect to certain banks that will be subject to the Internal Ratings Based and Advanced Measurement Approaches (generally known as ''Basel II''), the capital treatment for all guaranty exposures is governed by the advanced Internal Ratings Based Approach.[48]

Accordingly, for the reasons set forth above, we adopt the proposed financial guarantor provision, with the one clarifying change described previously.

Cumulative Voting in Election of Directors

Prior to FSRRA, national banking law imposed mandatory cumulative voting requirements on all national banks. Section 301 of the FSRRA amended section 5144 of the Revised Statutes of the United States (12 U.S.C. 61) to provide that a national bank may state in its articles of association whether to provide for cumulative voting in the election of its directors. Section 301 is consistent with the Model Business Corporation Act and most States' corporate codes, which provide that cumulative voting is optional. Our proposal amended 12 CFR 7.2006 to incorporate this change. We received no comments on this amendment and adopt it as proposed.

Electronic Banking-Related Amendments

Twelve CFR part 7, Subpart E, contains OCC regulations relating to various electronic activities. In 2002, the OCC undertook revisions to part 7 to address the ways in which technological developments were affecting the business of banking. The proposal included several additions to this regulation. None of the comment letters addressed these electronic banking-related amendments and we adopt them in the final rule as proposed, with updates to the citations listed in the footnote to § 7.1016. These amendments are described below.

Incidental Electronic Activities. Currently, 12 CFR 7.5001(d) sets forth the standards that the OCC uses to determine whether an electronic activity is incidental to, though not part of, the business of banking because the activity is convenient or useful to the conduct of the business of banking. The OCC has already codified in its regulations two incidental electronic activities: The sale of excess electronic capacity and by-products (§ 7.5004) and incidental non-financial data processing (§ 7.5006). We are amending § 7.5001(d) to add other examples of electronic incidental activities that we have since approved for national banks. These activities are: Web site development where incidental to other electronic banking services;[49] Internet access and e-mail provided on a non-profit basis as a promotional activity;[50] advisory and consulting services on electronic activities where the services are incidental to customer use of electronic banking services;[51] and the sale of equipment that is convenient or useful to customers' use of related electronic banking services, such as specialized terminals for scanning checks that will be deposited electronically by wholesale customers of banks under the Check Clearing for the 21st Century Act, Public Law 108–100 (12 U.S.C. 5001–5018).[52] This list is illustrative and not exclusive, and the OCC may determine in the future that activities not on this list are permissible pursuant to this authority.

Electronic Letters of Credit. Section 7.1016 permits national banks to issue letters of credit within the scope of applicable laws or rules of practice recognized by law, and includes an illustrative footnote that cites examples of these laws and practices. Section 7.5002 permits a national bank to perform, provide or deliver through electronic means and facilities any activity, function, product, or service that a bank is otherwise authorized to perform, provide, or deliver, if the electronic activity is subject to standards or conditions designed to provide that the activity functions as intended, is conducted safely and soundly, and accords with other applicable statutes, regulations, or supervisory policies and guidance of the OCC. Section 7.5002 includes a list of permissible electronic activities that currently does not include electronic letters of credit. Because the OCC has determined that a national bank may issue an electronic letter of credit in a safe and sound manner in accordance with applicable laws and OCC guidance and policies, the OCC is amending § 7.5002 by adding the issuance of electronic letters of credit within the scope of § 7.1016 to the list of banking activities that a national bank can conduct by electronic means and facilities.

The proposal also amended the footnote in § 7.1016 to include a reference to the International Chamber of Commerce (ICC) supplement to UCP 500 for Electronic Presentation (eUCP) (the uniform customs and practices for documentary credits for electronic presentations) as a law that supports electronic letters of credit. We have updated this citation in the final rule to reflect the new version of the ICC's Uniform Customs and Practices for Documentary Credits, Publication No. 600, which became effective in July 2007. We also have made a corresponding update to the citation to the ICC's Uniform Customs and Practices for Documentary Credits already included in the current footnote.

Software That Is Part of the Business of Banking. Currently, OCC regulations list software acquired or developed by the bank for banking purposes or to support its banking business as an example of an electronic by-product that a national bank can sell to others as a permissible ''incidental'' activity.[53] This final rule expands § 7.5006 to address, as ''part of the business of banking,'' the sale of software that performs services or functions that a national bank can perform directly, thereby codifying previous OCC interpretations.[54] We note that software that is part of the business of banking can be sold without regard to any other banking product or service, whereas software that is incidental must be shown to be convenient or useful to another activity that is authorized for national banks.[55]

Our proposal asked commenters to identify any other areas of subpart E that should be revised to recognize the evolving role of technology. We received no comments in response to this request and have not made any additional amendments to subpart E in this final rule.

[47] 12 CFR part 3, Appendix A.

[48] *See,* generally 12 CFR part 3, Appendix C, part IV (Risk-Weighted Assets for General Credit Risk) and part V (Risk-Weighted Assets for Securitization Exposures), 72 FR 69288 (December 7, 2007).

[49] *See* OCC Corporate Decision No. 2002–13, July 31, 2002.

[50] *See* OCC Conditional Approval No. 612, Nov. 21, 2003.

[51] *See* OCC Corporate Decision No. 2002–11, June 28, 2002.

[52] *See* OCC Interpretive Letter No. 1036, Aug. 10, 2005.

[53] 12 CFR 7.5004.

[54] *See, e.g.,* Corporate Decision 2003–6, March 17, 2003.

[55] *See* 12 CFR 7.5001(c) and 7.5001(d).

Part 9—Fiduciary Activities of National Banks

In response to recent amendments made by the SEC to its rules and forms under section 17A of the Exchange Act, the OCC proposed to amend its transfer agent rule at § 9.20 to clarify the procedures applicable to national bank transfer agents. None of the comment letters addressed these amendments, and the final rule includes these amendments as proposed.

Specifically, under the SEC's amended rules, all transfer agents, including national bank transfer agents, are required to file annual reports electronically with the SEC through the SEC's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. In addition, nonbank transfer agents now must file registration and withdrawal forms electronically with the SEC through the EDGAR system. The SEC's amended rules do not require national bank transfer agents to file registration or withdrawal forms with the SEC electronically or otherwise.

Currently, § 9.20(a) of the OCC's rules cross-references to the SEC's rules with respect to registration. This cross-reference may make it appear that national bank transfer agents also are subject to the requirement to file registration and withdrawal forms through the SEC's EDGAR system. To avoid confusion regarding electronic filing, the final rule replaces the cross-reference in § 9.20(a) to the SEC's transfer agent registration and withdrawal rules with specific procedures for filing applications for registration, amending registrations, and withdrawals from registration with the OCC. This amendment will not result in any substantive changes for national bank transfer agents. National bank transfer agents will continue to file applications for registration, amendments to registration, and withdrawals from registration with the OCC as previously required.

In addition, to reflect the SEC's revision and renumbering of its transfer agent rules, the final rule removes the specific citations in § 9.20(b) to the SEC's rules in favor of a more general reference. This amendment makes no substantive changes to § 9.20(b). This change will, however, avoid the need for the OCC to revise our regulation each time the SEC makes changes to its transfer agent rules.

Part 10—Municipal Securities Dealers

As in our proposal, the final rule amends § 10.1(a) to eliminate the application of part 10 to DC banks, consistent with the DC Bank Act.

Part 11—Securities Exchange Act Disclosure Rules

Part 11 addresses the rules, regulations, and filing requirements that apply to national banks with one or more classes of securities subject to the registration provisions of sections 12(b) and (g) of the Exchange Act (15 U.S.C. 78l(b) & (g)). As in the proposal, this final rule amends § 11.1(a) to remove DC banks from the scope of part 11, consistent with the DC Bank Act.

Part 12—Recordkeeping and Confirmation Requirements for Securities Transactions

Section 12.7(a)(4) requires bank officers and employees who make investment recommendations or decisions for customers to report their personal transactions in securities to the bank within *ten business days* after the end of the calendar quarter. The OCC modeled this reporting requirement on SEC Rule 17j–1 (17 CFR 270.17j–1), issued pursuant to the Investment Company Act of 1940, which, at the time of the most recent revision to this OCC requirement in 1996, required ''access persons'' to report their personal transactions in securities within ten days after the end of the calendar quarter.[56] However, in July 2004 the SEC amended Rule 17j–1 to expand this ten-day deadline to 30 days.[57]

To conform part 12 with the current SEC filing deadline in SEC Rule 17j–1, the proposed rule amended § 12.7(a)(4) by replacing the 10-business day filing deadline for reporting personal transactions in securities with the deadline specified in SEC rule 17j–1. We received no comments on this change and adopt it as proposed. This amendment will enable bank employees that are subject to both SEC Rule 17j–1 and the OCC's securities recordkeeping and confirmation regulation to file by the same deadline, thereby eliminating employee confusion as well as the regulatory burden associated with complying with two separate filing deadlines.

[56] *See* 61 FR 63958 (Dec. 2, 1996). The OCC's reporting requirement under 12 CFR 12.7(a)(4) is a separate requirement from any applicable requirements under SEC Rule 17j–1. However, an ''access person'' required to file a report with a national bank pursuant to SEC Rule 17j–1 need not file a separate report under the OCC's reporting requirement if the required information is the same. *See* 12 CFR 12.7(d). The SEC rule defines ''access person'' as including directors, officers, and certain employees of the investment adviser. 17 CFR 270.17j–1(a)(1).

[57] *See* 69 FR 41696 (July 9, 2004).

Part 16—Securities Offering Disclosure Rules

Part 16 governs offers and sales of bank securities by issuers, underwriters, and dealers. The proposed rule made a number of amendments to Part 16. We received only one comment on these part 16 amendments, relating to § 16.6 (sale of nonconvertible debt). As explained below, we decline to revise our proposed amendment to § 16.6, and adopt all of our amendments to part 16 as proposed.[58]

Definitions (§ 16.2)

As in the proposal, the final rule eliminates DC banks from the definition of ''bank'' in § 16.2(b), consistent with the DC Bank Act.

Sales of Nonconvertible Debt (§ 16.6)

Section 16.6(a)(3) requires bank debt issued under § 16.6 to be in a minimum denomination of $250,000 and requires each note or debenture to show on its face that it cannot be exchanged for notes or debentures in smaller denominations. However, this legend requirement cannot be satisfied—and would serve no purpose—if the bank is using a paperless book entry form, which has become the more current form of issuance used by banks and other securities issuers. Our proposal amended § 16.6(a)(3) to provide that this legend requirement only applies to debt issued in certificate form. All other requirements of § 16.6, including the requirement of minimum denominations of $250,000, would continue to apply to all bank sales of nonconvertible debt, whether issued in certificate or book entry form.

We received one comment on this proposed amendment that recommended that we also remove the requirements in § 16.6 that the debt be offered and sold only to accredited investors and sold in minimum denominations of $250,000, as these requirements do not apply to State member banks and State-licensed branches of non-U.S. banks. We decline to make this change. These requirements—sales only to accredited investors and only in a minimum denomination of $250,000—serve as important investor/consumer protection tools and foster safe and sound banking practices. Therefore, the final rule makes no changes from the proposal in this regard.

[58] We note that the OCC has made an additional amendment to Part 16 in a separate rulemaking. This amendment reduces unnecessary regulatory burden by amending § 16.15 to provide a general waiver of certain requirements for organizing groups seeking to establish a national bank charter. *See* 73 FR 12009 (March 6, 2008).

Nonpublic Offerings (§ 16.7)

Part 16 provides that, absent an available exemption, no person may offer and sell a security issued by a national bank without meeting the registration and prospectus delivery requirements of part 16. Part 16 generally incorporates by reference the definitions, registration, and prospectus delivery requirements of the Securities Act and SEC implementing rules, including Regulation D under the Securities Act.[59] Section 16.7(a) of the OCC's nonpublic offering regulation provides that the OCC will deem offers and sales of bank-issued securities to be exempt from the registration and prospectus requirements of part 16 if they meet certain requirements, including filing with the OCC a notice on Form D that meets the requirements of Regulation D.[60]

Form D requires the issuer to disclose basic information concerning the identity of the issuer and the offering, including the exemption being claimed and information regarding the offering price, number of investors, expenses, and use of proceeds. However, the OCC does not use the information in the Form D for any supervisory or other particular purpose, and the OCC does not treat the requirement to file a Form D as a condition to the availability of an exemption under part 16. Furthermore, the SEC adopted Form D for reasons that do not directly apply to the OCC.[61] Accordingly, as proposed, we have eliminated the requirement to file a Form D.

Securities Offered and Sold in Bank Holding Company Dissolution (New § 16.9)

The OCC's current securities offering disclosure rules, at part 16, have resulted in some confusion as to whether offers and sales of bank-issued securities in connection with the dissolution of the bank's holding company are exempt from the § 16.3 registration statement and prospectus requirements. As in the proposal, the final rule resolves this uncertainty by codifying specific requirements that apply in order for the offer and sale of bank securities in a bank holding company dissolution to be exempt from the § 16.3 registration statement and prospectus requirements.

Specifically, the final rule adds a new § 16.9 that would expressly exempt from the § 16.3 registration statement and prospectus requirements offers and sales of bank-issued securities in connection with the dissolution of the holding company of the bank if those transactions satisfy the following requirements: (1) The offer and sale of bank-issued securities occurs solely as part of a dissolution in which the security holders exchange their shares of stock in a holding company that had no significant assets other than securities of the bank, for bank stock; (2) the security holders receive, after the dissolution, substantially the same proportional share of interests in the bank as they held in the holding company; (3) the rights and interests of the security holders in the bank are substantially the same as those in the holding company prior to the transaction; and (4) the bank has substantially the same assets and liabilities as the holding company had on a consolidated basis prior to the transaction.

As we noted in the preamble to the proposed rule, these requirements parallel the conditions that must be satisfied in order for securities issued in connection with an acquisition by a holding company of a bank (pursuant to section 3(a) of the Bank Holding Company Act of 1956) to be eligible for exemption from the registration requirements of section 3(a)(12) of the Securities Act, and are equally appropriate in the reverse context where bank-issued securities are offered and sold in connection with the dissolution of the bank's holding company.

From a shareholder protection standpoint, the rationale for not requiring a registration statement for the formation of a shell holding company—that the interests of the bank and company shareholders are essentially the same—would apply equally to dissolution of a shell holding company. The business rationale—reduction of costs of dissolution of a holding company if a bank decides it does not need the flexibility of a holding company structure—also is similar.

The final rule also makes conforming amendments to part 16 by amending § 16.5(a) to clarify that the exemption under section 3(a)(12) of the Securities Act is not available and adding a reference to new § 16.9 in the listing of exempt securities under § 16.5.

Removal of Current and Periodic Report Filing (§ 16.20)

State banks and national banks are both subject to the Exchange Act's periodic and current reporting requirements if they have one or more classes of securities subject to the registration provisions of section 12(g) of the Exchange Act.[62] Pursuant to that statute, banks having a class of equity securities held by 500 or more owners of record are required to register that class of securities under § 12(g) of the Exchange Act.[63] Once registered, a bank becomes subject to the periodic and current reporting requirements of the Exchange Act.

Section 16.20 of the OCC's regulations imposes periodic and current reporting requirements for national banks that file registration statements with the OCC for the public offering of their securities. Pursuant to § 16.20, a national bank must file periodic and current reports after the registration statement becomes effective, even if the bank is not otherwise required to register its securities under the Exchange Act. This periodic and current reporting requirement was based on that imposed by section 15(d) of the Exchange Act on other entities filing Securities Act registration statements with the SEC.[64] The OCC adopted this periodic and current reporting requirement in consideration of the interests of potential purchasers in a bank's public offering to have access to updated information necessary for their investment decisions, in the same manner as investors in other companies.

The periodic and current reporting requirements of § 16.20 apply to national banks until the securities to which the national bank's registration statement relates are held of record by fewer than 300 persons. The FDIC and the Federal Reserve Board have not imposed a comparable obligation on State banks. Instead, a State bank that conducts public offerings of their securities are subject to Exchange Act periodic and current reporting requirements only if the bank has more than 500 shareholders.

As in the proposal, the final rule eliminates § 16.20 in order to reduce regulatory burden with respect to small national banks that file registration statements with the OCC for the public offering of their securities. Thus, only a national bank that has 500 or more shareholders of record will be subject to

[59] 17 CFR 230.501 *et seq.*

[60] 17 CFR 230.503.

[61] Specifically, Form D serves a useful purpose for the SEC as a uniform State notification form for purposes of the States' Uniform Limited Offering Exemption, which is inapplicable to national banks. In addition, the SEC uses the information in the forms to conduct economic and other analyses of the private placement market in general. The OCC does not use the information in the Form D for this purpose. *See* Sec. Act. Release No. 33–6339, 46 FR 41,791 (Aug. 18, 1981).

[62] *See* Exchange Act § 12(i), 15 U.S.C. 78l(i), 12 CFR part 335, and 12 CFR part 11.

[63] Section 12(g) of the Exchange Act also requires a bank to have more than $1 million of assets.

[64] 59 FR 54789 (Nov. 2, 1994).

the Exchange Act periodic and current reporting requirements.[65] We also make a conforming change to § 16.6 by deleting the reference to § 16.20 in that section.

As noted in the preamble to our proposal, this change will not significantly diminish financial information about a bank that will be available to investors, as updated financial information, including the bank's most recent balance sheet and statement of income filed with the OCC as part of the bank's most recent Consolidated Report of Condition (Call Report), is publicly available to investors. This change also will have no effect on the requirement under the OCC's Exchange Act disclosure rule at 12 CFR part 11 that a national bank whose securities are registered under section 12(b) or 12(g) of the Exchange Act must file current and periodic reports that conform to section 13 of the Exchange Act.

Part 19—Rules of Practice and Procedure

The FSRRA made several changes affecting the OCC's exercise of its enforcement authority pursuant to section 8 of the FDI Act[66] and our proposed rule amended part 19 to reflect these changes. We also proposed to update the titles of OCC officials referenced in §§ 19.111 and 19.112 and to eliminate the applicability of part 19 to DC banks by deleting a reference to DC banks in the definition of ''institution'' in § 19.3(g) and in the scope section of subpart P, § 19.241, which relates to the removal, suspension, and debarment of accountants from performing audit services. No commenter discussed these amendments, and we adopt them as proposed, with two technical amendments, as discussed below.

More specifically, section 303 of the FSRRA changed the procedures for issuing orders of suspension, removal or prohibition against institution-affiliated parties (IAPs) of national banks. Previously, section 8(e)(4) of the FDI Act 12 U.S.C. 1818(e)(4) required that, following proceedings before an administrative law judge, the determination whether to issue such orders would be made by the Federal Reserve Board. Section 303 of the FSRRA repealed that requirement, so that the OCC now has the authority to issue such orders, as it does with respect to other types of orders resulting from an OCC-initiated enforcement action. Our final rule amends § 19.100, pertaining to OCC adjudications, to reflect this change in the law.

Section 8(g) of the FDI Act pertains to the suspension, removal, or prohibition of an IAP when the IAP is the subject of an information, indictment, or complaint involving certain crimes set forth in the statute or when the IAP has been convicted of such a crime.[67] Section 708 of the FSRRA revised the statutory grounds that warrant suspension, removal or prohibition of an IAP from further participation in the conduct of the affairs of a depository institution, including a national bank, in such a case. Section 708 also clarified that, if grounds exist, an appropriate Federal banking agency, including the OCC, may suspend or prohibit the IAP from participating in the affairs of *any* depository institution, and not only the institution with which the party is, or was last, affiliated. The amendment further clarified that this authority applies even if the IAP is no longer associated with the depository institution at which the offense allegedly occurred or if the depository institution with which the IAP was affiliated no longer exists. The final rule amends §§ 19.110, and 19.111, and 19.113 to conform to these amendments. We also have made a technical correction to our amendment to § 19.111, adding back in language inadvertently removed from our current rule relating to the time period allowed for an institution-affiliated party to request a hearing. In addition, the final rule includes a technical amendment to both §§ 19.110 and 19.111 not included in the proposed rule. Specifically, we are inserting the phrase ''pursuant to 12 U.S.C. 1818(g)'' in these two paragraphs to clarify that these provisions provide procedures for suspensions and removals of institution-affiliated parties charged with a felony.

Part 21—Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program

Part 21 consists of three subparts. Subpart A requires each bank to adopt appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts. Subpart B ensures that national banks file a Suspicious Activity Report when they detect a known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of the Bank Secrecy Act. Subpart C requires that all national banks establish and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of the Bank Secrecy Act and its implementing regulations.

As in the proposed rule, the final rule removes references to DC banks in the scope section of part 21 to clarify that part 21 no longer applies to DC banks, pursuant to the DC Bank Act.

Part 22—Loans in Areas Having Special Flood Hazards

Part 22 applies to loans secured by buildings or mobile homes located or to be located in areas subject to special flood hazards. It implements the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973. As in the proposed rule, this final rule eliminates the applicability of part 22 to DC banks by removing DC banks from the definition of ''bank'' in § 22.2(b).

Part 23—Leasing

Part 23 contains the standards for personal property lease financing transactions authorized for national banks. Section 23.6 applies the lending limits of 12 U.S.C. 84 or, if the lessee is an affiliate of the bank, the restrictions on transactions with affiliates prescribed by 12 U.S.C. 371c and 371c–1 to these lease transactions. The proposal added to § 23.6 cross-references to the Federal Reserve Board's Regulation W, 12 CFR part 223, which implements 12 U.S.C. 371c and 371c–1. We proposed this change because Regulation W contains new provisions that do not appear in 12 U.S.C. 371c and 371c–1. In addition, Regulation W contains a definition of the term ''affiliate'' that is broader than the definition that appears in § 371c and § 371c–1. The proposal also added to § 23.6 a cross-reference to 12 CFR part 32, which implements 12 U.S.C. 84, for consistency in reader reference. We adopt these amendments as proposed, with minor corrections to the regulatory text.

Part 24—Community Development Investments

The FSRRA made a number of changes to section 24 (Eleventh), the authorizing statute for 12 CFR part 24. Prior to its amendment by the FSRRA, 12 U.S.C. 24 (Eleventh) authorized a national bank to ''make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services, or jobs)'' (the public welfare test). A national bank could

[65] *See* Exchange Act § 12(i), 15 U.S.C. 78l(i) and 12 CFR part 11.

[66] 12 U.S.C. 1818.

[67] *Id.* at 1818(g).

''make such investments directly or by purchasing interests in an entity primarily engaged in making such investments.'' The FSRRA narrowed the grant of authority in section 24 (Eleventh) by providing that a national bank may ''make investments, directly or indirectly, each of which promotes the public welfare by benefiting primarily low- and moderate-income communities or families (such as by providing housing, services, or jobs).'' The FSRRA also revised section 24 (Eleventh) to state explicitly that the authority to make public welfare investments applies to investments made by a national bank directly and by its subsidiaries.[68] In addition, the FSRRA raised the maximum aggregate outstanding investment limit under section 24 (Eleventh) from 10 to 15 percent of the bank's unimpaired capital and surplus.

The proposal revised part 24 to conform to these changes. In addition, the proposal made changes to the procedure that applies when a national bank requests OCC approval to exceed the investment limit, and made a number of conforming and technical changes to part 24. The commenters did not address these amendments to part 24. We therefore adopt them in the final rule as proposed, with the exception of § 24.2(c) in which we correct a drafting error. These amendments are described below.

Definition of ''Community and Economic Development Entity'' (CEDE) (§ 24.2(c))

The final rule amends the definition of a CEDE in § 24.2(c) to implement the FSRRA change to the public welfare test. Paragraph (c) now defines a CEDE as ''an entity that makes investments or conducts activities that promote the public welfare by benefiting primarily low- and moderate-income areas or individuals''. We also have made a technical correction to the **Federal Register** formatting instructions, which in the proposed rule had inadvertently removed the remaining part of this definition that contained a non-exclusive list of examples of the types of entities that may be CEDEs. The final rule replaces this text.

Definition of ''Benefiting Primarily Low- and Moderate-Income Areas or Individuals'' (§ 24.2(g))

As indicated above, 12 U.S.C. 24 (Eleventh) now authorizes a national bank and its subsidiaries to make investments that promote the public welfare by ''benefiting primarily'' low- and moderate-income areas or individuals. The final rule defines ''benefiting primarily low and moderate-income areas or individuals'' when used to describe an investment to mean that: (1) A majority (more than 50 percent) of the investment benefits low- and moderate-income areas or individuals; or (2) the express, primary purpose of the investment (evidenced, for example, by government eligibility requirements) is to benefit ''low- and moderate-income areas or individuals.'' As we noted in the preamble to the proposed rule, this definition is consistent with the way in which the OCC and the other Federal banking agencies have construed the concept of ''primary'' in the phrase ''primary purpose'' for community development activities pursuant to the CRA rules.[69]

Public Welfare Investments (§§ 24.3, 24.1)

The final rule revises § 24.3, which contains the authorization to make investments pursuant to section 24 (Eleventh), to conform with the changes made by the FSRRA. The final rule also adds a new § 24.1(e) to clarify that investments made, or written commitments to make investments entered into, before the enactment of the FSRRA continue to be subject to the statutes and regulations in effect prior to October 13, 2006.[70]

Investment Limits (§ 24.4)

The final rule revises § 24.4(a) to implement the statutory change to the aggregate investment limit in section 24 (Eleventh) from 10 to 15 percent of unimpaired capital and surplus.

After-the-Fact Notice and Prior Approval Procedures (§ 24.5)

The final rule modifies the procedure that applies when a national bank requests OCC approval to exceed the investment limit. The current rule permits a national bank's aggregate outstanding investments to exceed 5 percent of its capital and surplus if the bank is well capitalized and the OCC determines, by written approval of a bank's proposed investment pursuant to the procedures set out at § 24.5(b), that a higher amount will pose no significant risk to the deposit insurance fund. Section 24.5(b) describes the application process that is required for the OCC's prior approval of an investment when a bank does not satisfy the requirements for using an after-the-fact notice. Thus, the investment limits provision in current § 24.4(a) requires a national bank to submit a request to exceed the 5 percent limit together with a specific investment proposal, and to use the prior approval procedures for that investment proposal.

As indicated in the preamble to the proposed rule, this particular prior approval procedure is not required by the statute and the OCC has determined that the burden it imposes is not warranted in view of the low level of risk generally presented by the types of investments authorized pursuant to section 24 (Eleventh). Accordingly, the final rule removes the requirement that a national bank submit a specific investment proposal for prior approval under § 24.5(b) when it also seeks approval to exceed the 5 percent investment limit. In other words, under this new, simpler procedure, the bank is not required to tie its written request to exceed the 5 percent limit to a specific investment proposal. If the OCC provides written approval of the request, the bank may make investments above the 5 percent limit. However, as is the case for investments below the 5 percent limit, for each investment above the limit the bank would submit either an after-the-fact notice under § 24.5(a) if it satisfies the requirements for after-the-fact notice, or an application under § 25.4(b) if it does not. These revisions facilitate national banks' ability to plan their investment activity while enabling the OCC to monitor the bank's use of the part 24 authority on a case-by-case basis. Thus, revised § 24.4(a) permits a national bank's aggregate outstanding investments to exceed 5 percent of its capital and surplus, *provided that* the bank is at least adequately capitalized and the OCC determines, by written approval of a written request submitted by the bank, that a higher amount of investment will pose no significant risk to the deposit insurance fund.

Examples of Qualifying Public Welfare Investments (§ 24.6)

Current § 24.6 contains examples of qualifying public welfare investments. The final rule revises § 24.6 as necessary to reflect the revision of the statutory standard made by section 305 of the FSRRA. The final rule also makes conforming amendments to § 24.6 to clarify that the examples of qualifying

[68] FSRRA, § 305, 120 Stat. at 1970–71.

[69] *See* Interagency Questions and Answers Regarding Community Reinvestment, Q&A §§ _.12(i) and 563e.12(h)–7, 66 FR 36620, 36627 (July 12, 2001) (explaining ''primary purpose'' for community development activities in the context of the CRA rules).

[70] *See* 152 Cong. Rec. H7586 (daily ed. Sept. 29, 2006) (colloquy between Chairman Oxley of the House Financial Services Committee and Ranking Member Frank) (explaining that the revised standard in section 24 (Eleventh) applies prospectively only and does not affect investments made, or written commitments to make investments that were entered into, prior to the enactment of the new standard).

public investments include investments that benefit primarily low- and moderate-income areas or individuals and that: (1) Finance minority- and women-owned small businesses or small farms; (2) provide technical assistance for minority- and women-owned small businesses; or (3) are made in minority- and women-owned depository institutions. As stated in the preamble to the final rule, the OCC expects these qualifying investments to be made in minority- and women-owned entities that conform to the ownership and control, profit and loss taking, and senior management representation requirements of the CRA's provision governing operation of branch facilities by minorities and women.[71] In addition, the final rule revises references to investments in ''targeted redevelopment areas,'' which, after FSRRA, would be permissible only if they promote the public welfare by benefiting primarily low- and moderate-income areas or individuals. Finally, the final rule amends § 24.6(d)(1) to include investments that provide financial literacy as an additional example of a qualifying public welfare investment.

Technical Amendments

The final rule revises several sections of part 24 to eliminate language that is inconsistent or unnecessary in light of the revised statutory standard for community development investments and to make technical changes, including:

- A revision to § 24.2(f) that updates a cross-reference to the definitions of ''low-income'' and ''moderate-income'' in § 25.12.
- Amendments to § 24.5 that direct national banks to submit after-the-fact notices and investment proposals needing prior approval to the OCC's Community Affairs Department, instead of to the Director, Community Development Division, and that permit banks to submit these materials via e-mail, fax, or electronically through National BankNet, in addition to the mail. We also are correcting the format of a citation to 12 U.S.C. 24 (Eleventh) in paragraph (a)(1).
- An amendment to § 24.6(b)(2) that replaces the phrase ''low- or moderate-income'' with ''low- and moderate-income,'' which is consistent with how that phrase appears throughout part 24.
- A conforming technical amendment to § 24.6(d)(3) that would permit other public welfare investments, including investments of a type determined by the OCC to be permissible under the revisions to part 24. Grandfathered investments that are subject to statutes and regulations in effect prior to October 13, 2006 would not be affected.

The proposal also revises Appendix 1 to part 24, the CD–1 National Bank Community Development (Part 24) Investments Form, to reflect the proposed changes to the regulation.

Part 26—Management Officials Interlocks

Part 26 implements the provisions of the Depository Institution Management Interlocks Act (Interlocks Act)[72] which generally prohibits a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.[73] As in the proposal, this final rule amends part 26 by deleting the reference to DC banks in the scope section, § 26.1(c), deleting the definition of ''District bank'' in § 26.2(i), and deleting the reference to DC banks in the enforcement section, § 26.8.

Part 27—Fair Housing Home Loan Data System

Part 27 applies to activities of national banks and their subsidiaries that make home loans for the purpose of purchasing, construction-permanent financing, or refinancing of residential real property. As proposed, the final rule removes DC banks from the scope of part 27 in § 27.1(a) and the definition of ''bank'' in § 27.2(c).

Part 28—International Banking Activities

The proposed rule made three changes to part 28, which sets forth the OCC's rules on international banking activities of national banks. We received no comments on these changes and adopt them as proposed.

The first amendment makes a technical change to the definition of ''limited Federal branch'' in 12 CFR 28.11(s). Currently, this regulation defines a limited foreign branch as a Federal branch or agency that, pursuant to an agreement between the parent foreign bank and the FRB, may receive only those deposits permissible for an Edge corporation to receive. However, this agreement is not required for a foreign bank to operate a limited Federal branch in the United States. Therefore, we are removing the unnecessary reference to this agreement from this definition. We note that this change does not in any manner affect the requirement in § 28.11(s) that a limited Federal branch licensed by the OCC may accept only those deposits that are permissible for an Edge corporation.

Second, we are making a technical change to part 28 with respect to the expedited time periods for processing applications by eligible foreign banks to establish or relocate an interstate Federal branch or agency. Current 12 CFR 28.12(e)(3) provides that an application by an eligible foreign bank to establish and operate a *de novo* interstate Federal branch or agency is conditionally approved as of the 30th day after the OCC receives the application unless the OCC notifies the bank otherwise. However, as noted in the preamble to the proposed rule, the OCC is finding that the expedited process in the current regulation is not allowing sufficient time for the 30-day comment period to expire and for consideration of the comments received. As a result, the OCC is routinely notifying the eligible banks that the time period is extended. The final rule amends § 28.12(e) to provide that all expedited approvals to establish or relocate a Federal branch or agency are approved as of the 15th day after the close of the applicable public comment period, or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the bank otherwise. These are the same time frames that would apply under 12 CFR 5.20(f)(5) if a national bank were engaging in a similar transaction.

Finally, we are eliminating the applicability to DC banks of subpart C of part 28, which implements the International Lending Supervision Act of 1988 (12 U.S.C. 3901 *et seq.*). Specifically, the final rule eliminates the references to DC banks in the scope section, § 28.50(c), and in the definition of ''banking institution'', § 28.51(a).

Part 31—Extensions of Credit to Insiders and Transactions With Affiliates

Sections 23A and 23B of the Federal Reserve Act, as implemented by the Federal Reserve Board's Regulation W, impose quantitative and qualitative limitations on a bank's transactions with its ''affiliates.'' Appendix A to part 31 of the OCC's rules contains two interpretations of section 23A pertaining to a national bank's transactions with an affiliate. One of these interpretations provides that a loan to an unaffiliated

[71] *See* 12 U.S.C. 2907(b)(1)–(3).

[72] 12 U.S.C. 3201 *et seq.*

[73] Section 610 of the FSRRA raised the asset-size amount from $20 million to $50 million for small banks that are exempt under certain provisions of the Interlocks Act. Because the OCC's current substantive rules implementing the Interlocks Act were issued together with the other Federal banking agencies, the OCC has amended part 26 to reflect this FSRRA provision through a separate rulemaking conducted jointly with those agencies. The OCC and the other Federal banking agencies issued a final rule implementing this change on July 16, 2007. *See* 72 FR 38753.

third party that is collateralized by securities issued by an affiliate is not a ''covered transaction'' (that is, a transaction to which the requirements of section 23A apply) so long as: the borrower provides additional collateral that meets or exceeds the collateral requirements of § 23A (*i.e.*, up to 130% of the loan); and the loan proceeds are not used to purchase the affiliate-issued securities or otherwise used for the benefit of, or transferred to, any affiliate. The Federal Reserve Board's Regulation W, which was issued subsequent to the OCC's adoption of these interpretations, treats this transaction differently. Accordingly, we proposed to remove our interpretation on that issue from Appendix A to part 31.

In addition, we proposed minor changes to section 2 of Appendix A to part 31 to reflect the applicability of 12 U.S.C. 371c, 371c–1, and their implementing regulation, Regulation W, to deposits between affiliated banks. Furthermore, we proposed an exception to this provision in order to clarify that a national bank may make or receive a deposit if a party other than the depositary can legally offer and does post the collateral.

The proposal also removed the reference to 12 U.S.C. 1972(2)(G), which was repealed by section 601 of the FSRRA, in the authority section of part 31 as well as in § 31.1.

Finally, the proposal made a technical amendment to Appendix B to part 31. This appendix compares the requirements of part 31 and part 32. However, it currently contains an inaccurate description of part 32 relating to exclusions to the definition of ''loans or extensions of credit.'' The proposal removed this inaccuracy.

None of the commenters addressed these amendments to part 31, and we adopt them as proposed.

Part 32—Lending Limits

Part 32 sets forth the lending limits that are applicable to a national bank. Section 32.1(c)(1) excludes from the scope of part 32's coverage loans made by a national bank and its domestic operating subsidiaries to a bank ''affiliate,'' as that term is defined in section 23A(b)(1) of the Federal Reserve Act. After the OCC adopted part 32 in its current form, the Gramm-Leach-Bliley Act authorized a national bank (as well as an insured State member bank) to hold financial subsidiaries and provided generally that financial subsidiaries would be treated as ''affiliates'' for purposes of sections 23A and 23B of the Federal Reserve Act. This treatment appears in the statute at section 23A(e). Accordingly, the Federal Reserve Board's Regulation W generally defines as ''affiliates'' financial subsidiaries established pursuant to the authorization in the Gramm-Leach-Bliley Act.

The proposal added to § 32.1(c)(1) cross-references to section 23A(e) and to § 223.2(a) of the Federal Reserve Board's Regulation W. This change directly cites the specific statute that defines an affiliate to include a financial subsidiary as well as the implementing provision of Regulation W. We received no comments on this amendment and adopt it as proposed.

This amendment to § 32.1 makes clear that a bank's loan to its financial subsidiary is not covered by the lending limit and that, instead, Regulation W applies to such a loan.[74] The amendment also serves more generally to reflect the fact that Regulation W contains a definition of the term ''affiliate'' that is broader than the definition that appears in § 371c.

Part 34—Real Estate Lending and Appraisals

Under current § 34.22, if a national bank makes an adjustable rate mortgage (ARM) loan, the loan documents must specify an index to which a change in the interest rate will be linked. Section 34.22 describes the requirements that generally apply to such an index. The proposal amended § 34.22 to provide national banks with additional flexibility with respect to the indices upon which ARM rates may be based. Specifically, the amendment permitted national banks to use a combination of indices to which changes in the interest rate will be linked, in addition to a single index. The amendment also permitted a national bank to use an index other than one already permissible under the rule, if the bank files a notice with the OCC and the OCC does not notify the bank within 30 days that the notice raises supervisory concerns or significant issues of law or policy. If the OCC notifies the bank about such issues or concerns, the bank may not proceed unless it has obtained the OCC's written approval. The approval could include any restrictions or conditions necessary to address the issues or concerns the OCC has identified.

We received one comment on this amendment to Part 34, which requested that we clarify that national banks may purchase, as well as originate, loans that use indices other than those permissible under the current rule. The commenter stated that this would permit the OCC to exercise the same level of oversight and supervision with regard to purchases as applies to originations and to ensure that the indices on which purchased ARM loans are based are also consistent with the principles of safety and soundness and fairness and transparency to the borrower.

Part 34 currently addresses a national bank's purchase of loans that do not conform with the requirements of the part. Generally, loans purchased from unrelated parties are not subject to the ARM criteria specified by part 34, but loans acquired from a subsidiary or an affiliate are subject to those standards. Section 34.21(b) currently provides that:

> A national bank may purchase or participate in ARM loans that were not made in accordance with this part, except that loans purchased, in whole or in part, from an affiliate or subsidiary must comply with this part. For purposes of this paragraph, the terms affiliate and subsidiary have the same meaning as in 12 U.S.C. 371c.

Pursuant to § 34.21(b), the index requirements (and the no-objection procedure added by the draft final rule) apply to ARM loans originated by operating subsidiaries. This is consistent with provisions elsewhere in our rules that require operating subsidiaries to conduct activities subject to the same standards as apply to the parent bank.[75] Consequently, an operating subsidiary should not have nonconforming loans available for purchase by its parent bank unless the bank or operating subsidiary had provided notice to the OCC pursuant to our amendment to § 34.22, and not received a disapproval from the OCC to use an index other than that specified in § 34.22(a).

Section § 34.21(b) also provides that loans that a national bank purchases from an affiliate also must comply with the index requirements. Alternatively, a bank contemplating the purchase of nonconforming loans from an affiliate

[74] However, subsidiaries that are financial subsidiaries solely because they sell insurance as agent or broker in a manner not permitted to the parent bank are not considered ''affiliates'' under Regulation W (*see* 12 CFR 223.3(p)(2)(i)) (unless the subsidiary is an affiliate for reasons other than its status as a financial subsidiary under the Gramm-Leach-Bliley Act). Loans to such subsidiaries are not subject to the lending limit for the same reason that the lending limit does not apply to loans to companies that meet the general definition of ''affiliate'' in § 371c(b)(1) but are excepted from § 371c by another provision, *e.g.*, operating subsidiaries or companies engaged solely in holding the premises of the bank (*see* section 371c(b)(2)). The OCC does not apply the lending limit to loans to any financial subsidiary since it is not necessary given that another statutory scheme—the affiliate transaction restrictions—is generally applicable. This reason applies even where a specific exemption—such as for the entities described in 12 CFR 223.3(p)(2)(i)—causes the affiliate transaction restrictions to be inapplicable.

[75] *See* 12 CFR 34.l, 5.34(e).

could comply with the no-objection procedure by submitting a notice prior to the purchase of the nonconforming loans. Therefore, further amendment to part 34 is not necessary in order to apply the prior notice and no-objection process of amended § 34.22 to ARM loans purchased from subsidiaries and affiliates.

Section 34.21(b) does not apply the index requirements of § 34.22 to the purchase of loans from *nonaffiliates*. The final rule retains this approach with the result that a national bank still may purchase or participate in ARM loans originated by unaffiliated lenders that do not conform with the index requirements of the rule. However, we have added language to 12 CFR 34.21 emphasizing that purchases of loans from any person or entity, whether or not the seller is a subsidiary or affiliate of the bank, must be undertaken prudently and are subject to standards contained in OCC rules and guidance regarding the purchasing of loans. For example, standards are contained in ''OCC Guidelines Establishing Standards for Residential Mortgage Lending Practices'' set forth in Appendix C of 12 CFR part 30;[76] OCC Banking Circular No. 181;[77] the ''Interagency Guidance on Nontraditional Mortgage Product Risks'';[78] and the ''Interagency Statement on Subprime Mortgage Lending''.[79]

Accordingly, we adopt the final rule as proposed, with the clarifying amendment to § 34.21, described above.

Part 37—Debt Cancellation Contracts and Debt Suspension Agreements

On September 19, 2002, the OCC published a final rule in the **Federal Register** that added a new 12 CFR part 37, which establishes standards governing DCCs and DSAs.[80] In the last sentence of § 37.7(a), the cross-reference to standards in § 37.6 is incorrect. The rule should say § 37.6(d), not § 37.6(b). The final rule corrects that error.

Part 40—Privacy of Consumer Financial Information

Part 40 governs the treatment of nonpublic personal information about consumers by financial institutions. Pursuant to the DC Bank Act, the final rule amends the scope section, § 40.1(b), to eliminate the applicability of part 40 to DC banks.

Effective Date of Final Rule

As noted above, the effective date of this final rule is July 1, 2008. However, national banks, and foreign banks taking actions with respect to Federal branches and agencies, may elect to comply voluntarily with any applicable provision of the final rule at any time prior to the effective date.[81]

Regulatory Analysis

Regulatory Flexibility Act

Pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under § 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

We have estimated that the economic costs associated with the changes made by this final rule will not be significant and that the majority of banks affected by these costs will be those with assets greater than $250 million. Therefore, pursuant to § 605(b) of the RFA, the OCC hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866. We have concluded that the changes made by this rule will not have an annual effect on the economy of $100 million or more. The OCC further concludes that this rule does not meet any of the other standards for a significant regulatory action set forth in Executive Order 12866.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in this final rule were submitted to and preapproved by OMB at the proposed rule stage under OMB control numbers 1557–0014 (Part 5 and Comptroller's Licensing Manual), 1557–0120 (Part 16, Securities Offering Disclosure Rules), 1557–0194 (Part 24, Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments), and 1557–0190 (Part 34, Real Estate Lending and Appraisals). Following publication of this final rule, OMB's preapproval will become final.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, § 205 of the Unfunded Mandates Act also

[76] Specifically, these standards and practices contained in these Guidelines include: (1) Criteria for entering into and continuing relationships with intermediaries and originators, including due diligence requirements; (2) underwriting and appraisal requirements; (3) standards related to total loan compensation and total compensation of intermediaries, including maximum rates, points, and other charges, and the use of overages and yield-spread premiums, structured to avoid providing an incentive to originate loans with predatory or abusive characteristics; (4) requirements for agreements with intermediaries and originators, including with respect to risks identified in the due diligence process, compliance with appropriate bank policies, procedures and practices and with applicable law (including remedies for failure to comply), protection of the bank against risk, and termination procedures; (5) loan documentation procedures, management information systems, quality control reviews, and other methods through which the bank will verify compliance with agreements, bank policies, and applicable laws, and otherwise retain appropriate oversight of mortgage origination functions, including loan sourcing, underwriting, and loan closings; and (6) criteria and procedures for the bank to take appropriate corrective action, including modification of loan terms and termination of the relationship with the intermediary or originator in question. *See* 12 CFR part 34, Appendix C, § III(E).

[77] Banking Circular No. 181 specifically provides that the absence of satisfactory controls over risk may constitute an unsafe or unsound banking practice and thus cause for the OCC to seek appropriate corrective action through its administrative remedies. Satisfactory controls over the purchase of loans and participations in loans ordinarily include, but are not limited to: (1) Written lending policies and procedures governing these transactions; (2) an independent analysis of credit quality by the purchasing bank; (3) agreement by the obligor to make full credit information available to the selling bank; (4) agreement by the selling bank to provide available information on the obligor to the purchaser; and (5) written documentation of recourse arrangements outlining the rights and obligations of each party. *See* OCC BC 181 (Rev), ''Purchases of Loans In Whole or In Part-Participations'' (Aug. 2, 1984).

[78] 71 FR 58609, 58618 (Oct. 4, 2006).

[79] This statement sets forth expectations for sound lending practices and clear communications with borrowers with respect to subprime mortgage products and lending practices. *See* 72 FR 37569 (July 10, 2007).

[80] 67 FR 58962.

[81] See 5 U.S.C. 553(d)(1), which provides that a delayed effective date is not required for a rule that reduces burden or relieves restrictions, and 12 U.S.C. 4802(b)(2), which permits voluntary compliance prior to the effective date of certain rules.

requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, final rule is not subject to § 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 1

Banks, Banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 2

Credit life insurance, National banks.

12 CFR Part 3

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements.

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 7

National banks.

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

12 CFR Part 10

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 11

Confidential business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 12

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 21

Crime, Currency, National banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 22

Flood insurance, Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 23

National banks.

12 CFR Part 24

Community development, Credit investments, Low and moderate income housing, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

12 CFR Part 26

Antitrust, Holding companies, National banks.

12 CFR Part 27

Civil rights, Credit, Fair housing, Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 31

Credit, National banks, Reporting and recordkeeping requirements.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

12 CFR Part 34

Mortgages, National banks, Reporting and recordkeeping requirements.

12 CFR Part 37

Banks, Banking, Consumer protection, National banks, Reporting and recordkeeping requirements.

12 CFR Part 40

Banks, Banking, Consumer protection, National banks, Privacy, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 1—INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), and 93a.

■ 2. Amend § 1.1 by:

■ a. Revising the section heading;
■ b. Revising the first sentence of paragraph (c); and
■ c. Adding a new paragraph (d).

The additions and revisions read as follows:

§ 1.1 Authority, purpose, scope, and reservation of authority.

* * * * *

(c) *Scope*. The standards set forth in this part apply to national banks and Federal branches of foreign banks.

* * *

(d) *Reservation of authority*. The OCC may determine, on a case-by-case basis, that a national bank may acquire an investment security other than an investment security of a type set forth in this part, provided the OCC determines that the bank's investment is consistent with 12 U.S.C. section 24 (Seventh) and with safe and sound banking practices. The OCC will consider all relevant factors, including the risk characteristics of the particular investment in comparison with the risk characteristics of investments that the OCC has previously authorized, and the bank's ability effectively to manage such risks. The OCC may impose limits or conditions in connection with approval of an investment security under this subsection. Investment securities that the OCC determines are permissible in accordance with this paragraph constitute eligible investments for purposes of 12 U.S.C. 24.

■ 3. Amend § 1.3 by:
■ a. In paragraph (h), removing the heading ''*Investment company shares*'' and in its place add the heading ''*Pooled investments*'';
■ b. In paragraph (h)(1)(i), removing the phrase ''under this part'';
■ c. In paragraph (h)(2), removing the phrase ''under this part'';
■ d. Adding a new paragraph (h)(3); and
■ e. In paragraph (i)(1), adding the phrase ''the security is marketable and'' after the word ''if'' and removing the phrase '', and the bank believes that the security may be sold with reasonable promptness at a price that corresponds reasonably to its fair value''.

The additions read as follows:

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

* * * * *

(h) * * *

(3) Investments made under this paragraph (h) must comply with § 1.5 of this part, conform with applicable published OCC precedent, and must be:

(i) Marketable and rated investment grade or the credit equivalent of a security rated investment grade, or

(ii) Satisfy the requirements of § 1.3(i).

* * * * *

PART 2—SALES OF CREDIT LIFE INSURANCE

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

Authority: 12 U.S.C. 24 (Seventh), 93a, and 1818(n).

■ 5. In § 2.2 revise paragraph (a) to read as follows:

§ 2.2 Definitions.

(a) *Bank* means a national banking association.

* * * * *

PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

Authority: 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

■ 7. In § 3.2, revise paragraph (b) to read as follows:

§ 3.2 Definitions.

* * * * *

(b) *Bank* means a national banking association.

* * * * *

■ 8. In Appendix A to part 3, revise section 3(a)(1)(v) to read as follows:

Appendix to Part 3—Risk-Based Capital Guidelines

* * * * *

Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(1) * * *

(v) That portion of local currency claims on, or unconditionally guaranteed by, central governments of non-OECD countries, to the extent the bank has liabilities in that currency. Any amount of such claims that exceeds the amount of the bank's liabilities in that currency is assigned to the 100% risk category of section 3(a)(4) of this appendix.

* * * * *

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 9. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1817(a)(2) and (3), 1818(u) and (v), 1820(d)(6), 1920(k), 1821(c), 1821(o), 1821(t), 1831m, 1831p–1, 1831o, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e.

■ 10. In § 4.4, revise the second sentence to read as follows:

§ 4.4 Washington office.

* * * The Washington office directs OCC policy, oversees OCC operations, and is responsible for the direct supervision of certain national banks, including the largest national banks (through the Large Bank Supervision Department) and other national banks requiring special supervision. * * *

■ 11. In § 4.5(a), revise the table to read as follows:

§ 4.5 District and field offices.

(a) * * *

District	Office address	Geographical composition
Northeastern District	Office of the Comptroller of the Currency, 340 Madison Avenue, 5th Floor New York, NY 10173–0002.	Connecticut, Delaware, District of Columbia, northeast Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, the Virgin Islands, Virginia, and West Virginia.
Central District	Office of the Comptroller of the Currency, One Financial Place, Suite 2700, 440 South LaSalle Street, Chicago, IL 60605.	Illinois, Indiana, northeast and southeast Iowa, central Kentucky, Michigan, Minnesota, eastern Missouri, North Dakota, Ohio, and Wisconsin.
Southern District	Office of the Comptroller of the Currency, 500 North Akard Street, Suite 1600, Dallas, TX 75201.	Alabama, Arkansas, Florida, Georgia, southern Kentucky, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas.
Western District	Office of the Comptroller of the Currency, 1225 17th Street, Suite 300, Denver, CO 80202.	Alaska, Arizona, California, Colorado, Hawaii, Idaho, central and western Iowa, Kansas, western Missouri, Montana, Nebraska, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, Wyoming, and Guam.

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

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

Authority: 12 U.S.C. 1 *et seq.*; 93a; 215a–2; 215a–3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

§ 5.3 [Amended]

■ 13. In § 5.3 remove paragraph (j) and redesignate paragraphs (k) and (l) as paragraphs (j) and (k), respectively.

§ 5.4 [Amended]

■ 14. Amend § 5.4(d) by:

■ a. Removing ''Licensing Manager'' in the first sentence and adding in its place ''Director for District Licensing''; and

■ b. Removing the phrase ''Bank Organization and Structure Department'' in the second sentence and adding in its place the phrase ''Licensing Department''.

■ 15. Amend § 5.13 by:

■ a. In paragraph (c), adding two sentences at the end of the paragraph;

■ b. In paragraph (f):

■ i. Removing the phrase ''Deputy Comptroller for Bank Organization and Structure'' in the first sentence and adding in its place the phrase ''Deputy Comptroller for Licensing''; and

■ ii. Adding a sentence after the first sentence.

The additions read as follows:

§ 5.13 Decisions.

* * * * *

(c) * * * The OCC may return an application without a decision if it finds the filing to be materially deficient. A filing is materially deficient if it lacks sufficient information for the OCC to make a determination under the applicable statutory or regulatory criteria.

* * * * *

(f) * * * In the event the Deputy Comptroller for Licensing was the deciding official of the matter appealed, or was involved personally and substantially in the matter, the appeal may be referred instead to the Chief Counsel. * * *

* * * * *

■ 16. Amend § 5.20 by:
■ a. In paragraph (i)(3), removing the term ''spokesperson'' wherever it appears and in its place adding the term ''contact person''; and
■ b. In paragraph (i)(5) by:
■ i. Revising the heading; and
■ ii. Adding a sentence after the second sentence of paragraph (i)(5)(i); and
■ iii. Redesignating paragraphs (i)(5)(ii) and (i)(5)(iii) as paragraphs (i)(5)(iii) and (i)(5)(iv), respectively; and
■ iv. Redesignating the last sentence of paragraph (i)(5)(i) as new paragraph (i)(5)(ii).

The addition and revision read as follows:

§ 5.20 Organizing a bank.

(i) * * *

(5) *Activities.* (i) * * * A proposed national bank may offer and sell securities prior to OCC preliminary approval of the proposed national bank's charter application, provided that the proposed national bank has filed articles of association, an organization certificate, and a completed charter application and the bank complies with the OCC's securities offering regulations, 12 CFR part 16.

* * *

■ 17. Amend § 5.26 as follows:
■ a. Remove paragraph (e)(2)(i)(B);
■ b. Redesignate paragraphs (e)(2)(i)(C), (e)(2)(i)(D), (e)(2)(i)(E), as paragraphs (e)(2)(i)(B), (e)(2)(i)(C), (e)(2)(i)(D), respectively;
■ c. At the end of newly redesignated paragraph (e)(2)(i)(C), remove the word ''and'';
■ d. At the end of newly redesignated paragraph (e)(2)(i)(D), remove the period and add in its place the phrase ''; and'';
■ e. Add a new paragraph (e)(2)(i)(E) to read as follows;
■ f. Redesignate paragraph (e)(3)(i) as paragraph (e)(3); and
■ g. Removing paragraph (e)(3)(ii) in its entirety.

The addition reads as follows:

§ 5.26 Fiduciary powers.

* * * * *

(e) * * *

(2) * * *

(i) * * *

(E) If requested by the OCC, an opinion of counsel that the proposed activities do not violate applicable Federal or State law, including citations to applicable law.

* * * * *

■ 18. Amend § 5.30 as follows:
■ a. In paragraph (d)(1)(i), add ''intermittent facility,'' after ''temporary facility,''; and
■ b. Redesignate paragraphs (d)(3) though (d)(5) as paragraphs (d)(4) through (d)(6), respectively; and add a new paragraph (d)(3);
■ c. Redesignate paragraphs (f)(4) and (f)(5) as paragraphs (f)(5) and (f)(6), respectively, and add a new paragraph (f)(4) to read as follows.

The additions read as follows:

§ 5.30 Establishment, acquisition, and relocation of a branch.

* * * * *

(d) * * *

(3) *Intermittent branch* means a branch that is operated for one or more limited periods of time to provide branch banking services at a specified recurring event, on the grounds or premises where the event is held or at a fixed site adjacent to the grounds or premises where the event is held, and exclusively during the occurrence of the event. Examples of an intermittent branch include the operation of a branch on the campus of, or at a fixed site adjacent to the campus of, a specific college during school registration periods; or the operation of a branch during a State fair on State fairgrounds or at a fixed site adjacent to the fairgrounds.

* * * * *

(f) * * *

(4) *Intermittent branches.* Prior to operating an intermittent branch, a national bank shall file a branch application and publish notice in accordance with § 5.8, both of which shall identify the event at which the branch will be operated; designate a location for operation of the branch which shall be on the grounds or premises at which the event is held or on a fixed site adjacent to those grounds or premises; and specify the approximate time period during which the event will be held and during which the branch will operate, including whether operation of the branch will be on an annual or otherwise recurring basis. If the branch is approved, then the bank need not obtain approval each time it seeks to operate the branch in accordance with the original application and approval.

* * * * *

■ 19. Amend § 5.33 as follows:
■ a. Add introductory text at the beginning of paragraph (d);
■ b. Revise the introductory text in paragraph (e)(1);
■ c. Redesignate paragraphs (e)(1)(i), (e)(1)(i)(A), (e)(1)(i)(B), (e)(1)(ii), (e)(1)(iii), (e)(1)(iv), and (e)(1)(v) as paragraphs (e)(1)(i)(A) introductory text, (e)(1)(i)(A)(*1*), (e)(1)(i)(A)(*2*), (e)(1)(i)(B), (e)(1)(i)(C), (e)(1)(ii) and (e)(1)(iii) respectively;
■ d. Add a new paragraph (e)(1)(i) introductory text;
■ e. Revise redesignated paragraph (e)(1)(ii);
■ f. Remove the phrase '', and with the appropriate district office'' from the first sentence of paragraph (e)(8)(ii);
■ g. Revise the headings of paragraphs (g), (g)(1) and (g)(3);
■ h. Remove the phrase ''or merger'' in paragraph (g)(2)(ii);
■ i. Remove the phrase ''12 U.S.C. 214c'' in paragraph (g)(3)(i) and add in its place ''12 U.S.C. 214b''; and
■ j. Revise paragraph (h).

The additions and revisions read as follows:

§ 5.33 Business combinations.

* * * * *

(d) *Definitions*—For purposes of this § 5.33: * * *

(e) *Policy.* (1) *Factors.* (i) *Bank Merger Act.* When the OCC evaluates an application for a business combination under the Bank Merger Act, the OCC considers the following factors: * * *

(ii) *Community Reinvestment Act.* When the OCC evaluates an application for a business combination under the Community Reinvestment Act, the OCC considers the performance of the applicant and the other depository institutions involved in the business combination in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices.

* * * * *

(g) *Provisions governing consolidations and mergers with different types of entities.* (1) *Consolidations and mergers under 12 U.S.C. 215 or 215a of a national bank with other national banks and State banks as defined in 12 U.S.C. 215b(1) resulting in a national bank.* * * *

* * * * *

(3) *Consolidation or merger of a national bank resulting in a State bank*

as defined in 12 U.S.C. 214(a) under 12 U.S.C. 214a or a Federal savings association under 12 U.S.C. 215c. * * *

* * * * *

(h) *Interstate combinations under 12 U.S.C. 1831u.* A business combination between insured banks with different home States under the authority of 12 U.S.C. 1831u must satisfy the standards and requirements and comply with the procedures of 12 U.S.C. 1831u and either 12 U.S.C. 215, 215a, and 215a–1, as applicable, if the resulting bank is a national bank, or 12 U.S.C. 214a, 214b, and 214c if the resulting bank is a State bank. For purposes of 12 U.S.C. 1831u, the acquisition of a branch without the acquisition of all or substantially all of the assets of a bank is treated as the acquisition of a bank whose home State is the State in which the branch is located.

* * * * *

■ 20. Amend § 5.34 as follows:

■ a. Amend paragraph (e)(2) by:

■ i. Redesignating paragraphs (e)(2)(i) and (e)(2)(ii) as paragraphs (e)(2)(ii)(A) and (e)(2)(ii)(B), respectively;

■ ii. Redesignating the first sentence of paragraph (e)(2) introductory text as paragraph (e)(2)(i) and revising it; and

■ iii. Redesignating the second sentence of paragraph (e)(2) introductory text as paragraph (e)(2)(ii) introductory text, republishing it for reader reference;

■ b. Amend paragraph (e)(5) by:

■ i. Revising paragraph (e)(5)(i);

■ ii. Removing paragraph (e)(5)(iv);

■ iii. Redesignating paragraphs (e)(5)(ii) and (e)(5)(iii) as paragraphs (e)(5)(iii) and (e)(5)(iv);

■ iv. Removing the word ''and'' at the end of paragraph (e)(5)(v)(X), and the period at the end of paragraph (e)(5)(v)(Y) and replacing it with a semicolon;

■ v. Revising paragraph (e)(5)(vi) introductory text;

■ vi. Removing the word ''and'' at the end of paragraph (e)(5)(vi)(B);

■ vii. Redesignating paragraph (e)(6) as paragraph (e)(7);

■ viii. Replacing the period with a semicolon and adding the word ''and'' at the end of (e)(5)(vi)(C); and

■ ix. Adding new paragraphs (e)(5)(ii), (e)(5)(v)(Z), (e)(5)(v)(AA), (e)(5)(v)(BB), (e)(5)(v)(CC), (e)(5)(v)(DD), (e)(5)(v)(EE), (e)(5)(v)(FF), (e)(5)(vi)(D), and (e)(6).

The additions and revisions read as follows:

§ 5.34 Operating subsidiaries.

* * * * *

(e) * * *

(2) *Qualifying subsidiaries.* (i) An operating subsidiary in which a national bank may invest includes a corporation, limited liability company, limited partnership, or similar entity if:

(A) The bank has the ability to control the management and operations of the subsidiary;

(B) The parent bank owns and controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary, or the parent bank otherwise controls the operating subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary; and

(C) The operating subsidiary is consolidated with the bank under Generally Accepted Accounting Principles (GAAP).

(ii) However, the following subsidiaries are not operating subsidiaries subject to this section:

* * * * *

(5) *Procedures*—(i) *Notice required.* (A) Except for operating subsidiaries subject to the application procedures set forth in paragraph (e)(5)(ii) of this section or exempt from notice or application procedures under paragraph (e)(5)(vi) of this section, a national bank that is ''well capitalized'' and ''well managed'' may establish or acquire an operating subsidiary, or perform a new activity in an existing operating subsidiary, by providing the appropriate district office written notice within 10 days after acquiring or establishing the subsidiary, or commencing the new activity, if:

(*1*) The activity is listed in paragraph (e)(5)(v) of this section;

(*2*) The entity is a corporation, limited liability company, or limited partnership; and

(*3*) The bank:

(*i*) Has the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management (or, in the case of a limited partnership, has the ability to control the management and operations of the subsidiary by controlling the selection and termination of senior management);

(*ii*) Holds more than 50 percent of the voting, or equivalent, interests in the subsidiary, and, in the case of a limited partnership, the bank or an operating subsidiary thereof is the sole general partner of the limited partnership, provided that under the partnership agreement, limited partners have no authority to bind the partnership by virtue solely of their status as limited partners; and

(*iii*) Is required to consolidate its financial statements with those of the subsidiary under Generally Accepted Accounting Principles.

(B) The written notice must include a complete description of the bank's investment in the subsidiary and of the activity conducted and a representation and undertaking that the activity will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity. To the extent that the notice relates to the initial affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity in which the company is engaged and has present plans to conduct. The bank also must list for each State the lines of business for which the company holds, or will hold, an insurance license, indicating the State where the company holds a resident license or charter, as applicable. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

(ii) *Application required.* (A) Except where the operating subsidiary is exempt from notice or application requirements under paragraph (e)(5)(vi) of this section, or subject to the notice procedures in paragraph (e)(5)(i), a national bank must first submit an application to, and receive approval from, the OCC with respect to the establishment or acquisition of an operating subsidiary, or the performance of a new activity in an existing operating subsidiary.

(B) The application must explain, as appropriate, how the bank ''controls'' the enterprise, describing in full detail structural arrangements where control is based on factors other than bank ownership of more than 50 percent of the voting interest of the subsidiary and the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary's board and to select and terminate senior management. In the case of a limited partnership that does not qualify for the notice procedures set forth in paragraph (e)(5)(i), the bank should provide a statement explaining why it is not eligible. The application also must include a complete description of the bank's investment in the subsidiary, the proposed activities of the subsidiary, the organizational structure and management of the subsidiary, the relations between the bank and the subsidiary, and other information necessary to adequately describe the proposal. To the extent that the application relates to the initial

affiliation of the bank with a company engaged in insurance activities, the bank should describe the type of insurance activity in which the company is engaged and has present plans to conduct. The bank must also list for each State the lines of business for which the company holds, or will hold, an insurance license, indicating the State where the company holds a resident license or charter, as applicable. The application must state whether the operating subsidiary will conduct any activity at a location other than the main office or a previously approved branch of the bank. The OCC may require an applicant to submit a legal analysis if the proposal is novel, unusually complex, or raises substantial unresolved legal issues. In these cases, the OCC encourages applicants to have a pre-filing meeting with the OCC. Any bank receiving approval under this paragraph is deemed to have agreed that the subsidiary will conduct the activity in a manner consistent with published OCC guidance.

* * * * *

(v) * * *

(Z) Providing data processing, and data transmission services, facilities (including equipment, technology, and personnel), databases, advice and access to such services, facilities, databases and advice, for the parent bank and for others, pursuant to 12 CFR 7.5006 to the extent permitted by published OCC precedent;

(AA) Providing bill presentment, billing, collection, and claims-processing services;

(BB) Providing safekeeping for personal information or valuable confidential trade or business information, such as encryption keys, to the extent permitted by published OCC precedent;

(CC) Providing payroll processing;

(DD) Providing branch management services;

(EE) Providing merchant processing services except when the activity involves the use of third parties to solicit or underwrite merchants; and

(FF) Performing administrative tasks involved in benefits administration.

(vi) *No application or notice required.* A national bank may acquire or establish an operating subsidiary, or engage in the performance of a new activity in an existing operating subsidiary, without filing an application or providing notice to the OCC, if the bank is well managed and adequately capitalized or well capitalized and the: * * *

(D) The standards set forth in paragraphs (e)(5)(i)(A)(*2*) and (*3*) of this section are satisfied.

(6) *Grandfathered operating subsidiaries.* Notwithstanding the requirements for a qualifying operating subsidiary in § 5.34(e)(2) and unless otherwise notified by the OCC with respect to a particular operating subsidiary, an entity that a national bank lawfully acquired or established as an operating subsidiary before April 24, 2008 may continue to operate as a national bank operating subsidiary under this section, provided that the bank and the operating subsidiary were, and continue to be, conducting authorized activities in compliance with the standards and requirements applicable when the bank established or acquired the operating subsidiary.

* * * * *

■ 21. Amend § 5.35 as follows:

■ a. In paragraph (d)(1) remove ''insured banks'' each time it appears and add in its place ''insured depository institutions'';

■ b. In paragraph (d)(3) add '', except when such term appears in connection with the term 'insured depository institution'' ' after ''means'';

■ c. Redesignate paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively;

■ d. Add new paragraph (d)(4);

■ e. In newly redesignated paragraph (d)(6):

■ i. Remove ''insured bank'' and add in its place ''insured depository institution'';

■ ii. Remove ''insured banks'' and add in its place ''insured depository institutions''; and

■ iii. Remove ''banks as its principal investor'' and add in its place ''insured depository institutions as its principal investor'';

■ f. Add the word ''and'' at the end of paragraph (g)(3);

■ g. Revise paragraph (g)(4);

■ h. Revise the heading of paragraph (i); and

■ i. Remove paragraphs (g)(5) and (i)(2) and the paragraph designation for paragraph (i)(1).

The additions and revisions read as follows:

§ 5.35 Bank service companies.

* * * * *

(d) * * *

(4) *Insured depository institution,* for purposes of this section, has the same meaning as in section 3 of the Federal Deposit Insurance Act.

* * * * *

(g) * * *

(4) Information demonstrating that the bank service company will perform only those services that each insured depository institution shareholder or member is authorized to perform under applicable Federal or State law and will perform such services only at locations in a State in which each such shareholder or member is authorized to perform such services unless performing services that are authorized by the Federal Reserve Board under the authority of 12 U.S.C. 1865(b).

* * * * *

(i) *Investment limitations.* * * *

■ 22. Amend § 5.36 as follows:

■ a. Add ''application or'' before ''notice'' in paragraph (b);

■ b. Revise the last sentence of paragraph (b);

■ c. Revise paragraph (e) introductory text;

■ d. Remove paragraph (e)(5);

■ e. Redesignate paragraphs (e)(6) through (e)(8) as paragraphs (e)(5) through (e)(7), respectively, and paragraphs (f) and (g) as paragraphs (h) and (i), respectively;

■ f. Revise redesignated paragraph (e)(6); and

■ g. Add new paragraphs (f) and (g).

The additions and revisions read as follows:

§ 5.36 Other equity investments.

* * * * *

(b) * * * Other permissible equity investments may be reviewed on a case-by-case basis by the OCC.

* * * * *

(e) *Non-controlling investments; notice procedure.* Unless the procedures governing a national bank's non-controlling investment are prescribed by OCC rules implementing a separate legal authorization of the investment and except as provided in paragraphs (f) and (g) of this section, a national bank may make a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities described in paragraph (e)(2) of this section by filing a written notice. The bank must file this written notice with the appropriate district office no later than 10 days after making the investment. The written notice must: * * *

(6) Certify that the bank's loss exposure is limited as a legal matter and that the bank does not have unlimited liability for the obligations of the enterprise; and

* * * * *

(f) *Non-controlling investment; application procedure.* Unless the procedures governing a national bank's non-controlling investment are prescribed by OCC rules implementing a separate legal authorization of the investment, a national bank must file an application and obtain prior approval

before making or acquiring, either directly or through an operating subsidiary, a non-controlling investment in an enterprise if the non-controlling investment does not qualify for the notice procedure set forth in paragraph (e) of this section because the bank is unable to make the representation required by paragraph (e)(2) or the certification required by paragraph (e)(3) of this section. The application must include the information required in paragraphs (e)(1) and (e)(4) through (e)(7) of this section and (e)(2) or (e)(3), as appropriate. If the bank is unable to make the representation set forth in paragraph (e)(2) of this section, the bank's application must explain why the activity in which the enterprise engages is a permissible activity for a national bank and why the applicant should be permitted to hold a non-controlling investment in an enterprise engaged in that activity. A bank may not make a non-controlling investment if it is unable to make the representations and certifications specified in paragraphs (e)(1) and (e)(4) through (e)(7) of this section.

(g) *Non-controlling investments in entities holding assets in satisfaction of debts previously contracted.* Certain non-controlling investments may be eligible for expedited treatment where the bank's investment is in an entity holding assets in satisfaction of debts previously contracted or the bank acquires shares of a company in satisfaction of debts previously contracted.

(1) *Notice required.* A national bank that is well capitalized and well managed may acquire a non-controlling investment, directly or through its operating subsidiary, in an enterprise that engages in the activities of holding and managing assets acquired by the parent bank through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted, by filing a written notice in accordance with this paragraph (g)(i). The activities of the enterprise must be conducted pursuant to the same terms and conditions as would be applicable if the activity were conducted directly by a national bank. The bank must file the written notice with the appropriate district office no later than 10 days after making the non-controlling investment. This notice must include a complete description of the bank's investment in the enterprise and the activities conducted, a description of how the bank plans to divest the non-controlling investment or the underlying assets within applicable statutory time frames, and a representation and undertaking that the bank will conduct the activities in accordance with OCC policies contained in guidance issued by the OCC regarding the activities. Any national bank receiving approval under this paragraph (g)(i) is deemed to have agreed that the enterprise will conduct the activity in a manner consistent with published OCC guidance.

(2) *No notice or application required.* A national bank is not required to file a notice or application under this § 5.36 if it acquires a non-controlling investment in shares of a company through foreclosure or otherwise in good faith to compromise a doubtful claim, or in the ordinary course of collecting a debt previously contracted.

* * * * *

■ 23. Amend § 5.39 as follows:

■ a. Amend paragraph (d)(1) by adding the phrase ''as implemented by Regulation W, 12 CFR part 223,'' before ''as applicable'';

■ b. Amend paragraph (h) by:

■ i. Removing the word ''Sections'' at the beginning of paragraph (h)(5) introductory text and adding in its place the phrase ''Except for a subsidiary of a bank that is considered a financial subsidiary under paragraph (a)(6) of this section solely because the subsidiary engages in the sale of insurance as agent or broker in a manner that is not permitted for national banks, sections'';

■ ii. Adding the phrase '', as implemented by Regulation W, 12 CFR part 223,'' before the word ''apply'' in paragraph (h)(5) introductory text;

■ iii. Revising paragraph (h)(5)(iii);

■ iv. Removing the word ''and'' at the end of paragraph (h)(5)(iv);

■ v. Redesignating paragraph (h)(5)(v) as paragraph (h)(5)(vi) and adding in redesignated paragraph (h)(5)(vi) the word ''other'' after the word ''Any''; and

■ vi. Adding a new paragraph (h)(5)(v).

The additions and revisions read as follows:

§ 5.39 Financial subsidiaries.

* * * * *

(h) * * *

(5) * * *

(iii) A bank's purchase of or investment in a security issued by a financial subsidiary of the bank must be valued at the greater of:

(A) The total amount of consideration given (including liabilities assumed) by the bank, reduced to reflect amortization of the security to the extent consistent with GAAP, or

(B) The carrying value of the security (adjusted so as not to reflect the bank's *pro rata* portion of any earnings retained or losses incurred by the financial subsidiary after the bank's acquisition of the security).

* * * * *

(v) Any extension of credit to a financial subsidiary of a bank by an affiliate of the bank is treated as an extension of credit by the bank to the financial subsidiary if the extension of credit is treated as capital of the financial subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary; and

* * * * *

■ 24. Amend § 5.46 as follows:

■ a. Remove the phrase ''letter of notification'' wherever it appears and replace it with the word ''notice'';

■ b. Revise paragraph (e)(3)(iii);

■ c. Amend the first sentence of paragraph (i)(2) by removing the number ''30'' and replacing it with the number ''15''; and

■ d. Remove the phrase ''in order to obtain a certification from the OCC'' in the first sentence in paragraph (i)(3).

The revision reads as follows:

§ 5.46 Changes in permanent capital.

* * * * *

(e) * * *

(3) * * *

(iii) The amount transferred from undivided profits; and

* * * * *

■ 25. Amend § 5.50 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (d)(4) through (d)(6) as paragraphs (d)(5) through (d)(7), respectively;

■ c. Adding a new paragraph (d)(4);

■ d. Redesignating paragraphs (f)(2)(ii) through (f)(2)(v) as paragraphs (f)(2)(iii) through (f)(2)(vi), respectively;

■ e. Adding a new paragraph (f)(2)(ii);

■ f. Removing the phrase ''paragraph (f)(2)(ii)'' in newly redesignated paragraph (f)(2)(vi) and adding in its place ''paragraphs (f)(2)(ii) and (iii)'';

■ g. Adding the phrase ''information regarding the future prospects of the institution,'' after ''detailed financial information,'' in paragraph (f)(3)(i)(A);

■ h. Redesignating paragraphs (f)(4) and (f)(5) as paragraphs (f)(5) and (f)(6), respectively;

■ i. Adding a new paragraph (f)(4);

■ j. Removing the phrase ''The financial condition of any acquiring person'' and adding in its place ''Either the financial condition of any acquiring person or the future prospects of the institution'' in newly redesignated paragraph (f)(5)(iii);

■ k. Redesignating paragraph (h) as paragraph (i); and

■ l. Adding a new paragraph (h).

The additions and revisions read as follows:

§ 5.50 Change in bank control; reporting of stock loans.

(a) *Authority.* 12 U.S.C. 93a, 1817(j), and 12 U.S.C. 1831aa.

* * * * *

(d) * * *

(4) *Immediate family* includes a person's spouse, father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, children, stepchildren, grandparent, grandchildren, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and the spouse of any of the forgoing.

* * * * *

(f) * * *

(2) * * *

(ii) The OCC presumes, unless rebutted, that a person is acting in concert with his or her immediate family.

* * * * *

(4) *Conditional actions.* The OCC may impose conditions on its action not to disapprove a notice to assure satisfaction of the relevant statutory criteria for non-objection to a notice.

* * * * *

(h) *Reporting requirement.* After the consummation of the change in control, the national bank shall notify the OCC in writing of any changes or replacements of its chief executive officer or of any director occurring during the 12-month period beginning on the date of consummation. This notice must be filed within 10 days of such change or replacement and must include a statement of the past and current business and professional affiliations of the new chief executive officers or directors.

* * * * *

■ 26. Revise § 5.64 to read as follows:

§ 5.64 Earnings limitation under 12 U.S.C. 60.

(a) *Definitions.* As used in this section, the term ''current year'' means the calendar year in which a national bank declared, or proposes to declare, a dividend. The term ''current year minus one'' means the year immediately preceding the current year. The term ''current year minus two'' means the year that is two years prior to the current year. The term ''current year minus three'' means the year that is three years prior to the current year. The term ''current year minus four'' means the year that is four years prior to the current year.

(b) *Dividends from undivided profits.* Subject to 12 U.S.C. 56 and this subpart, the directors of a national bank may declare and pay dividends of so much of the undivided profits as they judge to be expedient.

(c) *Earnings limitations under 12 U.S.C. 60*—(1) *General rule.* For purposes of 12 U.S.C. 60, unless approved by the OCC in accordance with paragraph (c)(3) of this section, a national bank may not declare a dividend if the total amount of all dividends (common and preferred), including the proposed dividend, declared by the national bank in any current year exceeds the total of the national bank's net income for the current year to date, combined with its retained net income of current year minus one and current year minus two, less the sum of any transfers required by the OCC and any transfers required to be made to a fund for the retirement of any preferred stock.

(2) *Excess dividends in prior periods.* (i) If in current year minus one or current year minus two the bank declared dividends in excess of that year's net income, the excess shall not reduce retained net income for the three-year period specified in paragraph (c)(1) of this section, provided that the amount of excess dividends can be offset by retained net income in current year minus three or current year minus four. If the bank declared dividends in excess of net income in current year minus one, the excess is offset by retained net income in current year minus three and then by retained net income in current year minus two. If the bank declared dividends in excess of net income in current year minus two, the excess is first offset by retained net income in current year minus four and then by retained net income in current year minus three.

(ii) If the bank's retained net income in current year minus three and current year minus four was insufficient to offset the full amount of the excess dividends declared, as calculated in accordance with paragraph (c)(2)(i) of this section, then the amount that is not offset will reduce the retained net income available to pay dividends in the current year.

(iii) The calculation in paragraph (c)(2) of this section shall apply only to retained net loss that results from dividends declared in excess of a single year's net income and does not apply to other types of current earnings deficits.

(3) *Prior approval required.* A national bank may declare a dividend in excess of the amount described in paragraph (c) of this section, provided that the dividend is approved by the OCC. A national bank shall submit a request for prior approval of a dividend under 12 U.S.C. 60 to the appropriate district office.

(d) *Surplus surplus.* Any amount in capital surplus in excess of capital stock (referred to as ''surplus surplus'') may be transferred to undivided profits and available as dividends, provided:

(1) The bank can demonstrate that the amount came from earnings in prior periods, excluding the effect of any stock dividend; and

(2) The board of directors of the bank approves the transfer of the amount from capital surplus to undivided profits.

PART 7—BANK ACTIVITIES AND OPERATIONS

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

Authority: 12 U.S.C. 1 *et seq.*, 71, 71a, 92, 92a, 93, 93a, 481, 484, and 1818.

§ 7.1016 [Amended]

■ 28. Amend footnote 1 to part 7 by:

■ a. Removing ''Publication No. 500'' and inserting in its place ''Publication No. 600 or any applicable prior version''; and

■ b. Adding ''Supplements to UCP 500 & 600 for Electronic Presentation (eUCP v. 1.0 & 1.1) (Supplements to the Uniform Customs and Practices for Documentary Credits for Electronic Presentation) (available from ICC Publishing, Inc., 212/206–1150; *http://www.iccwbo.org)''* before ''the International Standby Practices (ISP98) (ICC Publication No. 590)''.

■ 29. Amend § 7.1017 by:

■ a. Redesignating the introductory text, paragraph (a), paragraph (b) introductory text, paragraphs (b)(1) through (b)(3), and paragraphs (b)(2)(i) through (b)(2)(iv) as paragraph (a) introductory text, paragraph (a)(1), paragraph (a)(2) introductory text, paragraphs (a)(2)(i) through (a)(2)(iii), and paragraphs (a)(2)(ii)(A) through (a)(2)(ii)(D), respectively; and

■ b. Adding a new paragraph (b) to read as follows:

§ 7.1017 National bank as guarantor or surety on indemnity bond.

* * * * *

(b) In addition to paragraph (a) of this section, a national bank may guarantee obligations of a customer, subsidiary or affiliate that are financial in character, provided the amount of the bank's financial obligation is reasonably ascertainable and otherwise consistent with applicable law.

■ 30. In § 7.2006, revise the second sentence to read as follows:

§ 7.2006 Cumulative voting in election of directors.

* * * If permitted by the national bank's articles of association, the

shareholder may cast all these votes for one candidate or distribute the votes among as many candidates as the shareholder chooses. * * *

■ 31. In § 7.5001, add a new paragraph (d)(3) to read as follows:

§ 7.5001 Electronic activities that are part of, or incidental to, the business of banking.

* * * * *

(d) * * *

(3) In addition to the electronic activities specifically permitted in § 7.5004 (sale of excess electronic capacity and by-products) and § 7.5006 (incidental non-financial data processing), the OCC has determined that the following electronic activities are incidental to the business of banking, pursuant to this section. This list of activities is illustrative and not exclusive; the OCC may determine that other activities are permissible pursuant to this authority.

(i) Web site development where incidental to other banking services;

(ii) Internet access and e-mail provided on a non-profit basis as a promotional activity;

(iii) Advisory and consulting services on electronic activities where the services are incidental to customer use of electronic banking services; and

(iv) Sale of equipment that is convenient or useful to customer's use of related electronic banking services, such as specialized terminals for scanning checks that will be deposited electronically by wholesale customers of banks under the Check Clearing for the 21st Century Act, Public Law 108–100 (12 U.S.C. 5001–5018) (the Check 21 Act).

■ 32. Amend § 7.5002 by:

■ a. Removing the word ''and'' at the end of paragraph (a)(3),

■ b. Removing the period at the end of paragraph (a)(4) and adding in its place the ''; and''; and

■ c. Adding a new paragraph (a)(5) to read as follows:

§ 7.5002 Furnishing of products and services by electronic means and facilities.

(a) * * *

(5) Issuing electronic letters of credit within the scope of 12 CFR 7.1016.

* * * * *

■ 33. In § 7.5006, add a new paragraph (c) as follows:

§ 7.5006 Data processing.

* * * * *

■ (c) *Software for performance of authorized banking functions.* A national bank may produce, market, or sell software that performs services or functions that the bank could perform directly, as part of the business of banking.

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

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

Authority: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

■ 35. Revise § 9.20 to read as follows:

§ 9.20 Transfer agents.

(a)(1) *Registration.* An application for registration under Section 17A(c) of the Securities Exchange Act of 1934 of a transfer agent for which the OCC is the appropriate regulatory agency, as defined in section 3(a)(34)(B) of the Securities Exchange Act of 1934, shall be filed with the OCC on FFIEC Form TA–1, in accordance with the instructions contained therein. Registration shall become effective 30 days after the date an application on Form TA–1 is filed unless the OCC accelerates, denies, or postpones such registration in accordance with section 17A(c) of the Securities Exchange Act of 1934.

(2) *Amendments to registration.* Within 60 days following the date on which any information reported on Form TA–1 becomes inaccurate, misleading, or incomplete, the registrant shall file an amendment on FFIEC Form TA–1 correcting the inaccurate, misleading, or incomplete information. The filing of an amendment to an application for registration as a transfer agent under this section, which registration has not become effective, shall postpone the effective date of the registration for 30 days following the date on which the amendment is filed unless the OCC accelerates, denies, or postpones the registration in accordance with Section 17A(c) of the Securities Exchange Act of 1934.

(3) *Withdrawal from registration.* Any registered national bank transfer agent that ceases to engage in activities that require registration under Section 17A(c) of the Securities Exchange Act of 1934 may file a written notice of withdrawal from registration with the OCC. Deregistration shall be effective 60 days after filing.

(4) *Reports.* Every registration or amendment filed under this section shall constitute a report or application within the meaning of Sections 17, 17A(c), and 32(a) of the Securities Exchange Act of 1934.

(b) *Operational and reporting requirements.* The rules adopted by the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934 prescribing operational and reporting requirements for transfer agents apply to the domestic activities of registered national bank transfer agents.

PART 10—MUNICIPAL SECURITIES DEALERS

■ 36. The authority citation for part 10 is revised to read as follows:

Authority: 12 U.S.C. 93a, 481, and 1818; 15 U.S.C. 78o–4(c)(5) and 78q–78w.

■ 37. In § 10.1 revise paragraph (a) to read as follows:

§ 10.1 Scope.

* * * * *

(a) Any national bank and separately identifiable department or division of a national bank (collectively, a national bank) that acts as a municipal securities dealer, as that term is defined in section 3(a)(30) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(30)); and

* * * * *

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

■ 38. The authority citation for part 11 continues to read as follows:

Authority: 12 U.S.C. 93a, 15 U.S.C. 78l, 78m, 78n, 78p, 78w, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

■ 39. In § 11.1 revise paragraph (a) to read as follows:

§ 11.1 Authority and OMB control number.

(a) *Authority.* The Office of the Comptroller of the Currency (OCC) is vested with the powers, functions, and duties otherwise vested in the Securities and Exchange Commission (Commission) to administer and enforce the provisions of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Securities Exchange Act of 1934, as amended (1934 Act) (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p), regarding national banks with one or more classes of securities subject to the registration provisions of sections 12(b) and (g) of the 1934 Act (registered national banks). Further, the OCC has general rulemaking authority under 12 U.S.C. 93a, to promulgate rules and regulations concerning the activities of national banks.

* * * * *

PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

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

Authority: 12 U.S.C. 24, 92a, and 93a.

§ 12.7 [Amended]

■ 41. Amend § 12.7(a)(4) by removing ''ten business days after the end of the calendar quarter'' and adding ''the deadline specified in SEC rule 17j–1 (17 CFR 270.17j–1) for quarterly transaction reports'' in its place.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

■ 42. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.* and 93a.

■ 43. In § 16.2 revise paragraph (b) to read as follows:

§ 16.2 Definitions.

* * * * *

(b) *Bank* means an existing national bank, a national bank in organization, or a Federal branch or agency of a foreign bank.

* * * * *

■ 44. Amend § 16.5 as follows:

■ a. Revise paragraph (a);

■ b. Remove ''or'' from the end of paragraph (f);

■ c. Remove the period at the end of paragraph (g) and add ''; or'' in its place; and

■ d. Add a new paragraph (h), to read as follows:

§ 16.5 Exemptions.

* * * * *

(a) If the securities are exempt from registration under section 3 of the Securities Act (15 U.S.C. 77c), but only by reason of an exemption other than section 3(a)(2) (exemption for bank securities), section 3(a)(11) (exemption for intrastate offerings), and section 3(a)(12) of the Securities Act (exemption for bank holding company formation).

* * * * *

(h) In a transaction that satisfies the requirements of § 16.9 of this part.

§ 16.6 [Amended]

■ 45. Amend § 16.6 by:

■ a. In paragraph (a) introductory text, removing the phrase ''§§ 16.3, 16.15(a) and (b), and 16.20'' and adding in its place ''§§ 16.3 and 16.15(a) and (b)'';

■ b. In paragraph (a)(3), adding '', if issued in certificate form,'' after ''each note or debenture''.

§ 16.7 [Amended]

■ 46. Amend § 16.7 as follows:

■ a. Remove paragraph (a)(3);

■ b. In paragraph (a)(1), add the word ''and'' after the semicolon; and

■ c. In paragraph (a)(2), remove ''; and'' and replace it with a period.

■ 47. Add a new § 16.9 to read as follows:

§ 16.9 Securities offered and sold in holding company dissolution.

Offers and sales of bank issued securities in connection with the dissolution of the holding company of the bank are exempt from the registration and prospectus requirements of § 16.3 pursuant to § 16.5(h), provided all of the following requirements are met:

(a) The offer and sale of bank-issued securities occurs solely as part of a dissolution in which the security holders exchange their shares of stock in a holding company that had no significant assets other than securities of the bank, for bank stock;

(b) The security holders receive, after the dissolution, substantially the same proportional share interests in the bank as they held in the holding company;

(c) The rights and interests of the security holders in the bank are substantially the same as those in the holding company prior to the transaction; and

(d) The bank has substantially the same assets and liabilities as the holding company had on a consolidated basis prior to the transaction.

§ 16.20 [Removed]

■ 48. Remove § 16.20.

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 49. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3018(a), 3909 and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note, 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

■ 50. In § 19.3, revise paragraph (g) to read as follows:

§ 19.3 Definitions.

* * * * *

(g) *Institution* includes any national bank or Federal branch or agency of a foreign bank.

* * * * *

§ 19.100 [Amended]

■ 51. In § 19.100, second sentence, remove the phrase ''(except that in removal and prohibition cases instituted pursuant to 12 U.S.C. 1818, the administrative law judge will file the record and the recommended decision with the Board of Governors of the Federal Reserve System)''.

§ 19.110 [Amended]

■ 52. In § 19.110, remove the phrase ''bank affairs'' and add in its place ''the affairs of any depository institution pursuant to 12 U.S.C. 1818(g)''.

■ 53. Revise § 19.111 to read as follows:

§ 19.111 Suspension, removal, or prohibition.

The Comptroller may serve a notice of suspension or order of removal or prohibition pursuant to 12 U.S.C. 1818(g) on an institution-affiliated party. A copy of such notice or order will be served on any depository institution that the subject of the notice or order is affiliated with at the time the notice or order is issued, whereupon the institution-affiliated party involved must immediately cease service to, or participation in the affairs of, that depository institution and, if so determined by the OCC, any other depository institution. The notice or order will indicate the basis for suspension, removal or prohibition and will inform the institution-affiliated party of the right to request in writing, to be received by the OCC within 30 days from the date that the institution-affiliated party was served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of any depository institution has not posed, does not pose, or is not likely to pose a threat to the interests of the depositors of, or has not threatened, does not threaten, or is not likely to threaten to impair public confidence in, any relevant depository institution. The written request must be sent by certified mail to, or served personally with a signed receipt on, the District Deputy Comptroller in the OCC district in which the bank in question is located; if the bank is supervised by Large Bank Supervision, to the Senior Deputy Comptroller for Large Bank Supervision for the Office of the Comptroller of the Currency; if the bank is supervised by Mid-Size/Community Bank Supervision, to the Senior Deputy Comptroller for Mid-Size/Community Bank Supervision for the Office of the Comptroller of the Currency; or if the institution-affiliated party is no longer affiliated with a particular national bank, to the Deputy Comptroller for Special Supervision, Washington, DC 20219. The request must state specifically the relief desired and the grounds on which that relief is based. For purposes of this section, the term *depository institution* means any depository institution of which the petitioner is or was an institution-affiliated party at the time at which the notice or order was issued by the Comptroller.

§ 19.112 [Amended]

■ 54. In § 19.112, amend paragraphs (a), (b), and (c) by removing the phrase ''the District Deputy Comptroller or Administrator, the Deputy Comptroller for Multinational Banking, or the Deputy Comptroller or Director for Special Supervision,'' wherever it appears and adding in its place ''the District Deputy Comptroller, the Senior Deputy Comptroller for Large Bank Supervision, the Senior Deputy Comptroller for Mid-Size/Community Bank Supervision, or the Deputy Comptroller for Special Supervision,''.

§ 19.113 [Amended]

■ 55. In § 19.113, amend paragraph (c) by removing the phrase ''the bank'' and adding in its place ''any depository institution''.

■ 56. Revise § 19.241 to read as follows:

§ 19.241 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services required by section 36 of the FDI Act (12 U.S.C. 1831m) for insured national banks and Federal branches and agencies of foreign banks.

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES, REPORTS OF SUSPICIOUS ACTIVITIES, AND BANK SECRECY ACT COMPLIANCE PROGRAM

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

Authority: 12 U.S.C. 93a, 1818, 1881–1884, and 3401–3422; 31 U.S.C. 5318.

■ 58. In § 21.1, revise the first sentence of paragraph (a) to read as follows:

§ 21.1 Purpose and scope of subpart A of this part.

(a) This subpart is issued by the Comptroller of the Currency pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882) and is applicable to all national banking associations. * * *

* * * * *

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

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

Authority: 12 U.S.C. 93a, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 60. In § 22.2 revise paragraph (b) to read as follows:

§ 22.2 Definitions.

* * * * *

(b) *Bank* means a national bank.

* * * * *

PART 23—LEASING

■ 61. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et. seq.*, 24 (Seventh), 24 (Tenth), and 93a.

§ 23.6 [Amended]

■ 62. Amend § 23.6 by:

■ a. Removing ''A'' at the beginning of the first sentence and adding ''All'' in its place;

■ b. Adding the phrase ''and Regulation W, 12 CFR part 223'' after ''12 U.S.C. 371c and 371c–1'' in the first sentence;

■ c. Adding the phrase ''as implemented by Regulation W, 12 CFR part 223,'' before ''as applicable'' in the third sentence;

■ d. Adding '', as implemented by 12 CFR part 32,'' after ''12 U.S.C. 84'' in the first sentence; and

■ e. Adding ''as implemented by part 32,'' after ''12 U.S.C. 84,'' in the fourth sentence.

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

■ 63. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24 (Eleventh), 93a, 481, and 1818.

■ 64. Amend § 24.1 by:

■ a. Removing in paragraph (a) the colon after the word ''Authority'' and adding a period in its place;

■ b. Revising paragraphs (b) and (d); and

■ c. Adding paragraph (e).

The revisions and addition read as follows:

§ 24.1 Authority, purpose, and OMB control number.

* * * * *

(b) *Purpose.* This part implements 12 U.S.C. 24 (Eleventh). It is the OCC's policy to encourage a national bank to make investments described in § 24.3, consistent with safety and soundness. This part provides the standards and procedures that apply to these investments.

* * * * *

(d) A national bank that makes loans or investments that are authorized under both 12 U.S.C. 24 (Eleventh) and other provisions of the Federal banking laws may do so under such other provisions without regard to the provisions of 12 U.S.C. 24 (Eleventh) or this part.

(e) Investments made, or written commitments to make investments made, prior to October 13, 2006, pursuant to 12 U.S.C. 24 (Eleventh) and this part, continue to be subject to the statutes and regulations in effect prior to the enactment of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109–351).

■ 65. Amend § 24.2 by:

■ a. Revising the first sentence of paragraph (c);

■ b. Amending paragraph (f) by removing ''12 CFR 25.12(n)'' and adding ''12 CFR 25.12(m)'' in its place;

■ c. Redesignating paragraphs (g) through (i) as paragraphs (h) through (j), respectively; and

■ d. Adding new paragraph (g).

The revision and addition read as follows:

§ 24.2 Definitions.

* * * * *

(c) *Community and economic development entity* (CEDE) means an entity that makes investments or conducts activities that promote the public welfare by benefiting primarily low- and moderate-income areas or individuals. * * *

* * * * *

(g) *Benefiting primarily low- and moderate-income areas or individuals*, when used to describe an investment, means:

(1) A majority (more than 50 percent) of the investment benefits low- and moderate-income areas or individuals; or

(2) The express, primary purpose of the investment (evidenced, for example, by government eligibility requirements) is to benefit low- and moderate-income areas or individuals.

* * * * *

■ 66. Revise § 24.3 to read as follows:

§ 24.3 Public welfare investments.

A national bank or national bank subsidiary may make an investment directly or indirectly under this part if the investment promotes the public welfare by benefiting primarily low- and moderate-income areas or individuals.

■ 67. Amend § 24.4 by:

■ a. Revising the first sentence in paragraph (a); and

■ b. Removing, in the second sentence of paragraph (a), ''10'' and adding ''15'' in its place.

The revision reads as follows:

§ 24.4 Investment limits.

(a) * * * A national bank's aggregate outstanding investments under this part may not exceed 5 percent of its capital and surplus, unless the bank is at least adequately capitalized and the OCC determines, by written approval of a written request by the bank to exceed the 5 percent limit, that a higher amount of investments will not pose a significant risk to the deposit insurance fund. * * *

* * * * *

■ 68. Amend § 24.5 by:

■ a. Amending paragraphs (a)(2) and (b)(1) by removing ''Director, Community Development Division,'' and adding ''Community Affairs Department,'' in its place;

■ b. Adding a second sentence at the end of paragraph (a)(2);

■ c. In paragraph (a)(5), removing ''Community Development Division'' where it appears in the first and second sentences and adding ''Community Affairs Department'' in its place; and

■ d. Adding a new sentence after the first sentence in paragraph (b)(1).

The additions read as follows:

§ 24.5 Public welfare investment after-the-fact notice and prior approval procedures.

(a) * * *

(2) * * * The after-the-fact notification may also be e-mailed to *CommunityAffairs@occ.treas.gov*, faxed to (202) 874–4652, or provided electronically via National BankNet at *http://www.occ.treas.gov*.

* * * * *

(b) * * * (1) * * * The investment proposal may also be e-mailed to *CommunityAffairs@occ.treas.gov*, faxed to (202) 874–4652, or submitted electronically via National BankNet at *http://www.occ.treas.gov*. * * *

■ 69. Amend § 24.6 by:

■ a. Revising the introductory text;

■ b. Amending paragraph (b)(1) by removing the phrase ''or other targeted redevelopment areas'';

■ c. Revising paragraphs (b)(2) and (d)(1);

■ d. Amending paragraph (b)(3) by removing the phrase ''or targeted redevelopment area'';

■ e. Amending paragraph (b)(4) by removing the phrase ''or targeted redevelopment areas'';

■ f. Amending paragraph (d)(2) by removing the word ''and'';

■ g. Amending paragraph (d)(3) by removing the word ''previously'', and by removing the period and adding ''; and'' in its place; and

■ h. Adding paragraph (d)(4).

The revisions and addition read as follows:

§ 24.6 Examples of qualifying public welfare investments.

The following are examples of qualifying public welfare investments to the extent they benefit primarily low- and moderate-income areas or individuals as set forth in § 24.3:

* * * * *

(b) * * *

(2) Investments that finance small businesses or small farms, including minority- and women-owned small businesses or small farms that, although not located in low- and moderate-income areas, create a significant number of permanent jobs for low- and moderate-income individuals;

* * * * *

(d) * * *

(1) Investments that provide credit counseling, financial literacy, job training, community development research, and similar technical assistance for non-profit community development organizations, low- and moderate-income individuals or areas, or small businesses, including minority- and women-owned small businesses, located in low- and moderate-income areas or that produce or retain permanent jobs, the majority of which are held by low- and moderate-income individuals;

* * * * *

(4) Investments in minority- and women-owned depository institutions that serve primarily low- and moderate-income individuals or low- and moderate-income areas.

■ 70. Revise Appendix 1 to Part 24 to read as follows:

Appendix 1 to Part 24—CD–1—National Bank Community Development (Part 24) Investments

BILLING CODE 4810–33–P

Comptroller of the Currency
Administrator of National Banks

CD-1 – National Bank Community Development (Part 24) Investments

For Official Use Only

OMB Number
1557-0194

A national bank or national bank subsidiary may make an investment directly or indirectly under this part if the investment promotes the public welfare by benefiting primarily low- and moderate-income areas or individuals under the community development investment authority in 12 USC 24(Eleventh) and its implementing regulation, 12 CFR 24 (Part 24). Part 24 contains the OCC guidelines to determine whether an investment is designed to promote the public welfare by benefiting primarily low- and moderate-income areas or individuals and procedures that apply to those investments. National banks must submit the completed form to provide an after-the-fact notice or to request prior approval of a public welfare investment to the Community Affairs Department, Office of the Comptroller of the Currency, Washington, DC 20219. Please contact the Community Affairs Department at (202) 874-4930 or CommunityAffairs@occ.treas.gov for more information.

PLEASE PROVIDE THE FOLLOWING INFORMATION ABOUT THE INVESTING BANK.

Bank name:	Mailing address *(street or P.O. box)*:
Bank charter number:	City, State, ZIP Code:
Telephone number:	Fax number:
E-mail address:	URL:

CONTACT FOR INFORMATION:

Name of bank contact responsible for form's information:	Name of bank contact responsible for CD investment (if different):
Mailing address *(street or P.O. box)*:	Mailing address *(street or P.O. box)*:
City, State, ZIP Code:	City, State, ZIP Code:
Telephone number:	Telephone number:
Fax number:	Fax number:
E-mail address:	E-mail address:

PLEASE INDICATE THE PROCESS THE BANK REQUESTS BY CHECKING THE APPROPRIATE BOX, BELOW.

After-the-fact notice (12 CFR 24.5(a)) - complete sections 1 and 2. ☐

Prior approval (12 CFR 24.5(b)) - complete section 2. ☐

Section 1 – After-The-Fact Notice Only (12 CFR 24.5(a))

A bank may provide an after-the-fact notice of its Part 24 investment if the bank responds affirmatively to all of the following requirements.

The bank is "well-capitalized," as defined in 12 CFR 24.2(j). Yes ☐ No ☐

The bank has a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System. Yes ☐ No ☐

The bank's most recent Community Reinvestment Act rating is satisfactory or outstanding. Yes ☐ No ☐

The bank is not under a cease and desist order, consent order, formal written agreement, or Prompt Corrective Action directive.

Yes ☐ No ☐

Including this investment, the bank's aggregate outstanding investments and commitments under Part 24 do not exceed 5 percent of its capital and surplus, unless the OCC has provided written approval of a written request by the bank allowing the bank to provide after-the-fact notices for investments that would raise the aggregate amount of the bank's Part 24 investments beyond 5 percent of its capital and surplus.

Yes ☐ No ☐

The investment does not involve properties carried on the bank's books as "other real estate owned." Yes ☐ No ☐

The OCC has not determined, in published guidance, that the investment is inappropriate for the after-the-fact notification.

Yes ☐ No ☐

Has the bank responded affirmatively to all of the above requirements in order to provide an after-the-fact notice of its Part 24 investment? [The OCC may have provided written notification that the bank may submit Part 24 after-the-fact notices. If so, please provide the date or a copy of the OCC's written notification.]

Yes ☐ (The bank may make an investment authorized by 12 USC 24(Eleventh) and this part and notify the OCC within 10 working days by submitting a completed after-the-fact notice.)

No ☐ (The bank must seek prior OCC approval of its investment and submit a completed investment proposal before making the investment.)

(To complete the after-the-fact notice process or to request prior OCC approval, please proceed to section 2 of this form.)

Section 2 — All Requests

1. **Please indicate how the bank's investment is consistent with Part 24 requirements for public welfare investments, under 12 CFR 24.3.**

   a. Check at least one of the following that applies to the bank's investment:

   The investment benefits primarily low- and moderate-income individuals. ☐

   The investment benefits primarily low- and moderate-income areas. ☐

2. **Please indicate how the bank's investment is consistent with Part 24 requirements for investment limits under 12 CFR 24.4 by responding to the following questions.**

   a. Dollar amount of the bank's investment that is the subject of this submission: _____.

   b. Percentage of the bank's capital and surplus represented by the bank's investment that is the subject of this submission: _____%.

   c. Percentage of the bank's capital and surplus represented by the aggregate outstanding Part 24 investments and commitments, including this investment: _____%.

   d. Does this investment expose the bank to unlimited liability?

   Yes ☐ (This investment cannot be made under Part 24.)

   No ☐

3. **Please attach a brief description of the bank's investment. (*See* 12 CFR 24.5(a)(3)(i) and (b)(2)(i)). Include the following information in the description.**

   a. The name of the community and economic development entity (CEDE) into which the bank's investment has been (or will be) made.

   b. The type of bank investment (equity, debt, or other).

   c. The activity or activities of the CEDE in which the bank has invested (or will invest). (*See* examples of qualifying investment activities described in 12 CFR 24.6 (a), (b), (c), and (d).)

   d. How the investment is structured so that it does not expose the bank to unlimited liability, such as by describing the structure of the CEDE (*e.g.*, CDC subsidiary, multi-bank CDC, multi-investor CDC, limited partnership, limited liability company, community development bank, community development financial institution, community development entity, community development venture capital fund, community development lending consortia, community development closed-end mutual funds, non-diversified closed-end investment companies, or any other CEDE) and by providing any other relevant information.

   e. The geographic area served by the CEDE.

   f. The total funding or other support by community development partners involved in the project (*e.g.*, government or public agencies, nonprofits, other investors), if known.

   g. Supplemental information (*e.g.*, prospectus, annual report, Web address that contains information about the CEDE in which the investment is or will be made), if available.

4. Evidence of qualification is readily available for examination purposes.

The bank maintains information concerning this investment in a form readily accessible and available for examination that supports the certifications contained in this form and demonstrates that the investment meets the standards set out in 12 CFR 24.3, including, where applicable, the criteria of 12 CFR 25.23.

Yes ☐ No ☐

5. Certification

The undersigned hereby certifies that the foregoing information in this form is accurate and complete. It is further certified that the undersigned is authorized to file this form on Part 24 investments for the bank.

Name: _____

Title: _____

Signature: _____

Date: _____

DESCRIPTION OF THE BANK'S CD INVESTMENT. (See *information previously requested*)

(*Type the description of the bank's Part 24 investment here. You may type as much text as necessary. You will have access to all of MS Word's editing features.*)

BILLING CODE 4810–33–C

PART 26—MANAGEMENT OFFICIAL INTERLOCKS

■ 71. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 93a and 3201–3208.

■ 72. In § 26.1 revise paragraph (c) to read as follows:

§ 26.1 Authority, purpose, and scope.

* * * * *

(c) *Scope.* This part applies to management officials of national banks and their affiliates.

§ 26.2 [Amended]

■ 73. In § 26.2 remove paragraph (i) and redesignate paragraphs (j) through (q) as (i) through (p), respectively.

■ 74. Revise § 26.8 to read as follows:

§ 26.8 Enforcement.

Except as provided in this section, the OCC administers and enforces the Interlocks Act with respect to national banks and their affiliates, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a national bank is subject to the primary regulation of another Federal depository organization supervisory agency, then the OCC does not administer and enforce the Interlocks Act with respect to that affiliate.

PART 27—FAIR HOUSING HOME LOAN DATA SYSTEM

■ 75. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 1 *et. seq.,* 93a, 161, 481, and 1818; 15 U.S.C. 1691 *et seq.;* 42 U.S.C. 3601 *et seq.;* 12 CFR part 202.

■ 76. In § 27.1 revise paragraph (a) to read as follows:

§ 27.1 Scope and OMB control number.

(a) *Scope.* This part applies to the activities of national banks and their subsidiaries, which make home loans for the purpose of purchasing, construction-permanent financing, or refinancing of residential real property.

* * * * *

■ 77. In § 27.2 revise paragraph (c) to read as follows:

§ 27.2 Definitions.

* * * * *

(c) *Bank* means a national bank and any subsidiaries of a national bank.

* * * * *

PART 28—INTERNATIONAL BANKING ACTIVITIES

■ 78. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24 (Seventh), 93a, 161, 602, 1818, 3101 *et seq.,* and 3901 *et seq.*

§ 28.11 [Amended]

■ 79. In § 28.11, remove the phrase ‘‘, pursuant to an agreement between the parent foreign bank and the FRB,’’ in paragraph (s).

■ 80. In § 28.12, remove the phrase ‘‘30th day after the OCC receives the filing,’’ in paragraph (e)(3) and add in its place ‘‘15th day after the close of the applicable public comment period, or the 45th day after the filing is received by the OCC, whichever is later,’’.

■ 81. In § 28.50, revise paragraph (c) to read as follows:

§ 28.50 Authority, purpose, and scope.

* * * * *

(c) *Scope.* This subpart requires national banks to establish reserves against the risks presented in certain international assets and sets forth the accounting for various fees received by the banks when making international loans.

■ 82. In § 28.51, revise paragraph (a) to read as follows:

§ 28.51 Definitions.

* * * * *

(a) *Banking institution* means a national bank.

* * * * *

PART 31—EXTENSIONS OF CREDIT TO INSIDERS AND TRANSACTIONS WITH AFFILIATES

■ 83. The authority citation for part 31 is revised to read as follows:

Authority: 12 U.S.C. 93a, 375a(4), 375b(3), and 1817(k).

§ 31.1 [Amended]

■ 84. Amend § 31.1 by removing ‘‘1817(k), and 1972(2)(G),’’ and adding in its place ‘‘and 1817(k),’’.

■ 85. Revise Appendix A to part 31 as follows:

Appendix A to Part 31—Interpretations: Deposits Between Affiliated Banks

a. *General rule.* A deposit made by a bank in an affiliated bank is treated as a loan or extension of credit to the affiliate bank under 12 U.S.C. 371c, as this statute is implemented by the Federal Reserve Board's Regulation W, 12 CFR part 223. Thus, unless an exemption from Regulation W is available, these deposits must be secured in accordance with 12 CFR 223.14. However, a national bank may not pledge assets to secure private deposits unless otherwise permitted by law (*see, e.g.*, 12 U.S.C. 90 (permitting collateralization of deposits of public funds); 12 U.S.C. 92a (trust funds); and 25 U.S.C. 156 and 162a (Native American funds)). Thus, unless one of the exceptions to 12 CFR part 223 noted in paragraph b. of this interpretation applies, unless another exception applies that enables a bank to meet the collateral requirements of § 223.14, or unless a party other than the bank in which the deposit is made can legally offer and does post the required collateral, a national bank may not:

1. Make a deposit in an affiliated national bank;
2. Make a deposit in an affiliated State-chartered bank unless the affiliated State-chartered bank can legally offer collateral for the deposit in conformance with applicable State law and 12 CFR 223.14; or
3. Receive deposits from an affiliated bank.

b. *Exceptions.* The restrictions of 12 CFR part 223 (other than 12 CFR 223.13, which requires affiliate transactions to be consistent with safe and sound banking practices) do not apply to deposits:

1. Made in an affiliated depository institution or affiliated foreign bank provided that the deposit represents an ongoing, working balance maintained in the ordinary course of correspondent business. *See* 12 CFR 223.42(a); or
2. Made in an affiliated, insured depository institution that meets the requirements of the ‘‘sister bank’’ exemption under 12 CFR 223.41(a) or (b).

Appendix B to Part 31 [Amended]

■ 86. Amend Appendix B to part 31 by removing the third sentence under the heading ‘‘Exclusions to Definition’’.

PART 32—LENDING LIMITS

■ 87. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 et seq., 84, and 93a.

§ 32.1 [Amended]

■ 88. In § 32.1(c)(1), add the phrase ‘‘and (e), as implemented by section 223.2(a) of Regulation W’’ after ‘‘12 U.S.C. 371c(b)(1)’’.

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 89. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 29, 93a, 371, 1701j–3, 1828(o), and 3331 *et seq.*

■ 90. In § 34.21, revise paragraph (b) and add a new paragraph (c) as follows:

§ 34.21 General rule.

* * * * *

(b) *Purchase of loans not in compliance.* Except as provided in paragraph (c) of this section, a national bank may purchase or participate in

ARM loans that were not made in accordance with this part, provided such purchases are consistent with safe and sound banking practices as described in published OCC guidance, including appropriate diligence regarding the quality and characteristics of the loans, and other applicable regulations.

(c) *Purchase of loans from a subsidiary or affiliate.* ARM loans purchased, in whole or in part, from a subsidiary or affiliate must comply with this part and with other applicable regulations, and be consistent with safe and sound banking practices as described in published OCC guidance, including appropriate diligence regarding the quality and characteristics of the loans. For purposes of this paragraph, the terms affiliate and subsidiary have the same meaning as in 12 U.S.C. 371c.

■ 91. Amend § 34.22 by:

■ a. Designating the existing text as paragraph (a), and by adding the following heading;

■ b. In newly designated paragraph (a), adding to the first sentence the words ''or combination of indices'' after the words ''specify an index''; and

■ c. Adding a new paragraph (b).

The addition and revision read as follows:

§ 34.22 Index.

(a) *In general.* * * *

(b) *Exception.* Thirty days after filing a notice with the OCC, a national bank may use an index other than one described in paragraph (a) of this section unless, within that 30-day period, the OCC has notified the bank that the notice presents supervisory concerns or raises significant issues of law or policy. If the OCC provides such notice to the bank, the bank may not use that index unless it applies for and receives the OCC's prior written approval.

PART 37—DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS

■ 92. The authority citation for part 37 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24 (Seventh), 93a, 1818.

§ 37.7 [Amended]

■ 93. Amend the last sentence in § 37.7(a) by removing the phrase ''§ 37.6(b)'' and adding the phrase ''§ 37.6(d)'' in its place.

PART 40—PRIVACY OF CONSUMER FINANCIAL INFORMATION

■ 94. The authority citation for part 40 continues to read as follows:

Authority: 12 U.S.C. 93a; 15 U.S.C. 6801 *et seq.*

■ 95. In § 40.1 revise the last sentence of paragraph (b)(1) to read as follows:

§ 40.1 Purpose and scope.

* * * * *

(b) *Scope.* (1) * * * These are national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities except a broker or dealer that is registered under the Securities Exchange Act of 1934, a registered investment adviser (with respect to the investment advisory activities of the adviser and activities incidental to those investment advisory activities), an investment company registered under the Investment Company Act of 1940, an insurance company that is subject to supervision by a State insurance regulator (with respect to insurance activities of the company and activities incidental to those insurance activities), and an entity that is subject to regulation by the Commodity Futures Trading Commission.

* * * * *

Dated: February 28, 2008.

John C. Dugan,

Comptroller of the Currency.

[FR Doc. E8–8443 Filed 4–23–08; 8:45 am]

BILLING CODE 4810–33–P

Federal Register

Thursday,
April 24, 2008

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 26

Public Access, Use, and Recreation Regulations for the Upper Mississippi River National Wildlife and Fish Refuge; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

RIN 1018–AV43

Public Access, Use, and Recreation Regulations for the Upper Mississippi River National Wildlife and Fish Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are adopting new regulations for the Upper Mississippi River National Wildlife and Fish Refuge (refuge) to govern existing general public use and recreation. These changes will take effect in spring 2008 and will implement the recently completed comprehensive conservation plan (CCP) for the refuge. This regulation codifies many existing refuge regulations currently published in and by brochures, signs, maps, and other forms of public notice.

DATES: This rule is effective May 27, 2008.

FOR FURTHER INFORMATION CONTACT: Don Hultman, (507) 452–4232; Fax (507) 452–0851.

SUPPLEMENTARY INFORMATION: The Upper Mississippi River National Wildlife and Fish Refuge (refuge) encompasses 240,000 acres in a more-or-less continuous stretch of 261 miles of Mississippi River floodplain in Minnesota, Wisconsin, Iowa, and Illinois. Congress established the refuge in 1924 to provide a ''refuge and breeding place'' for migratory birds, fish, other wildlife, and plants. The refuge is perhaps the most important corridor of habitat in the central United States, due to its species diversity and abundance, and it is the most visited refuge in the United States, with 3.7 million annual visitors.

The development of an environmental impact statement (EIS) and CCP for the refuge began with a notice of intent to prepare the EIS, which we published in the **Federal Register** on May 30, 2002 (67 FR 37852). We followed with a notice of availability of our Draft EIS (April 28, 2005; 70 FR 22085), and we accepted public comments on the Draft EIS for 120 days. On October 7, 2005, we published a notice of intent to prepare a Supplement to the Draft EIS (70 FR 58738). We made the Supplement to the Draft EIS available on December 5, 2005 (70 FR 72462), and accepted public comments on that document for 60 days, extended to 90 days (January 17, 2006, 71 FR 2561).

We offered public involvement through 46 public meetings and workshops attended by 4,500 persons in 14 different communities in 4 States during the 4-year planning process. In addition, we held or attended 80 other meetings with the States, other agencies, interest groups, and elected officials to discuss the Draft EIS, and mailed three different planning update newsletters to up to 4,900 persons or organizations on our planning mailing list. We also issued numerous news releases at various planning milestones, and held two press conferences.

On July 11, 2006, we published a notice of availability of our Final EIS (71 FR 39125), and we accepted public comments on the Final EIS for 30 days. On August 24, 2006, the Regional Director of the Midwest Region of the Fish and Wildlife Service signed the Record of Decision that documented the selection of Alternative E, the Preferred Alternative presented in the Final EIS. We published a notice of availability of that Record of Decision on November 2, 2006 (71 FR 64553).

In accordance with the Record of Decision, we prepared a CCP based on Alternative E. The CCP was approved on October 24, 2006. The National Wildlife Refuge System Administration Act of 1966 [16 U.S.C. 668dd–668ee (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act)] requires the Secretary of the Interior (Secretary) to manage each refuge in a manner consistent with a completed CCP. The Final EIS and CCP are available at *http://www.fws.gov/midwest/planning/uppermiss.*

In accordance with the recently completed CCP, on June 28, 2007, we published a proposed rule in the **Federal Register** (72 FR 35380) identifying amendments to the refuge-specific regulations for hunting and sport fishing on the refuge and invited 30 days of public comment. We published the final rule on September 7, 2007 (72 FR 51534).

On October 17, 2007, we published a proposed rule (72 FR 58982) to amend the refuge-specific regulations governing existing general public use and recreation. We accepted public comments on the proposal for 60 days, ending December 17, 2007. This final rule adopts, with certain changes described below, the amendments we proposed on October 17, 2007.

This final rule implements the goals, objectives, and strategies spelled out in the CCP pertaining to wildlife observation, photography, interpretation, environmental recreation, and other forms of recreation, access, and use such as boating and camping.

This rule also codifies current refuge-specific regulations contained in brochures and signs and on maps, fine-tunes the language of same for clarity and ease of enforcement, and generally modernizes the regulations for consistency with the principles of sound fish, wildlife, and recreation management.

Regulations stemming from the CCP include the establishment of 4 new electric motor-only areas totaling 1,630 acres (1 such area of 222 acres already exists) and 8 new seasonal slow, no-wake areas totaling 9,370 acres. In electric motor-only areas, watercraft may only be powered by electric motors or nonmotorized means. In slow, no-wake areas from March 16 through October 31, watercraft must travel at slow, no-wake speed, and we prohibit airboats and hovercraft. These areas remain open to all forms of recreation, including hunting and fishing, and only the means of access changes to lessen wildlife and habitat disturbance and balance the needs of the estimated 3.7 million annual visitors to the refuge. Collectively, these areas account for 8 percent of the water area of the refuge, leaving 92 percent of the water area of the refuge open to watercraft without restriction.

Other regulations stemming from the CCP include a ban of glass food and beverage containers on beach areas and other lands of the refuge; clarifying the definition and requirements for camping and campsite sanitation; clarifying rules for fire and firewood use; and clarifying rules for vehicles, firearms, and domestic animals on the refuge.

The Administration Act authorizes the Secretary to allow uses of refuge areas, including wildlife-dependent and other recreation, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), and consistent with the principles of sound fish and wildlife management and administration. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

The Secretary is required to prepare a CCP for each refuge and shall manage each refuge consistent with the CCP.

Each CCP must identify and describe the refuge purposes; fish, wildlife, and plant populations; cultural resources; areas for administrative or visitor facilities; significant problems affecting resources and actions necessary; and opportunities for compatible wildlife-dependent recreation. We must also develop each CCP through consultation with the other States, agencies, and the public, and coordinate with applicable State conservation plans.

Each CCP is guided by the overarching requirement that we manage refuges to fulfill the purposes for which they were established and to carry out the mission of the Refuge System. In addition, the Improvement Act requires that we administer the Refuge System to provide for the conservation of fish, wildlife, and plants and their habitats, and to ensure their biological integrity, diversity, and environmental health.

We developed the CCP for the refuge in accordance with all requirements and in accordance with the consultation and public involvement provisions of the Improvement Act. This includes new compatibility determinations for interpretation, wildlife observation and photography, environmental education, beach-related uses, boating, camping, and other allowed recreation. We reference and list these compatibility determinations in Appendix E of the Final EIS. We then developed this rule to implement portions of the CCP.

Plain Language Mandate

In this rule, we comply with a Presidential mandate to use plain language in regulations. As examples, we use ''you'' to refer to the reader and ''we'' to refer to the Service, the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and we use active voice whenever possible (e.g., ''We allow camping on all lands and waters of the refuge'' rather than ''Camping is allowed on all lands and waters of the refuge'').

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1977, and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges.

This document codifies in the Code of Federal Regulations public use and recreation regulations that are applicable to the Upper Mississippi River National Wildlife and Fish Refuge. We are doing this to implement the refuge CCP, better inform the general public of the regulations at the refuge, increase understanding and compliance with these regulations, and make enforcement of these regulations more efficient. In addition to finding these regulations in 50 CFR part 26, visitors will find them reiterated in literature distributed by the refuge and posted on signs at major access points. Visitors will also find the boundaries of closed areas or other restricted-use areas referenced in these regulations marked by specific signs.

This rule includes cross-references to a number of existing regulations in 50 CFR parts 26, 27, and 32 to assist visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our general public use and recreation programs.

Response to Public Comment

In the October 17, 2007, **Federal Register** (72 FR 58982), we published a proposed rule for new regulations for the refuge and invited public comments. We reviewed and considered all comments received by December 17, 2007, the end of the 60-day comment period. We received 22 comments on the proposed rule. Since comments were often similar or commenters covered multiple topics, we have grouped many of the comments/responses by major issue area.

Comment 1: A commenter was opposed to prohibiting the collection of shed deer antlers, saying that it was a wholesome outdoor pastime that posed no harm since most of the refuge was already open to walking.

Response 1: We have changed the final rule to allow the collection of shed deer antlers based on this comment and internal discussions weighing the positives and negatives of this activity.

Comment 2: A commenter wanted to clarify that it is not practical for a hovercraft to pass through a slow, no-wake zone at reduced speed since a wake is created with hovercraft at slower speeds.

Response 2: We have noted this comment but did not change the rule as a result. Since hovercraft are prohibited from electric motor areas year-round and in slow, no-wake areas from March 16 through October 31, it is a moot point whether hovercraft do or do not create a wake at slow speed since their use is prohibited. In the linear, slow, no-wake zones, we apply the respective State definition for slow, no-wake operation, which in many States like Wisconsin, allows the speed necessary to maintain proper control and steerage. These definitions would also apply to hovercraft in these zones. Due to the small number of these zones and multiple river access points, we do not believe the zones will cause much inconvenience to hovercraft access and use.

Comment 3: Several commenters expressed general opposition to the CCP for the refuge and thus opposition to the proposed rule.

Response 3: We understand that many citizens remain opposed to changes reflected in the CCP. We made a concerted effort to keep citizens informed and to consider their comments and suggestions in crafting the CCP. We developed the CCP through extensive public involvement including 46 public meetings or workshops attended by 4,500 citizens, and offered longer than normal comment periods on the Draft EIS and subsequent Supplement. However, we have an obligation to manage the refuge in accordance with the Refuge Administration Act and policies and regulations governing the Refuge System. These mandates require that we manage refuges to accomplish their established purposes and that recreation and use opportunities afforded the public are compatible with those purposes. The CCP was approved October 24, 2006, and we are now obligated to implement the plan in accordance with the Refuge Administration Act. The new rules implement portions of the CCP dealing with public access, use, and recreation, and ensure that these activities remain a safe and compatible use on the refuge. We made no change to the rule as a result of these comments.

Comment 4: A commenter expressed support for the proposed rule and a commenter expressed support for the refined definitions regarding dogs, camping, beaching, boat mooring, campfires, and litter.

Response 4: We have noted these comments but did not change the rule as a result.

Comment 5: Several commenters were against restrictions to airboat or hovercraft use through the designation of slow, no-wake areas and electric motor areas. These commenters noted that the restriction was discriminatory toward certain watercraft users, most airboaters operated below 86 decibel noise level, airboats do little environmental damage, and the restriction would limit volunteer search and rescue efforts.

Response 5: We thoroughly analyzed the effects of airboats and hovercraft and the establishment of electric motor areas and slow, no-wake areas in this rule

against physical, biological, and socio-economic parameters in the EIS prepared as part of the CCP process. Watercraft speed and noise, even below 86 decibels, have been shown to be major wildlife disturbance factors in both off-refuge and on-refuge studies. We are establishing the electric motor areas and slow, no-wake areas to reduce disturbance in the backwater areas of the refuge which provide important nurseries for many fish, amphibian, and bird species. These area-specific regulations will also limit disturbance to persons who desire a slower and quieter hunting, fishing, and wildlife observation experience. As noted in the **SUPPLEMENTARY INFORMATION** section of this rule, there will remain ample area and opportunity for unrestricted airboat use. Collectively, these restricted areas account for 8 percent of the water area of the refuge, leaving 92 percent of the water area open to all watercraft without restriction. The electric motor areas and slow, no-wake areas also remain open to all forms of recreation, including hunting and fishing. During bona fide emergency situations like search and rescue, common sense dictates that we would temporarily suspend restrictions for emergency workers and volunteers. We made no change to the rule as a result of these comments.

Comment 6: A commenter reminded us that the Wisconsin Department of Natural Resources does not have the authority to enact or enforce rules on the Mississippi River that regulate the means of navigation and this authority rests with local municipalities. We were encouraged to work with local municipalities and the public in pursuing designation of the slow, no-wake areas and electric motor areas.

Response 6: As noted in our response to Comment 5, we are establishing electric motor and slow, no-wake *areas* to protect sensitive backwater areas of the refuge and provide an alternative recreation experience. Throughout the EIS and CCP preparation process, we received comments and input from the public and local governments and responded with many changes to the electric motor and slow, no-wake area designations in the CCP. Although we continue to value input, we believe we would be abdicating our responsibility to manage the refuge in accordance with its establishing legislation, the Refuge Administration Act, and Refuge System policies and regulations if we did not carry out the actions approved in the CCP.

We are, however, with respect to slow, no-wake *zones* (which are linear or corridor designations), coordinating with local units of government and seeking their concurrence before establishing them. These zones are designed to improve boating safety due to narrow channels or blind spots, or to reduce bank erosion. Our coordination with the local units of government on these zones is in keeping with the language in the CCP. We made no change to the rule based on this comment.

Comment 7: A commenter suggested that the proposed rule be modified to include an exemption for State and federal agencies entering restricted areas for bona fide fish and wildlife management, monitoring, and enforcement activities.

Response 7: These rules govern public access, use, and recreation and are not intended to apply to States or other agencies continuing to carry out their responsibilities for fish and wildlife management and enforcement. We do not believe that exemptions for States or other agencies are necessary or practicable from a rulemaking standpoint. However, the exemption is clearly articulated in the CCP on page 107, and says ''special designation regulations are general public use regulations and not intended to apply to state, federal, and local agencies engaged in bona fide fish and wildlife management, monitoring, and enforcement.'' We are obligated to manage the refuge consistent with language in the CCP. We made no change to the rule based on this comment.

Comment 8: A commenter suggested that the prohibition of chainsaws on the refuge without a permit be clarified so it does not affect through-the-ice commercial fishing operations. It was suggested that the language be modified to prohibit chainsaws on any refuge ''lands.''

Response 8: We have changed the final rule by removing the wording prohibiting the possession of chainsaws without a permit. We believe regulations dealing with the protection of plants and the cutting of campfire wood are adequate to protect refuge habitat.

Comment 9: Several commenters contend that the refuge does not have the authority to restrict uses on navigable waters within the refuge. They contend the CCP and these proposed rules usurp Wisconsin authority on sovereign waters, violate Wisconsin's Public Trust Doctrine, and are a breach of Wisconsin's original conditioned consent to establishment of the refuge.

Response 9: We received similar comments during preparation of the CCP. Neither the Wisconsin Department of Natural Resources' nor the Wisconsin Attorney General's comments included in the EIS said the Service has intruded or impinged on State authority. In particular, the Attorney General's comments on this issue did not say that the Service crossed a line that would constitute intrusion into State authority.

As the Attorney General acknowledged in citing Wisconsin Supreme Court rulings, public rights on navigable waters are to be protected, but no public right is absolute and must be balanced with other public rights: ''* * * the court stated the kinds of factors that must be considered to determine whether the balance of public rights and interests has been sufficiently struck. They include whether public bodies will control the use of the area; whether the area will be devoted to public purposes and open to the public; whether the diminution of water area available to the public will be small when compared with the whole of the water body; whether no one of the public uses of the waterway will be destroyed or greatly impaired; and whether the disappointment of those members of the public who may desire to exercise particular public rights in the area is negligible when compared with the greater convenience to be afforded those members of the public who use the area.''

The Attorney General's comments indicate that Wisconsin's Public Trust Doctrine embodies exactly the type of program we have been trying to develop, namely, balancing competing uses, acknowledging that no one public right is absolute. We also believe our proposal is in keeping with the Attorney General's urging that ''any such restrictions are reasonable and are not imposed to the exclusion of other key factors that affect the conservation of resources in the Refuge.'' We addressed the State's 1925 consent language in the EIS and CCP and developed our plan and regulations to meet those conditions. We continue to recognize and respect the various State and U.S. Army Corps of Engineers authorities while carrying out our responsibilities to manage a national wildlife refuge in accordance with the Refuge Administration Act. We made no change to the rule based on these comments.

Comment 10: A commenter was concerned that the proposed rule violates the sovereignty of the State of Minnesota in regard to jurisdiction of State waters and the limits placed on navigation.

Response 10: We do not claim authority to control general navigation on the Upper Mississippi River as this

is under the purview of the U.S. Army Corps of Engineers, U.S. Coast Guard, and various State agencies, and we continue to respect State authorities and sovereignty (see related Comment 9 and our response). We believe we do have the authority to control public entry and use on the refuge under the authorities cited in the **Statutory Authority** section of this rule. In summary, the United States owns the bed of the inundated areas of the refuge where we proposed restrictions and thus the Property Clause of the Constitution and laws that established the refuge and govern the administration of the Refuge System apply. These laws grant authority to control all entry and public use. However, we believe we have been diligent in balancing the public need to enjoy the refuge while safeguarding fish and wildlife resources and habitat. The CCP and this rule continue to ensure relatively free and open access. We believe this has been accomplished through controlling the means of navigation within the refuge on specific areas when necessary rather than controlling navigation itself. We made no change to the rule based on this comment.

Comment 11: A commenter stated that the Service cannot lawfully establish regulations limiting navigation in the refuge without formal State of Wisconsin concurrence, and such concurrence has not been given.

Response 11: We view the provisions of Wisconsin's original law granting consent for the establishment of the refuge seriously and have worked diligently to meet its conditions (see Comment 9 and response). Although there is no requirement of formal State consent for refuge management actions, such as this rule, we have approached these issues in an open manner and included the State at every stage of development of the CCP and subsequent rules. The State has had every opportunity to raise its own issues—which it did—and we responded by modifying the CCP in a number of ways including changes to waterfowl hunting closed areas, adding voluntary compliance provisions, changes to delineation of electric motor and slow, no-wake areas, safeguarding State access in restricted areas, and modifications to the number and scope of step-down management plans. We understand that all States work with different constituent groups, legislative oversight, and rulemaking processes when compared to the refuge. Although we respect these differences, as well as the State's authority to adopt or not adopt similar State regulations, we cannot abdicate our responsibilities to manage the refuge in accordance with federal laws and Refuge System policies and regulations. We made no change to the rule based on this comment.

Comment 12: Two commenters cited the 1928 court case *U.S.* v. *2,271.29 Acres* in regard to State and Federal authorities concerning navigation and these regulations.

Response 12: We have reviewed this case and believe that these regulations do not conflict with any of the case's holdings. We believe our responses to Comments 9, 10, and 11 cover questions concerning jurisdiction and authority for these regulations.

Modifications From the Proposed Rule

We are making three changes in this final rule as a result of public comment or further internal discussion. These changes are as follows:

(1) In section (a)(5), we deleted the reference to shed deer antlers and changed the wording in section (a)(4) so that the collection of shed deer antlers for personal use is allowed;

(2) In section (a)(6), we deleted the prohibition of chainsaws on the refuge; and

(3) In section (c)(3), we changed the minimum camping distance from various recreation facilities from 100 feet (30 meters) to 200 feet (60 meters).

Regulatory Planning and Review

In accordance with the criteria in E.O. 12866, we assert that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under E.O. 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. However, a brief assessment follows to clarify the costs and benefits associated with this rule.

The purpose of this rule is to implement public use and recreation regulations on the Upper Mississippi River National Wildlife and Fish Refuge beginning with the spring 2008 recreation season. These regulations are derived from and are consistent with the CCP approved October 24, 2006. We documented the environmental and socioeconomic impacts of the CCP in the Final EIS (available at *http://www.fws.gov/midwest/planning/uppermiss*).

Costs Incurred

Costs incurred by this regulation include sign-posting, leaflet preparation and printing to provide information to the public, law enforcement, and monitoring. However, these are regular and recurring functions on the refuge with or without these regulations, and we can handle these functions within normal budget and staffing levels. Therefore, we expect any costs to be minor in the short term and negligible in the long term.

Benefits Accrued

These regulations will have several effects on wildlife observation, recreational boating, camping, and other beach-related uses such as swimming, picnicking, and sunbathing. These public uses account for the most annual refuge visits (1.67 million) outside of hunting and fishing. All of these uses will continue, although in some areas the means of use will change to balance the needs of a diverse public who enjoys the refuge in various ways, to safeguard visitors, and to safeguard sensitive fish and wildlife habitat.

The following projections and estimations of use levels and economic benefit for wildlife observation, boating, camping, and beach-related uses are based on projected trends over the 15-year span of the CCP. While it is not possible to quantify increases in these activities that result from this rule per se, we expect the rule to contribute to these trends by improving conditions for these activities in certain areas.

We estimate that wildlife observation visits will increase 20 percent over the 15-year life of the CCP due to overall long-term trends in wildlife observation visits, habitat improvements, access improvements, and a marked increase in wildlife observation-related facilities outlined in the CCP. We predict these regulations will have no effect on the positive economic impact as reflected in Table 1 below.

Table 1 shows the expected annual change by the end of the 15-year life of the CCP compared with FY 2003 for the 19-county area on and adjacent to the refuge. We expect annual wildlife observation visitation to increase by 20 percent, resulting in 61,403 more wildlife observation visits. Retail expenditures associated with this increased visitation total $812,658, with total economic output (based on an output multiplier of 1.23 for the 19-county region impacted by the refuge) of $993,723. An additional 14 jobs with associated income of $214,297 would occur, along with an additional $104,531 in Federal and State tax revenue.

TABLE 1.—ANNUAL ECONOMIC IMPACTS OF CCP IMPLEMENTATION COMPARED WITH FY 2003 IMPACTS: WILDLIFE OBSERVATION VISITORS

[2003 dollars]

Impacts	FY 2003	Annual change (from FY 2003 for 15-year span of CCP)
Wildlife Observation Visitors	307,013	+61,403
Expenditures	$4,063,292	+$812,658
Economic Output	$4,968,614	+$993,723
Jobs	68	+14
Job Income	$1,071,484	+$214,297
Federal and State Taxes	$522,657	+$104,531

These regulations will have several effects on current boating opportunities on the refuge. Approximately 140,000 acres of water will remain open to boating, but 1,852 acres of backwater areas will be designated electric motor only and another 9,370 acres will be designated seasonal (March 16 through October 31) slow, no-wake areas where boaters must travel at slow, no-wake speed, and we will prohibit airboats and hovercraft. Collectively, these areas account for 8 percent of the water area of the refuge. These areas remain open to all allowed uses.

These regulations will have little effect on camping and other beach-related use levels, since the areas open will remain virtually unchanged. These regulations could, however, improve the quality of the experience by clarifying and fine-tuning existing regulations on camping, boat mooring, reserving sites, length of stay, campfires, sanitation, and other aspects of the use which can cause conflicts among visitors. Also, a regulation banning the possession of glass food and beverage containers on beaches and other lands will improve visitor safety.

We expect annual visits for boating, camping, and beach-related activities to remain about the same, although we expect visits for silent watercraft recreation (canoes and kayaks) to increase an estimated 15 percent due to the electric motor areas and slow, no-wake areas. We predict a corresponding modest positive change in economic impact as reflected in Table 2.

Table 2 shows the expected annual change by the end of the 15-year CCP lifespan compared with FY 2003 in the 19-county area. We expect the annual number of boating, camping, and beach-related use visitors to increase by 2,044, with associated retail expenditures of $52,010 and total economic output of $63,400. We associate these expenditures and output with 1 job and $213,567 in job-related income. Federal and State tax revenue would increase by $6,838.

TABLE 2.—ANNUAL ECONOMIC IMPACTS OF CCP IMPLEMENTATION COMPARED WITH FY 2003 IMPACTS: RECREATIONAL BOATING, CAMPING, AND OTHER BEACH-RELATED USE VISITORS

[2003 dollars]

Impacts	FY 2003	Annual change (from FY 2003 for 15-year span of CCP)
Boating, Camping, and Other Beach Use Visitors	1,362,851	+2,044
Expenditures	$34,673,216	+$52,010
Economic Output	$42,266,199	+$63,400
Jobs	535	+1
Job Income	$9,044,582	+$213,567
Federal and State Taxes	$4,558,847	+$6,838

b. This rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the Refuge System. The wildlife observation, boating, camping, and other general recreation activities located on the Upper Mississippi River National Wildlife and Fish Refuge account for less than 1 percent of the available supply in the United States. Any small, incremental change in the supply of recreational opportunities will not measurably impact any other agencies' existing programs.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use on national wildlife refuges.

d. This rule will not raise novel legal or policy issues that were not addressed in the Final EIS. This rule continues the practice of allowing recreational public use of the refuge. Many refuges in the Refuge System currently have opportunities for the public to engage in interpretation, wildlife observation, and other wildlife-dependent uses, and also allow regulated boating, camping, and other general recreation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 et seq.), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not

have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule does not decrease the number of recreation types allowed on the refuge but amends current noncodified regulations on the refuge. As a result, opportunities for wildlife observation, boating, camping, and other general recreation on the refuge will remain abundant and increase over time.

Many small businesses within the retail trade industry (such as hotels, gas stations, outdoor sports shops, etc.) may benefit from some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (Table 3).

We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any given community or county. Using the estimate derived in the *Regulatory Planning and Review* section, we expect recreationists to spend an additional $865,000 annually in total in the refuges' local economies. As shown in Table 3, this represents less than 0.001 percent of the total amount of retail expenditures in the 19-county area. For comparison purposes, we show the county with the smallest retail expenditure total, Buffalo County in Wisconsin. If the entire retail trade expenditures associated with the 2008 public use and recreation regulations occurred in Buffalo County, this would amount to a 1.48 percent increase in annual retail expenditures.

TABLE 3.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FROM CCP IMPLEMENTATION

	Retail trade in 2002	Change during CCP implementation (15-year span of CCP)	Change as percent of total retail trade	Total number of retail establishments	Establishments with fewer than 10 employees
19 County Area	$9.8 billion	$864,668	0.0097	24,878	17,957
Buffalo County, WI	58.3 million	864,668	1.48	350	290

Therefore, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Will not have an annual effect on the economy of $100 million or more. By the end of the 15-year CCP lifespan, the additional recreational opportunities on the refuge are expected to generate an additional $865,000 in visitor expenditures with an economic impact estimated at $1.06 million per year (2003 dollars). Consequently, the maximum benefit of this rule for businesses both small and large will not be sufficient to make this a major rule. The impact will be scattered across 19 counties and will most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. We do not expect this rule to affect the supply or demand for wildlife observation, boating, camping, and other general recreation opportunities in the United States and, therefore, it should not affect prices for related recreation equipment and supplies, or the retailers that sell equipment. Additional refuge recreation opportunities could account for a virtually undetectable percent of the available opportunities in the United States.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending of a small number of affected wildlife observers, boaters, campers, and other recreationists, approximately a maximum of $1.06 million annually in impact (economic output). Therefore, this rule will have no measurable economic effect on the wildlife-dependent boating and camping industries, which have annual sales of equipment and travel expenditures of over $120 billion nationwide in 2006.

Unfunded Mandates Reform Act

Since this rule applies to public use of a federally owned and managed refuge, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, this rule will not have significant takings implications. This regulation affects only visitors to the refuge and describes what they can do while they are on the refuge.

Federalism (E.O. 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing the CCP for the refuge, we worked closely with the four States bordering the refuge, and this rule reflects the CCP.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. This rule clarifies and codifies established regulations and results in better understanding of the regulations by refuge visitors.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is a modification of existing public use and recreation programs on the refuge, it is not a significant regulatory action under E.O. 12866, and we do not expect it to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose changes to the regulations. During scoping and preparation of the Final EIS, we contacted 35 Indian tribes to inform them of the process and seek their comments.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) (OMB Control Number is 1018–0102). See 50 CFR 25.23 for information concerning that approval. 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.

Endangered Species Act Section 7 Consultation

During preparation of the Final EIS, we completed a section 7 consultation and determined that the preferred alternative, which included public use and recreation changes reflected in this rule, is not likely to adversely affect individuals of listed or candidate species or designated critical habitat of such species. The Service's Ecological Services Office concurred with this determination. Listed species on the refuge are the Higgins eye pearly mussel and candidate species are the Eastern massasauga and spectaclecase and sheepnose mussels. You may obtain a copy of the section 7 evaluation and accompanying biological assessment by writing: Refuge Manager, Upper Mississippi River National Fish and Wildlife Refuge, 51 East Fourth Street, Room 101, Winona, MN 55987.

National Environmental Policy Act (NEPA)

Concerning the actions that are the subject of this rulemaking, we have complied with NEPA through the preparation of a Final EIS and Record of Decision which include the major public use and recreation changes reflected in this rule. The NEPA documents are available on our Web site at *http://www.fws.gov/midwest/planning/uppermiss.*

Available Information for Specific Districts of the Refuge

The refuge is divided into four districts for management, administrative, and public service effectiveness and efficiency. These districts correspond to two or more Mississippi River navigation pools created by the series of locks and dams on the river. District offices are located in Winona, Minnesota (Pools 4–6); La Crosse, Wisconsin (Pools 7–8); McGregor, Iowa (Pools 9–11); and Savanna, Illinois (Pools 12–14). If you are interested in specific information pertaining to a particular electric motor area; slow, no-wake area; or other feature discussed in this rule, you may contact the appropriate district office listed below:

Winona District, U.S. Fish and Wildlife Service, 51 East Fourth Street, Room 203, Winona, MN 55987; Telephone (507) 454–7351.

La Crosse District, U.S. Fish and Wildlife Service, 555 Lester Avenue, Onalaska, WI 54650; Telephone (608) 783–8405.

McGregor District, U.S. Fish and Wildlife Service, P.O. Box 460, McGregor, IA 52157; Telephone (563) 873–3423.

Savanna District, U.S. Fish and Wildlife Service, 7071 Riverview Road, Thomson, IL 61285; Telephone (815) 273–2732.

Primary Author

Don Hultman, Refuge Manager, Upper Mississippi River National Wildlife and Fish Refuge, is the primary author of this rulemaking document.

List of Subjects in 50 CFR Part 26

Recreation and recreation areas, Wildlife refuges.

■ For the reasons set forth in the preamble, we amend title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

PART 26—[AMENDED]

■ 1. Revise the authority citation for part 26 to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i; Pub. L. 96–315 (94 Stat. 958) and Pub. L. 98–146 (97 Stat. 955).

■ 2. Revise the heading, add introductory text, and alphabetically add lists for the States of Illinois, Iowa, Minnesota, and Wisconsin to § 26.34 to read as follows:

§ 26.34 What are the special regulations concerning public access, use, and recreation for individual national wildlife refuges?

The following refuge units, listed in alphabetical order by State and unit name, have refuge-specific regulations for public access, use, and recreation.

Illinois

Upper Mississippi River National Wildlife and Fish Refuge

Refer to § 26.34 Minnesota for regulations.

Iowa

Upper Mississippi River National Wildlife and Fish Refuge

Refer to § 26.34 Minnesota for regulations.

Minnesota

Upper Mississippi River National Wildlife and Fish Refuge

(a) Wildlife Observation, Photography, Interpretation, Environmental Education, and other General Recreational Uses. We allow wildlife-dependent uses and other recreational uses such as, but not limited to, sightseeing, hiking, bicycling on roads or trails, picnicking, and swimming, on areas designated by the refuge manager and shown on maps available at refuge offices, subject to the following conditions:

(1) In areas posted and shown on maps as ''No Entry—Sanctuary,'' we prohibit entry as specified on signs or maps (see § 32.42 of this chapter for list of areas and locations).

(2) In areas posted and shown on maps as ''Area Closed,'' ''Area Closed—No Motors,'' and ''No Hunting Zone'' (Goose Island), we ask that you practice voluntary avoidance of these areas by any means or for any purpose from October 15 to the end of the respective State duck hunting season. In areas marked ''no motors,'' we prohibit the use of motors on watercraft from October 15 to the end of the respective State duck hunting season (see § 32.42

of this chapter for list of areas and locations).

(3) Commercial tours and filming require a permit issued by the refuge or district manager (see § 27.51 of this chapter).

(4) We allow the collecting of edible fruits, nuts, mushrooms, or other plant parts for personal use (no sale or barter allowed). We limit the amount you may collect to 2 gallons by volume per person, per day (see § 27.51 of this chapter). We also allow the collecting of shed deer antlers for personal use.

(5) We prohibit the harvest of wild rice; plant and animal specimens; and other natural objects, such as rocks, stones, or minerals. We only allow the collection of plants or their parts for ornamental use by permit issued by the refuge or district manager (see § 27.51 of this chapter).

(6) We prohibit the cutting, removal, or damage of any tree or vegetation on the refuge without a permit from the refuge or district manager. We prohibit attaching nails, screws, or other hardware to any tree (see § 27.51 and § 32.42 of this chapter).

(7) We prohibit all vehicle use on or across refuge lands at any time except on designated routes of travel or on the ice over navigable waters accessed from boat landings. We prohibit parking beyond vehicle control barriers or on grass or other vegetation. We prohibit parking or operating vehicles in a manner that obstructs or impedes any road, trail, fire lane, boat ramp, access gate, or other facility, or in a manner that creates a safety hazard or endangers any person, property, or environmental feature. We may impound any vehicle left parked in violation at the owner's expense (see § 27.31(h) of this chapter).

(8) We allow dogs and other domestic animals on the refuge subject to the following conditions:

(i) We prohibit dogs disturbing or endangering wildlife or people while on the refuge.

(ii) While on the refuge, all dogs must be under the control of their owners/handlers at all times or on a leash.

(iii) We prohibit allowing dogs to roam.

(iv) All dogs must be on a leash when on hiking trails, or other areas so posted.

(v) We allow working a dog in refuge waters by tossing a retrieval dummy or other object for out-and-back exercise.

(vi) We encourage the use of dogs for hunting (see § 32.42 of this chapter), but we prohibit field trials and commercial/professional dog training.

(vii) Owners/handlers of dogs are responsible for disposal of dog droppings in refuge public use concentration areas such as trails, sandbars, and boat landings.

(viii) We prohibit horses and all other domestic animals on the refuge unless confined in a vehicle, boat, trailer, kennel or other container (see § 26.21 of this chapter).

(9) We prohibit the carrying, possessing, or discharging of firearms (including dog training pistols and dummy launchers), air guns, or any other weapons on the refuge, unless you are a licensed hunter or trapper engaged in authorized activities during established seasons, in accordance with Federal, State, and local regulations. We prohibit target practice on the refuge (see §§ 27.42 and 27.43 of this chapter).

(10) We prohibit the use or possession of glass food and beverage containers on lands within the refuge.

(11) We require that you keep all refuge lands clean during your period of use or occupancy. At all times you must keep all refuse, trash, and litter contained in bags or other suitable containers and not left scattered on the ground or in the water. You must remove all personal property, refuse, trash, and litter immediately upon vacating a site. We require that human solid waste and associated material be either removed and properly disposed of off-refuge or be buried on site to a depth of 6–8 inches (15–20 cm) and at least 50 feet (15 m) from water's edge (see § 27.94 of this chapter).

(b) Watercraft Use. We allow the use of watercraft of all types and means of propulsion on all navigable waters of the refuge in accordance with State regulations subject to the following conditions:

(1) In areas posted and shown on maps as ''Electric Motor Area,'' we prohibit motorized vehicles and watercraft year-round except watercraft powered by electric motors or nonmotorized means. We do not prohibit the possession of other watercraft motors in these areas, only their use. These areas are named and located as follows:

(i) Island 42, Pool 5, Minnesota, 459 acres.

(ii) Snyder Lake, Pool 5A, Minnesota, 182 acres.

(iii) Mertes Slough, Pool 6, Wisconsin, 222 acres.

(iv) Browns Marsh, Pool 7, Wisconsin, 827 acres.

(v) Hoosier Lake, Pool 10, Wisconsin, 162 acres.

(2) In areas posted and shown on maps as ''Slow No Wake Area,'' we require watercraft to travel at slow, no-wake speed from March 16 through October 31. We apply the applicable State definition of slow, no-wake operation in these areas. We also prohibit the operation of airboats or hovercraft in these areas from March 16 through October 31. These areas are named and located as follows:

(i) Nelson-Trevino, Pool 4, Wisconsin, 2,626 acres (takes effect March 16, 2009).

(ii) Denzers Slough, Pool 5A, Minnesota, 83 acres.

(iii) Black River Bottoms, Pool 7, Wisconsin, 815 acres.

(iv) Blue/Target Lake, Pool 8, Minnesota, 1,834 acres.

(v) Root River, Pool 8, Minnesota, 695 acres.

(vi) Reno Bottoms, Pool 9, Minnesota, 2,536 acres.

(vii) Nine Mile Island, Pool 12, Iowa, 454 acres.

(viii) Princeton, Pool 14, Iowa, 327 acres.

(3) In water access and travel routes posted and shown on maps as ''Slow No Wake Zone,'' we require watercraft to travel at slow, no-wake speed at all times unless otherwise posted. We apply the respective State definition of slow, no-wake operation in these areas.

(4) In portions of Spring Lake and Crooked Slough—Lost Mound, Pool 13, Illinois, posted as ''Slow, 5 mph When Boats Present'' and marked on maps as ''Speed/Distance Regulation,'' we require watercraft operators to reduce the speed of their watercraft to less than 5 mph (8 kph) when within 100 feet (30 m) of another watercraft that is anchored or underway at 5 mph (8 kph) or less.

(5) We prohibit the mooring, beaching, or storing of watercraft on the refuge without being used at least once every 24 hours. We define ''being used'' as a watercraft moved at least 100 feet (30 m) on the water with operator on board. We prohibit the mooring of watercraft within 200 feet (60 m) of refuge boat landings or ramps. We may impound any watercraft moored in violation at the owner's expense (see § 27.32 of this chapter).

(6) Conditions A1, A2, and A11 apply.

(c) Camping. We allow camping on all lands and waters of the refuge as designated by the refuge manager and shown on maps available at refuge offices subject to the following conditions:

(1) We define camping as erecting a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle or mooring or anchoring of a vessel, for the apparent purpose of overnight occupancy, or, occupying or leaving personal property, including boats or other craft, at a site

anytime between the hours of 11 p.m. and 3 a.m.

(2) We prohibit camping at any one site for a period longer than 14 days during any 30-consecutive-day period. After 14 days, you must move all persons, property, equipment, and boats to a new site located at least 0.5 mile (0.8 km) from the previous site.

(3) We prohibit camping within 200 feet (60 meters) of any refuge boat landing, access area, parking lot, structure, road, trail, or other recreation or management facility.

(4) We prohibit camping during waterfowl hunting seasons within areas posted ''No Entry—Sanctuary,'' ''Area Closed,'' ''Area Closed—No Motors,'' and ''No Hunting Zone'' or on any sites not clearly visible from the main commercial navigation channel of the Mississippi River (see § 32.42 of this chapter).

(5) You must occupy campsites daily. We prohibit the leaving of tents, camping equipment, or other property unattended at any site for over 24 hours, and we may impound any equipment left in violation at the owner's expense. We define occupy and attended as being present at a site for a minimum of 2 hours daily.

(6) You must remove any tables, fireplaces, or other facilities erected upon vacating a camping or day-use site.

(7) We allow campfires in conjunction with camping and day-use activities subject to the following conditions (see § 27.95 and § 32.42 of this chapter):

(i) You may only use dead wood on the ground, or materials brought into the refuge such as charcoal or firewood. You must remove any unused firewood brought into the refuge upon departure due to the threat of invasive insects.

(ii) We prohibit building, attending, and maintaining a campfire without sufficient clearance from flammable materials so as to prevent its escape.

(iii) We prohibit building a fire at any developed facility including, but not limited to, boat landings, access areas, parking lots, roads, trails, or any other recreation or management facility or structure.

(iv) We prohibit burying live fires or hot coals when vacating a campfire site.

(v) We prohibit burning or attempting to burn any nonflammable materials or any materials that may produce toxic fumes or leave hazardous waste. These materials include, but are not limited to, metal cans, plastic containers, glass, fiberglass, treated wood products, wood containing nails or staples, wire, flotation materials, or other refuse.

(8) Conditions A4 through A11 apply.

* * * * *

Wisconsin

Upper Mississippi River National Wildlife and Fish Refuge

Refer to § 26.34 Minnesota for regulations.

Dated: March 25, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–8972 Filed 4–23–08; 8:45 am]

BILLING CODE 4310–55–P

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April 24, 2008

Part IV

The President

Presidential Determination No. 2008–10 of April 10, 2008—Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization Office

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2008–18 of April 10, 2008

Waiver and Certification of Statutory Provisions Regarding the Palestine Liberation Organization Office

Memorandum for the Secretary of State

Pursuant to the authority and conditions contained in section 634(d) of the Department of State, Foreign Operations and Related Programs Appropriations Act, 2008 (Div. J, Public Law 110–161), I hereby determine and certify that it is important to the national security interests of the United States to waive the provisions of section 1003 of the Anti-Terrorism Act of 1987, Public Law 100–204.

This waiver shall be effective for a period of 6 months from the date hereof. You are hereby authorized and directed to transmit this determination to the Congress and to publish it in the **Federal Register**.

THE WHITE HOUSE,
Washington, April 10, 2008.

[FR Doc. 08–1188
Filed 4–23–08; 9:20 am]
Billing code 4710–10–P

Federal Register

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Part V

The President

Proclamation 8242—National Day of Prayer, 2008

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Presidential Documents

Title 3—

The President

Proclamation 8242 of April 21, 2008

National Day of Prayer, 2008

By the President of the United States of America

A Proclamation

America trusts in the abiding power of prayer and asks for the wisdom to discern God's will in times of joy and of trial. As we observe this National Day of Prayer, we recognize our dependence on the Almighty, we thank Him for the many blessings He has bestowed upon us, and we put our country's future in His hands.

From our Nation's humble beginnings, prayer has guided our leaders and played a vital role in the life and history of the United States. Americans of many different faiths share the profound conviction that God listens to the voice of His children and pours His grace upon those who seek Him in prayer. By surrendering our lives to our loving Father, we learn to serve His eternal purposes, and we are strengthened, refreshed, and ready for all that may come.

On this National Day of Prayer, we ask God's continued blessings on our country. This year's theme, ''Prayer! America's Strength and Shield,'' is taken from Psalm 28:7, ''The Lord is my strength and my shield; my heart trusts in him, and I am helped.'' On this day, we pray for the safety of our brave men and women in uniform, for their families, and for the comfort and recovery of those who have been wounded.

The Congress, by Public Law 100–307, as amended, has called on our Nation to reaffirm the role of prayer in our society by recognizing each year a ''National Day of Prayer.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 1, 2008, as a National Day of Prayer. I ask the citizens of our Nation to give thanks, each according to his or her own faith, for the freedoms and blessings we have received and for God's continued guidance, comfort, and protection. I invite all Americans to join in observing this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of April, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 08–1189
Filed 4–23–08; 11:07 am]
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Federal Highway Administration

Indian Reservation Road Bridge Program; published 3-25-08

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Agricultural Marketing Service

Milk in the Appalachian, Florida, and Southeast Marketing Areas:

Tentative Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders; comments due by 4-29-08; published 2-29-08 [FR 08-00881]

Partial Recommended Decision:

Milk in the Appalachian, Florida and Southeast Marketing Areas; comments due by 4-29-08; published 2-29-08 [FR E8-03846]

User Fees for 2008 Crop Cotton Classification Services to Growers; comments due by 5-2-08; published 4-17-08 [FR 08-01148]

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Assessments of the Highly Pathogenic Avian Influenza Subtype H5N1 Status of Denmark and France; Availability; comments due by 4-28-08; published 3-27-08 [FR E8-06241]

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Federal Crop Insurance Corporation

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Revisions to New Source Review Rules; comments due by 5-1-08; published 4-1-08 [FR E8-06642]

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Utah; Interstate Transport of Pollution and Other Revisions; comments due by 4-28-08; published 3-28-08 [FR E8-06275]

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Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

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Alabama; comments due by 5-2-08; published 4-2-08 [FR E8-06812]

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Improving Public Safety Communications in the 800 MHz Band; comments due by 4-30-08; published 3-31-08 [FR E8-06494]

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Boeing Model 757 Airplanes, Model 767 Airplanes, and Model 777-200 and 300 Series Airplanes; comments due by 4-28-08; published 3-13-08 [FR E8-05011]

Boeing Model 767 200, 300, and 400ER Series Airplanes; comments due by 5-2-08; published 3-18-08 [FR E8-05373]

Bombardier Model CL 600 2B19 (Regional Jet Series 100 & 440) Airplanes; comments due by 4-28-08; published 3-27-08 [FR E8-06299]

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H.R. 5813/P.L. 110–200

To amend Public Law 110-196 to provide for a temporary extension of programs authorized by the Farm Security and Rural Investment Act of 2002 beyond April 18, 2008. (Apr. 18, 2008; 122 Stat. 695)

S. 550/P.L. 110–201

To preserve existing judgeships on the Superior Court of the District of Columbia. (Apr. 18, 2008; 122 Stat. 696)

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