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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AL74

Prevailing Rate Systems; Abolishment of Santa Clara, CA, as a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: U.S. Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing an interim rule to abolish the Santa Clara, California, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Santa Clara County, CA, to the Monterey, CA, NAF wage area and Alameda, Contra Costa, and San Francisco Counties, CA, to the Solano, CA, NAF wage area. San Mateo County, CA, will no longer be defined. These changes are necessary because the closure of the Moffett Federal Airfield Navy Exchange will leave the Santa Clara wage area without an activity having the capability to conduct a local wage survey.

DATES: *Effective Date:* This regulation is effective on November 4, 2008. We must receive comments on or before December 4, 2008. *Applicability date:* FWS employees remaining in the Santa Clara wage area will be transferred to the Monterey and Solano wage area schedules on the first day of the first applicable pay period beginning on or after November 15, 2008.

ADDRESSES: Send or deliver comments to Charles D. Grimes III, Deputy Associate Director for Performance and Pay Systems, Strategic Human Resources Policy Division, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.gov*; or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov*; or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The Santa Clara, California, nonappropriated fund (NAF) Federal Wage System (FWS) wage area is presently composed of one survey county, Santa Clara County, CA, and four area of application counties, Alameda, Contra Costa, San Francisco, and San Mateo Counties, CA. Under section 532.219 of title 5, Code of Federal Regulations, the U.S. Office of Personnel Management (OPM) may establish an NAF wage area when there are a minimum of 26 NAF wage employees in the survey area, the local activity has the capability to host annual local wage surveys, and the survey area has at least 1,800 private enterprise employees in establishments within survey specifications. The Department of Defense (DOD) notified OPM that the Moffett Federal Airfield Navy Exchange has closed, leaving the Santa Clara NAF wage area without an activity having the capability to conduct a local wage survey. The NAF FWS employment in Santa Clara County is currently 9 employees at the Moffett Navy Lodge and 17 employees at the VA Medical Center in Palo Alto. DOD recommended that OPM abolish the Santa Clara NAF FWS wage area and redefine Santa Clara County to the Monterey, CA, NAF wage area and Alameda, Contra Costa, and San Francisco Counties to the Solano, CA, NAF wage area.

Since Santa Clara, Alameda, Contra Costa, and San Francisco Counties will have continuing NAF employment and do not meet the regulatory criteria under 5 CFR 532.219 to be separate survey areas, they must be areas of application. In defining counties as area of application counties, OPM considers the following criteria:

(i) Proximity of largest facilities activity in each county;

(ii) Transportation facilities and commuting patterns; and

(iii) Similarities of the counties in:

(A) Overall population;

(B) Private employment in major industry categories; and

(C) Kinds and sizes of private industrial establishments.

In selecting a wage area to which Santa Clara County should be redefined, proximity favors the Monterey NAF wage area. All other criteria are inconclusive. Based on these findings, OPM is defining Santa Clara County as an area of application to the Monterey NAF wage area.

In selecting a wage area to which Alameda County should be redefined, proximity favors the San Joaquin wage area over the Solano wage area by approximately 1 mile. All other criteria are inconclusive. Based on the mixed nature of the regulatory analysis findings, we believe the fact that Alameda is geographically linked to Contra Costa, with both counties encompassing the greater Oakland area, provides strong evidence that Alameda and Contra Costa should remain together. Therefore, OPM is defining Alameda County as an area of application to the Solano wage area.

In selecting a wage area to which Contra Costa County should be redefined, proximity favors the Solano wage area. Commuting patterns very slightly favor the Solano wage area. All other criteria are inconclusive. Based on the mixed nature of the regulatory analysis findings, we believe the fact that Contra Costa is geographically linked to Alameda, with both counties encompassing the greater Oakland area, provides strong evidence that Alameda and Contra Costa should remain together. Therefore, OPM is defining Contra Costa County as an area of application to the Solano wage area.

In selecting a wage area to which San Francisco County should be redefined, proximity favors the Solano wage area. All other criteria are inconclusive. Based on these findings, OPM is defining San Francisco County as an area of application to the Solano wage area.

OPM is removing San Mateo County from the wage area definition. There are no longer NAF FWS employees working in San Mateo County. Under 5 U.S.C. 5343(a)(1)(B)(i), NAF wage areas ''shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed.'' Therefore, San Mateo County should not be defined as part of an NAF wage area.

The Monterey NAF wage area would consist of one survey county, Monterey County, and one area of application county, Santa Clara County. The Solano NAF wage area would consist of one

survey county, Solano County, and six area of application counties: Alameda, Contra Costa, Marin, Napa, San Francisco, and Sonoma Counties. FWS employees remaining in the Santa Clara wage area will be transferred to the Monterey and Solano wage area schedules on the first day of the first applicable pay period beginning on or after November 15, 2008. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and recommended these changes by consensus.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists to waive the general notice of proposed rulemaking. Also pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. This notice is being waived and the regulation is being made effective in less than 30 days because the closure of the Moffett Federal Airfield Navy Exchange will leave the Santa Clara wage area without an activity having the capability to conduct a local wage survey and the remaining NAF FWS employees in Santa Clara, Alameda, Contra Costa, and San Francisco Counties must be transferred to a continuing wage area as soon as possible.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, the U.S. Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—Nationwide Schedule of Nonappropriated Fund Regular Wage Surveys

■ 2. Appendix B to subpart B is amended by removing, under the State of California, ''Santa Clara.''

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

■ 3. Appendix D to subpart B is amended for the State of California by removing the wage area listing for Santa Clara, California, and revising the wage area listing for Monterey and Solano, California, to read as follows:

* * * * *

California

* * * * *

Monterey

Survey Area

California:
Monterey.

Area of application. Survey area plus:

California:
Santa Clara.

* * * * *

Solano

Survey Area

California:
Solano.

Area of application. Survey area plus:

California:
Alameda.
Contra Costa.
Marin.
Napa.
San Francisco.
Sonoma.

[FR Doc. E8–26274 Filed 11–3–08; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AL26

Emergency Leave Transfer Program

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations on the Emergency Leave Transfer Program to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disaster or emergency as declared by the President. The final regulations allow donated annual leave in a voluntary leave bank administered by one agency to be transferred to an emergency leave transfer program administered by another agency, revise the rules for returning unused donated annual leave to emergency leave donors (including leave banks), and incorporate the inclusion of Judicial branch employees as eligible participants in the emergency leave transfer program. In addition, the final regulations have been reorganized and renumbered to aid in accessibility and enhance reader understanding.

DATES: *Effective Date:* December 4, 2008.

FOR FURTHER INFORMATION CONTACT: Doris Rippey, by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: On October 15, 2007, the U.S. Office of Personnel Management (OPM) published proposed regulations (72 FR 58263) to amend 5 CFR 630, subpart K, to allow donated annual leave in a voluntary leave bank administered by one agency to be transferred to an emergency leave transfer program administered by another agency, revise the rules for returning unused donated annual leave to emergency leave donors (including leave banks), and incorporate the inclusion of Judicial branch employees as eligible participants in the emergency leave transfer program, as provided by Public Law 109–229, now codified at 5 U.S.C. 6391(f).

The amendments made to OPM's regulations are intended to support OPM's continuing efforts to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disaster or emergency as declared by the President. In addition, the final regulations have been reorganized and renumbered to aid in accessibility and enhance reader understanding.

The 60-day comment period for the proposed regulations ended on December 14, 2007. During the comment period, we received comments from five agencies, three unions, one payroll provider, and two individuals. A summary of the comments received and the changes made in the regulations are presented below.

Transfer of Leave From Leave Bank to Emergency Leave Transfer Program at Another Agency

The proposed regulations added § 630.1104 to permit a leave bank at an agency to donate, with the concurrence of the leave bank board, donated annual leave to an emergency leave transfer program administered by another

agency during a Governmentwide transfer of emergency leave coordinated by OPM.

Most commenters expressed support for this change and believed that being able to transfer leave from a leave bank to an emergency leave transfer program at another agency would be helpful because the donated annual leave would already be available for quick distribution to approved emergency leave recipients. One agency expressed concern that donations from a leave bank to an emergency leave transfer program at another Federal agency might mean leave bank members would not have enough available donated annual leave for their own use, which could have a negative impact on future leave bank membership.

In the current regulations at § 630.1103(c), a leave bank, with the concurrence of its leave bank board, already has authority to donate annual leave to an emergency leave transfer program administered by the leave bank's agency. The change in the proposed regulation would extend that authority to make it possible for a leave bank to donate annual leave to an emergency leave transfer program administered by another agency. Under the current and proposed rules, the use of this authority is discretionary.

During the Governmentwide transfer of donated annual leave coordinated by OPM in the aftermath of Hurricane Katrina, we found that many leave banks had large annual leave balances available for immediate use. At that time, several agencies requested that we broaden our regulations to permit the transfer of donated annual leave from the leave banks to the emergency leave transfer programs of other agencies to expedite the transfer of annual leave to those in need. When leave bank boards are considering the possibility of donating annual leave from their leave bank to an emergency leave transfer program—whether the emergency leave transfer program is at the same or another agency—we believe that the leave bank boards will act in the best interests of their leave bank's members and make prudent decisions that will benefit both the emergency leave transfer recipients and their leave bank members who are faced with a medical emergency. We agree that establishing a broader authority would provide an immediate benefit to employees adversely affected by future major disasters or emergencies, and we are adopting this provision in the final regulations.

Since the proposed regulations would allow a leave bank board to transfer annual leave to an emergency leave transfer program administered by another agency, a union asked if OPM would consider requiring that any such leave bank board include representatives of the unions and that these union representatives be consulted before transferring annual leave from the leave bank to another agency. We believe such a requirement is not necessary because § 630.1003(c) already requires that each leave bank board consist of three members, one of whom must represent a labor organization or employee group.

Procedures for Returning Unused Donated Annual Leave to Emergency Leave Donors

In the proposed regulations at § 630.1118(b), the following new procedure for returning unused donated annual leave was added: ''If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred annual leave will be restored.'' This proposal was written to be consistent with OPM's voluntary leave transfer program regulations at § 630.911, and the intent was to promote standardization and eliminate the requirement to return a minimal amount of leave to the leave donor (i.e., an amount of leave that would be less than the smallest increment of leave that may be processed under the payroll system covering the donor).

Returning Unused Donated Annual Leave to Donors

One agency supported the proposal, but a number of agencies and three unions expressed concerns with loss of unused annual leave. One agency and a union requested withdrawing this proposal. Several agencies requested clarification and questioned where the value of the unused donated annual leave would go if it were not restored. Some commenters asked whether donated annual leave not restored could be held over for the next emergency. Three unions disagreed with the proposal to not return unused annual leave if the total number of eligible donors exceeds the total number of hours of annual leave to be restored. To illustrate this concern, one union provided a hypothetical example of an emergency leave transfer program that had received annual leave donations from 50,000 leave donors. Upon termination of the emergency, 49,000 hours of donated annual leave remained unused, so under the proposed rule it would seem that all 49,000 hours of donated leave would be lost. Finally, one commenter suggested adding language to permit returning leave on a proportional basis, similar to the language in the voluntary leave transfer program in § 630.911(b).

We appreciate the comments and concerns raised by the agencies and unions and understand the need for clarification. The requirement to forfeit unused donated annual leave when the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored was intended to be applied only after the return of unused donated annual leave for each donor had been calculated on a proportional basis. In other words, unused donated annual leave must first be restored proportionally to each leave donor in the appropriate increments (i.e., the nearest increment of time the agency uses to account for annual leave, such as 15 minutes) before any leave is subject to forfeiture. Using the example from the union, the 49,000 hours of unused donated annual leave would be restored proportionally to the 50,000 donors based on the number of hours of annual leave donated by each donor to the emergency leave transfer program. Some donors might receive several hours of returned leave, while some others might receive only a fraction of an hour. However, even after the agency applies the formula on a proportional basis, as a result of rounding, there will still be a small amount of unused annual leave subject to forfeiture, as it would be too small to credit to each leave donor.

As a result of the comments, we are adding a reference to the formula for restoring unused donated annual leave on a proportional basis in the voluntary leave transfer program regulations at § 630.911 to make the leave restoration process more transparent. We are also revising § 630.1117(b) to better explain the process of restoring the unused donated leave. The revised language is as follows—''Each agency must determine the amount of annual leave to be restored to any leave bank and/or to each of the emergency leave donors who, on the date leave restoration is made, is employed in the Federal service. The amount of unused annual leave to be returned to each emergency leave donor and/or leave bank must be proportional to the amount of annual leave donated by the employee or the leave bank to the emergency leave transfer program for such disaster or emergency, and must be returned according to the procedures outlined in § 630.911(b). Any unused annual leave remaining after the distribution will be subject to forfeiture.''

Restoring Unused Donated Annual Leave to an Emergency Leave Bank or Voluntary Leave Bank

A number of agencies and unions recommended restoring unused donated annual leave to either an emergency leave bank or voluntary leave bank. The primary concern was the loss of the unused annual leave after the application of the procedures for restoring unused donated annual leave. One suggestion was to establish a special, permanent emergency leave bank that would retain any unused donated annual leave for future emergencies as declared by the President. While we agree that the establishment of a permanent emergency leave bank could potentially expedite the distribution of annual leave for future major disasters or emergencies, there is no legal authority to establish such a program. Other commenters recommended that unused donated annual leave be transferred to a leave bank at the employing agency. A similar suggestion was previously addressed in the supplemental portion of the final regulations that established the voluntary leave transfer program (see 50 FR 67125) in response to a recommendation that unused donated annual leave that could not be returned to voluntary leave transfer program donors after applying the leave restoration formula be transferred to a leave bank at the employing agency. OPM's response to this suggestion was that ''unused annual leave donated under subchapter III (voluntary leave transfer program) may not be credited to or appropriated by a leave bank * * *. Only unused leave drawn from a leave bank is to be restored to that leave bank.'' We restate our previous response: it is OPM's policy that unused leave drawn from a leave bank can be restored only to that same leave bank, i.e., leave can only be restored to its point of origin. Therefore, any unused donated annual leave remaining after the emergency leave program restoration procedures are applied will be forfeited. We believe that this approach is consistent with that used for the voluntary leave transfer program and is an equitable method for returning the unused leave within the confines of law.

Timing of the Restoration of Annual Leave

One agency felt that the requirement at proposed § 630.1118(c) that unused donated annual leave that a leave donor elects to have restored in the next leave year be returned to the leave donor's account in the first pay period of the following leave year is impractical and suggested that § 630.1118(c) be reworded to allow the annual leave to be returned either in the current or the following leave year.

Both § 630.1108 of the current regulations and § 630.1118(c) of the proposed regulations provide the employee the choice of having unused donated annual leave restored in either the current leave year or the first pay period of the following year. Restoring the unused annual leave in the first pay period provides a greater benefit to the leave donor by providing use of the restored annual leave for the entire subsequent leave year. Therefore, the proposed language is being adopted as final and can be found at § 630.1117(d).

Participation of Judicial Branch Employees in an Emergency Leave Transfer Program

Section 6391(f) of title 5, United States Code, authorizes OPM to provide for the participation of Judicial branch employees in any emergency leave transfer program after consultation with the Administrative Office of the United States Courts. After such consultation, OPM amended part 630, subpart K, in the proposed regulations to clarify that a court or other Judicial branch agency can participate in any emergency leave transfer program established by OPM under 5 U.S.C. 6391. No comments were received regarding the inclusion of the new legislative provisions allowing Judicial branch agencies to participate in any emergency leave transfer program established by OPM under 5 U.S.C. 6391. OPM is using this opportunity to revise the definition of *employee* at § 630.1102 to make it clear that Judicial branch employees are covered by the definition of *employee.*

Miscellaneous Comments

We received several comments and requests for clarification which were general in nature or which related to our reorganization and rewriting of the regulations to enhance reader understanding.

Definition of Emergency Leave Donor

An agency suggested that, under proposed § 630.1102, the definition of *emergency leave donor* be revised to specify that only *accrued* annual leave may be transferred because a donor cannot offer advanced annual leave or annual leave that is not already available to the donor. While we agree that only accrued annual leave may be transferred, we don't believe this change is necessary because the proposed language in § 630.1110 (§ 630.1109 in the final regulations) already states that an employee may request to transfer a certain number of hours of his or her accrued annual leave.

Definition of Paid Leave Status

OPM removed the definition of paid leave status from § 630.1102 in the final regulations. The definition is not applicable and does not contribute to the enhancement of the reader's understanding. We added language in § 630.1108 to clarify that an approved emergency leave recipient is not required to exhaust his or her accrued annual and sick leave before receiving donated leave under the emergency leave transfer program and that the recipient is eligible to be placed in a paid leave status using transferred annual leave.

Allow Leave Recipient To Keep an Extra 40 Hours of Donated Annual Leave

One agency suggested that OPM allow a leave recipient to keep up to 40 hours of unused donated annual leave after the disaster or medical emergency has terminated. The agency believes that, although the initial disaster or medical emergency may be over, the employee would still need the donated annual leave until he or she can build up his or her annual and sick leave balances again. We do not agree. An employee may qualify to be a leave recipient under the emergency leave transfer program until the employee is no longer affected by the disaster or emergency. Since the employee does not have to exhaust his or her available paid leave (annual or sick leave) before becoming a leave recipient under the emergency leave transfer program and the leave recipient accrues both sick and annual leave while receiving donated annual leave, the leave recipient would most likely have an available leave balance for use once the disaster or emergency is terminated.

OPM Delegation of Authority

An agency noted that the language at proposed § 630.1103(a) states that under certain situations, OPM may delegate to an agency the authority to establish an emergency leave transfer program. The agency noted that the language is new and wanted to know how this enhances the emergency leave transfer program. We have made this change as part of OPM's continuing efforts to provide alternative methods for agencies to assist their employees in the event of a pandemic health crisis or other major disaster or emergency as declared by the President. This new language allows OPM to exercise its delegation authority to expedite the distribution of annual leave under the emergency leave transfer program when circumstances

warrant this type of action. For example, an emergency may occur in a remote location and affect only one agency, which may have sufficient annual leave donations to cover all affected employees.

Renumbering the Regulations

An agency recommended changing the order of the items in proposed § 630.1103(b) to show the close of the donation period before the distribution of annual leave to approved recipients. However, we note that an agency may not know how long its employees will be affected by a particular disaster or emergency, and it may begin to transfer annual leave to emergency leave recipients long before it can determine the period of time for which donated annual leave may be accepted for distribution to emergency leave recipients. Based upon our program experience, we believe our language more accurately reflects the actual process. Therefore, we have not adopted this suggestion.

Maintaining Records on the Amount of Annual Leave Donated by Employees

An agency noted that the requirement under current regulations at § 630.1107(b)(2), that agencies must maintain records on the amount of annual leave donated by each emergency leave donor for the purpose of restoring unused transferred annual leave, is missing from the proposed rule. The agency recommended that the language in the current § 630.1107(b)(2) be retained, since under § 630.1118(a) of the proposed rule (§ 630.1117(b) of the final regulations), when unused annual leave is returned to the donors, agencies must still return the amount of annual leave that is proportional to that donated by each employee. Although we believe that each agency will maintain records of its employees' annual leave donations based upon the requirements listed in final § 630.1117(b) to restore leave proportionally to its leave donors and leave banks, we agree to add the language back into the regulations in order to make the process more transparent. Therefore, OPM is revising § 630.1112 to add a new (b)(2) to require an agency to ''maintain records on the amount of annual leave donated by each emergency leave donor to the emergency leave transfer program (for the purpose of restoring unused transferred annual leave under 630.1117(b).'' Current (b)(2) and (b)(3) are renumbered as (b)(3) and (b)(4), respectively.

Time Period for Employee Notification

Two agencies commented on the language in proposed §§ 630.1107 and 630.1108 regarding the time period during which the employing agency must notify an employee of the approval or disapproval of his or her application to be an emergency leave recipient. The first agency commented that both sections specify a 10 calendar-day period for notifying employees, but Saturdays, Sundays, and legal public holidays are excluded. The agency suggested it would be simpler to change the notification period to either 14 calendar days or 10 work days, with no exclusions. We disagree. We believe the language in the proposed regulation provides consistency with § 630.905(d) under the voluntary leave transfer program, and we are therefore not adopting this suggestion. The second agency believed the parenthetical language in these two sections is unclear and pointed out that the parenthetical language at current § 630.1105(b) and (c) ''(or the date the employing agency established its administrative procedures, if that date is later)'' refers to a situation where the agency does not yet have emergency leave transfer procedures in place. The agency suggested that, if the proposed rule intends to continue to take that situation into account, the language in current § 630.1105(b) and (c) should be retained. However, if the proposed rule assumes that all agencies already have established emergency leave transfer procedures in place, the time period should be clarified by revising the language to read, ''* * * within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received, unless the agency establishes an extended time period.'' We disagree. The new language reorganized and renumbered §§ 630.1106 and 630.1107 to enhance the reader's understanding of the program. The language was broadened not only to permit time to establish administrative procedures, but to provide the greatest flexibility possible for unpredictable situations that would require additional time to make the necessary determinations. For example, if an agency has many employees affected by a major disaster or emergency, it may not be possible to make determinations for all affected employees within the 10 calendar-day period. Therefore, the language in our proposed regulations at §§ 630.1106 and 630.1107 is being adopted, but with one technical change. Section 630.1106 now solely addresses the agency review of an application to become an emergency leave recipient, and the language about the notification of the approval or disapproval of an emergency leave recipient's application has been combined into § 630.1107.

OPM's Contacts With Agencies

In the section on transferring donated annual leave between agencies at proposed § 630.1113(b) (§ 630.1112(b) in the final regulations), an agency suggested modifying the language to read, ''Each Federal agency OPM contacts to solicit annual leave donations for transfer to another agency in need must * * *,'' saying that this modification would clarify the reason OPM is contacting the agency. We believe the context makes it clear why OPM is contacting agencies and do not feel it is necessary to revise this section.

240-Hour Limitation on Donated Annual Leave

Two agencies shared comments on the limitation on the amount of donated annual leave received by an emergency leave recipient at proposed § 630.1112 (§ 630.1111 in the final regulations). One agency mentioned that the language in the proposed regulations (which is identical to current § 630.1106(d)), regarding the 240-hour limitation on the amount of donated annual leave an emergency leave recipient may receive, was unclear. The agency said that during Hurricane Katrina, OPM had advised them that this section meant that an emergency leave transfer program recipient could receive more than one disbursement of 240 hours of annual leave for each disaster. Since this had not been clear to them previously, they recommended this be set out more clearly in the final regulations. We agree and have added the following language at the end of § 630.1111: ''After taking into consideration the amount of donated annual leave available to all approved emergency leave recipients and the needs of individual emergency leave recipients, an employing agency may allow an employee to receive additional disbursements of donated annual leave based on the employee's continuing need. Each disbursement of transferred annual leave may not exceed 240 hours.''

The second agency suggested that agencies be given more flexibility to set higher limits than the 240 hours on a case-by-case basis and suggested that this section be rewritten to include the following statement: ''Agencies may consider any request beyond 240 hours on a case-by-case basis. The decision should be based on documented need, the amount of donated leave left in the

bank, and the total number of requests.'' The agency provided the example of an employee injured at home during a disaster who would not be eligible for worker's compensation payments and whose serious injury could require the employee to be away from work for a period substantially longer than 240 hours (6 weeks). The agency argued that the employee might not have enough leave to cover an extended period of absence beyond 6 weeks, and there would be no other forms of assistance available to the employee at that point. The agency would prefer the flexibility of higher donation limits to deal with such situations. We believe the regulations already provide sufficient flexibility, and we have not adopted this suggestion. Although we agree that an employee may well have a need for more leave than 240 hours of donated annual leave, the regulations as currently written allow an employee to receive multiple disbursements of up to 240 hours of donated annual leave each time.

Emergency Leave Recipients Subject to Annual Leave Forfeiture

An agency asked for clarification as to why, under the proposed regulations at § 630.1115 (§ 630.1114 in the final regulations), emergency leave recipients are subject to the annual leave carryover caps in 5 U.S.C. 6304(a), (b), (c), and (f). The agency said it realizes this is not new language, but it would like to understand the rationale behind this requirement. Since emergency leave recipients are not required to exhaust their available paid leave before receiving donated annual leave, it is possible that emergency leave recipients may have annual leave balances at the end of the leave year that would exceed the applicable annual leave carryover caps. Since nothing in 5 U.S.C. 6391 exempts emergency leave recipients from the requirements of 5 U.S.C. 6304(a), (b), (c), and (f), the regulations mention these requirements as a point of clarification.

Decision To Terminate the Disaster or Emergency

An agency pointed out that proposed § 630.1117(a) (§ 630.1116(a) in the final regulations) allows the employing agency to determine when a disaster or emergency has terminated, whereas in the current regulations at § 630.1108(a)(1), the employing agency or OPM may determine when the disaster or emergency has terminated. The agency asked why the decision to terminate the emergency is delegated to the agency. Our answer is that OPM would determine when a disaster or emergency affecting an agency's employees has terminated only after consulting with the affected agency. We believe that the agency is in the best position to determine when the disaster or emergency has ended.

We have also added language to § 630.1116 to clarify that the disaster or emergency affecting the employee terminates at the earliest occurrence of one of the conditions listed in § 630.1116(a)–(e) so that the clause introducing paragraphs (a) through (e) now reads, ''The disaster or emergency affecting the employee as an emergency leave recipient terminates under the following conditions, whichever occurs earliest''.

Comments Outside the Scope of the Regulations

There were a number of comments and recommendations from agencies and individuals that we are not able to address in our final regulation because they are outside the scope of the changes outlined in the proposed regulations. Many of the recommendations would require statutory changes in the program area. For example, one agency recommended that employees be permitted to donate sick leave to an emergency leave transfer program, and two agencies recommended that we require employees to exhaust available paid leave before they can apply to be an emergency leave recipient. In order to take action on the other comments we received, OPM would have to develop and issue a new proposed rule and allow for a public comment period. Finally, we received a number of questions from an individual regarding the administration of the emergency leave transfer program at the agency level. These questions are best answered by the employee's servicing human resources office.

Technical Amendment—Returning Unused Donated Annual Leave to Leave Banks

In addition to the changes made to the proposed regulations based on the comments we received, we are clarifying that unused donated annual leave must be restored to both the emergency leave donors and the agency leave banks that donated to the emergency. Therefore, we are adding language in §§ 630.1104, 630.1109, and 630.1117 to make clear that unused donated annual leave must be returned to the applicable emergency leave donors and voluntary leave banks.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

Office of Personnel Management.

Michael W. Hager,

Acting Director.

■ Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

PART 630—ABSENCE AND LEAVE

■ 1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.205 also issued under Pub. L. 108–411, 118 Stat. 2312; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat. 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

■ 2. Subpart K is revised to read as follows:

Subpart K—Emergency Leave Transfer Program

Sec.
630.1101 Purpose, applicability, and administration.
630.1102 Definitions.
630.1103 Establishment of an emergency leave transfer program.
630.1104 Donations from a leave bank to an emergency leave transfer program.
630.1105 Application to become an emergency leave recipient.
630.1106 Agency review of an application to become an emergency leave recipient.
630.1107 Notification of approval or disapproval of an application to become an emergency leave recipient.
630.1108 Use of available paid leave.
630.1109 Donating annual leave.

630.1110 Limitation on the amount of annual leave donated by an emergency leave donor.
630.1111 Limitation on the amount of donated annual leave received by an emergency leave recipient.
630.1112 Transferring donated annual leave between agencies.
630.1113 Using donated annual leave.
630.1114 Accrual of leave while using donated annual leave.
630.1115 Limitations on the use of donated annual leave.
630.1116 Termination of a disaster or emergency.
630.1117 Procedures for returning unused donated annual leave to emergency leave donors and leave banks.
630.1118 Protection against coercion.

§ 630.1101 Purpose, applicability, and administration.

(a) *Purpose*. This subpart provides regulations to implement section 6391 of title 5, United States Code, and must be read together with section 6391. Section 6391 of title 5, United States Code, provides that in the event of a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees, the President may direct the Office of Personnel Management (OPM) to establish an emergency leave transfer program under which an employee may donate unused annual leave for transfer to employees of his or her agency or to employees in other agencies who are adversely affected by such disaster or emergency.

(b) *Applicability*. This subpart applies to any individual who is defined as an ''employee'' in 5 U.S.C. 6331(1) and who is employed in—

(1) An Executive agency; or

(2) The Judicial branch.

(c) *Administration*. The head of each agency having employees subject to this subpart is responsible for the proper administration of this subpart. Each Federal agency must establish and administer procedures to permit the voluntary transfer of annual leave consistent with this subpart.

§ 630.1102 Definitions.

In this subpart:

Agency means—

(1) An ''Executive agency,'' as defined in 5 U.S.C. 105; or

(2) A Judicial branch entity.

Disaster or emergency means a major disaster or emergency, as declared by the President, that results in severe adverse effects for a substantial number of employees (e.g., loss of life or property, serious injury, or mental illness as a result of a direct threat to life or health).

Emergency leave donor means a current employee whose voluntary written request for transfer of annual leave to an emergency leave transfer program is approved by his or her employing agency.

Emergency leave recipient means a current employee for whom the employing agency has approved an application to receive annual leave under an emergency leave transfer program.

Emergency leave transfer program means a program established by OPM that permits Federal employees to transfer their unused annual leave to other Federal employees adversely affected by a disaster or emergency, as declared by the President.

Employee means—

(1) An employee as defined in 5 U.S.C. 6331(1); or

(2) An employee of a Judicial branch entity.

Family member has the meaning given that term in § 630.902.

Leave year has the meaning given that term in § 630.201.

Transferred annual leave means donated annual leave credited to an approved emergency leave recipient's annual leave account.

§ 630.1103 Establishment of an emergency leave transfer program.

(a) When directed by the President, OPM will establish an emergency leave transfer program that permits an employee to donate his or her accrued annual leave to employees of the same or other agencies who are adversely affected by a disaster or emergency as defined in § 630.1102. In certain situations, OPM may delegate to an agency the authority to establish an emergency leave transfer program.

(b) OPM will notify agencies of the establishment of an emergency leave transfer program for a specific disaster or emergency, as declared by the President. Once notified, each agency affected by the disaster or emergency is authorized to do the following:

(1) Determine whether, and how much, donated annual leave is needed by affected employees;

(2) Approve emergency leave donors and/or emergency leave recipients within the agency, as appropriate;

(3) Facilitate the distribution of donated annual leave from approved emergency leave donors to approved emergency leave recipients within the agency; and

(4) Determine the period of time for which donated annual leave may be accepted for distribution to approved emergency leave recipients.

§ 630.1104 Donations from a leave bank to an emergency leave transfer program.

A leave bank established under subchapter IV of chapter 63 of title 5, United States Code, and subpart J of part 630 may, with the concurrence of the leave bank board established under § 630.1003, donate annual leave to an emergency leave transfer program administered by the employing agency during a Governmentwide transfer of emergency leave coordinated by OPM. Donated annual leave not used by an emergency leave recipient must be returned to the leave bank as provided in § 630.1117.

§ 630.1105 Application to become an emergency leave recipient.

(a) An employee who has been adversely affected by a disaster or emergency may make written application to his or her employing agency to become an emergency leave recipient. If an employee is not capable of making written application, a personal representative may make written application on behalf of the employee.

(b) An employee who has a family member who has been adversely affected by a disaster or emergency also may make written application to his or her employing agency to become an emergency leave recipient. An emergency leave recipient may use donated annual leave to assist an affected family member, provided such family member has no reasonable access to other forms of assistance.

(c) For the purpose of this subpart, an employee is considered to be adversely affected by a major disaster or emergency if the disaster or emergency has caused the employee, or a family member of the employee, severe hardship to such a degree that his or her absence from work is required.

(d) The employee's application must be accompanied by the following information:

(1) The name, position title, and grade or pay level of the potential emergency leave recipient;

(2) A statement describing his or her need for leave from the emergency leave transfer program; and

(3) Any additional information that may be required by the potential leave recipient's employing agency.

(e) An agency may determine a time period by which an employee must apply to become an emergency leave recipient after the occurrence of a disaster or emergency, as defined in § 630.1102.

§ 630.1106 Agency review of an application to become an emergency leave recipient.

An agency must review an application to become an emergency leave recipient under procedures the agency has established for the purpose of determining that a potential leave recipient is or has been affected by a disaster or emergency, as defined in § 630.1102.

§ 630.1107 Notification of approval or disapproval of an application to become an emergency leave recipient.

Once the employee's application to become an emergency leave recipient is either approved or disapproved, the agency must notify the employee (or his or her personal representative who made application on the employee's behalf) within 10 calendar days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date established by the agency, if that date is later). If disapproved, the agency must give the reason for its disapproval.

§ 630.1108 Use of available paid leave.

An approved emergency leave recipient is not required to exhaust his or her accrued annual and sick leave before receiving donated leave under the emergency leave transfer program and the recipient is eligible to be placed in a paid leave status using transferred annual leave.

§ 630.1109 Donating annual leave.

An employee may voluntarily submit a written request to his or her agency that a specified number of hours of his or her accrued annual leave, consistent with the limitations in § 630.1110, be transferred from his or her annual leave account to an emergency leave transfer program established under § 630.1103. An emergency leave donor may not donate annual leave for transfer to a specific emergency leave recipient under this subpart. Donated annual leave not used by an emergency leave recipient must be returned to the emergency leave donor(s) and/or leave banks as provided in § 630.1117.

§ 630.1110 Limitation on the amount of annual leave donated by an emergency leave donor.

(a) An emergency leave donor may not contribute less than 1 hour or more than 104 hours of annual leave in a leave year to an emergency leave transfer program. Each agency may establish written criteria for waiving the 104-hour limitation on donating annual leave in a leave year.

(b) Annual leave donated to an emergency leave transfer program may not be applied against the limitations on the donation of annual leave under the voluntary leave transfer or leave bank programs established under 5 U.S.C. 6332 and 6362, respectively.

§ 630.1111 Limitation on the amount of donated annual leave received by an emergency leave recipient.

An emergency leave recipient may receive a maximum of 240 hours of donated annual leave at any one time from an emergency leave transfer program for each disaster or emergency. After taking into consideration the amount of donated annual leave available to all approved emergency leave recipients and the needs of individual emergency leave recipients, an employing agency may allow an employee to receive additional disbursements of donated annual leave based on the employee's continuing need. Each disbursement of transferred annual leave may not exceed 240 hours.

§ 630.1112 Transferring donated annual leave between agencies.

(a) If an agency does not receive sufficient amounts of donated annual leave to meet the needs of approved emergency leave recipients within the agency, the agency may contact OPM to obtain assistance in receiving donated annual leave from other agencies. The agency must notify OPM of the total amount of donated annual leave needed for transfer to the agency's approved emergency leave recipients. OPM will solicit and coordinate the transfer of donated annual leave from other Federal agencies to affected agencies who may have a shortfall of donated annual leave. OPM will determine the period of time for which donations of accrued annual leave may be accepted for transfer to affected agencies.

(b) Each Federal agency OPM contacts for the purpose of providing donated annual leave to an agency in need must—

(1) Approve emergency leave donors under the conditions specified in §§ 630.1109 and 630.1110 and determine how much donated annual leave is available for transfer to an affected agency;

(2) Maintain records on the amount of annual leave donated by each emergency leave donor to the emergency leave transfer program (for the purpose of restoring unused transferred annual leave under § 630.1117(b)).

(3) Report the total amount of annual leave donated to the emergency leave transfer program to OPM; and

(4) When OPM has accepted the donated annual leave, debit the amount of annual leave donated to the emergency leave transfer program from each emergency leave donor's annual leave account.

(c) OPM will notify each affected agency of the aggregate amount of donated annual leave that will be credited to it for transfer to its approved emergency leave recipient(s). The affected agency will determine the amount of donated annual leave to be transferred to each emergency leave recipient (an amount that may vary according to individual needs).

(d) The affected agency must credit the annual leave account of each approved emergency leave recipient as soon as possible after the date OPM notifies the agency of the amount of donated annual leave that will be credited to the agency under paragraph (c) of this section.

§ 630.1113 Using donated annual leave.

(a) Any donated annual leave an emergency leave recipient receives from an emergency leave transfer program may be used only for purposes related to the disaster or emergency for which the emergency leave recipient was approved. Each agency is responsible for ensuring that annual leave donated under the emergency leave transfer program is used appropriately.

(b) Annual leave transferred under this subpart may be—

(1) Substituted retroactively for any period of leave without pay used because of the adverse effects of the disaster or emergency; or

(2) Used to liquidate an indebtedness incurred by the emergency leave recipient for advanced annual or sick leave used because of the adverse effects of the disaster or emergency. The agency may advance annual or sick leave, as appropriate (even if the employee has available annual and sick leave), so that the emergency leave recipient is not forced to use his or her accrued leave before donated annual leave becomes available.

§ 630.1114 Accrual of leave while using donated annual leave.

While an emergency leave recipient is using donated annual leave from an emergency leave transfer program, annual and sick leave continue to accrue to the credit of the employee at the same rate as if he or she were in a paid leave status under 5 U.S.C. chapter 63, subchapter I, and will be subject to the limitations imposed by 5 U.S.C. 6304(a), (b), (c), and (f) at the end of the leave year in which the transferred annual leave is received.

§ 630.1115 Limitations on the use of donated annual leave.

Donated annual leave transferred to a leave recipient under this subpart may not be—

(a) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552;

(b) Recredited to a former employee who is reemployed by a Federal agency; or

(c) Used to establish initial eligibility for immediate retirement or acquire eligibility to continue health benefits into retirement under 5 U.S.C. 6302(g).

§ 630.1116 Termination of a disaster or emergency.

The disaster or emergency affecting the employee as an emergency leave recipient terminates at the earliest occurrence of the following conditions.

(a) When the employing agency determines that the disaster or emergency has terminated;

(b) When the employee's Federal service terminates;

(c) At the end of the biweekly pay period in which the employee, or his or her personal representative, notifies the emergency leave recipient's agency that he or she is no longer affected by such disaster or emergency;

(d) At the end of the biweekly pay period in which the employee's agency determines, after giving the employee or his or her personal representative written notice and an opportunity to answer orally or in writing, that the employee is no longer affected by such disaster or emergency; or

(e) At the end of the biweekly pay period in which the employee's agency receives notice that OPM has approved an application for disability retirement for the emergency leave recipient under the Civil Service Retirement System or the Federal Employees' Retirement System, as appropriate.

§ 630.1117 Procedures for returning unused donated annual leave to emergency leave donors and leave banks.

(a) When a disaster or emergency is terminated, any unused annual leave donated to the emergency leave transfer program must be returned by the employing agency to the emergency leave donors, and if annual leave was donated by any leave bank(s) it must be returned to the leave bank(s).

(b) Each agency must determine the amount of annual leave to be restored to any leave bank and/or to each of the emergency leave donors who, on the date leave restoration is made, is employed in the Federal service. The amount of unused annual leave to be returned to each emergency leave donor and/or leave bank must be proportional to the amount of annual leave donated by the employee or the leave bank to the emergency leave transfer program for such disaster or emergency, and must be returned according to the procedures outlined in § 630.911(b). Any unused annual leave remaining after the distribution will be subject to forfeiture.

(c) Annual leave donated to an emergency leave transfer program for a specific disaster or emergency may not be transferred to another emergency leave transfer program established for a different disaster or emergency.

(d) At the election of the emergency leave donor, the employee may choose to have the agency restore unused donated annual leave by crediting the restored annual leave to the emergency leave donor's annual leave account in either the current leave year or the first pay period of the following leave year.

§ 630.1118 Protection against coercion.

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any emergency leave donor or emergency leave recipient for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term ''intimidate, threaten, or coerce'' includes promising to confer or conferring any benefit (such as appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

[FR Doc. E8–26220 Filed 11–3–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 1980

RIN 0575–AC73

Income Limit Modification

AGENCY: Rural Housing Service, USDA.

ACTION: Direct final rule.

SUMMARY: The Rural Housing Service (RHS) is amending its exiting income limit structure for the Single Family Housing Guaranteed Loan Program (SFHGLP). The effect of this action is to provide more efficient service to lenders, investors and Agency staff by modifying the existing Rural Development eight (8) tiered income structure into a simplified two (2) tiered structure. This modification will simplify program requirements and the qualification process.

DATES: This rule is effective January 20, 2009, unless we receive written adverse comments or written notices of intent to submit adverse comments on or before January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Joaquín Tremols, Acting Director, Single Family Housing Guaranteed Loan Division, USDA, Rural Development, 1400 Independence Avenue, SW., Room 2250, Stop 0784, Washington, DC 20250, telephone (202) 720–1465, *e-mail: joaquin.tremols@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be non-significant by the Office of Management and Budget (OMB) under Executive Order 12866 and, therefore, has not been reviewed by OMB.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with the regulations of the National Appeals Division of USDA at (7 CFR Part 11), must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier date.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1996 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of this rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for

State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of Rural Development that this action 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, Public Law 91–190, neither an Environmental Assessment nor an Environmental Impact Statement is not required.

Federalism Assessment—Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on States and local governments. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602) the undersigned has determined and certified by signature of this document that this rule will not have a significant impact on a substantial number of lenders or entities. This rule does not impose any significant new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determination of program benefits for guarantees on loans made to individuals.

Intergovernmental Consultation

This program/activity is excluded from the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. (*See* the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under 10.410, Very low- to Moderate-Income Housing Loans (Section 502 Rural Housing Loans).

Paperwork Reduction Act

This rule does not revise or impose any new information collection or recordkeeping requirements.

E-Government Act Compliance

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

Background

On April 10, 2008 [73 FR 19433], RHS published an advanced notice of proposed rule making with request for comments on the existing income limits structure.

Instead of eligible adjusted income based on households ranging from 1–8 persons according to 7 CFR § 1980.345(a) and RD Instruction 1980–D, Exhibit C, a two-tier income structure consisting of a 1–4 member household and a 5–8 member household is adopted. The new adjusted income limit for the 1–4 member household, for example, would be the current adjusted income limit for the 4-member household. The present add-on income limits for larger households will remain unchanged. Eight percent is added to the limit for each person in excess of 8 persons. The present eight-tier income limits (1–8 persons) are cumbersome, and the proposed consolidation is expected to simplify program delivery as well as allow the agency to serve additional qualified homebuyers. The SFHGLP is in partnership with many State Housing Agencies throughout the United States. The majority of these agencies already maintain a two-tier income structure, and this change would allow a seamless integration of the respective programs. This policy would not apply to other Rural Development housing programs. RHS therefore adopts a two-tier income structure, and current policy on determining moderate income according to statutory requirements and raising the income limit for families in excess of 8 persons. RD Instruction 1980–D, Exhibit C, listing the specific dollar limits for areas by state is being revised to adopt the two-tier system also. Moderate income figures continue to be provided by the United States Department of Housing and Urban Development (HUD). Rural Development only modifies the HUD figures for the state of Alaska to comply with Public Law 110–5, Section 754 (February 15, 2007). That law provides in the case of a high-cost isolated rural area in Alaska not connected to a road system, the maximum level for single family housing assistance will be 150 percent of the median household income level in the nonmetropolitan area of the state, and 115 percent of all other eligible areas of the state. RHS considers this rule to be noncontroversial and unlikely to result in adverse comments.

Discussion of Comments

Rural Development received comments from 429 respondents. Comments were from mortgage lenders, mortgage brokers, secondary market sources, realtors, employee groups, builder organizations and agency employees, and various other interest groups.

There were 420 respondents in favor of the income limit modification and that it was:

1. Beneficial to the homebuyer as the change would allow an increased number of families to participate in the program, allowing more families to be able to obtain the American dream of homeownership, and that this program improvement is needed because it is the only true 100% loan program available to non-veterans. (383 comments)

2. Beneficial to the lender in that it would simplify the process and make the lending limits more consistent with the state housing agencies across the country and all were pleased with the two-level income modification. (174 comments)

3. Beneficial to the rural area itself as the change would bring much needed workers and their families to underserved areas, create more homeownership opportunities for working middle class families in rural America, provide a positive change to the much troubled housing and mortgage industry in rural America, help build and stimulate a more robust and solid economy in the rural areas and lastly, open the rural housing market to more individuals. (94 comments)

Nine respondents simply stated that the proposed change would be for the good of the program.

Six respondents thought the proposed change would be beneficial in one or more of the above categories; however, they had additional concerns.

One respondent commented that both the lender and the borrower would benefit from the proposed changes, but was concerned that there should also be an increase in our funding levels.

Response: The SFHGLP depends on appropriated funds each year to continue the program. The Administration each year proposes a budget to the United States Congress.

After considering the Administration's budget, Congress appropriates funding and sends an appropriation bill to the President for review and concurrence. Any increase in funding is beyond the scope of this regulation. No action is taken based upon this comment.

One respondent commented that the borrower would benefit from the program but that the income limits were overly restrictive because they are too low.

Response: Section 502(h)(3) of the Housing Act of 1949, as amended, however, requires that the program be delivered only to low- and moderate-income borrowers whose incomes do not exceed 115 percent of the median income of the area as determined by the Secretary. This limit is met if the borrower's income does not exceed 115 percent of the median family income of the United States under Section 751 of Public Law 106–387 (October 28, 2000). In certain areas of Alaska, the limit is 150 percent of the median household income level in the nonmetropolitan areas of the state pursuant to § 754 of Public Law 110–5 (February 15, 2007). No action, therefore, can be taken to exceed the statutory limits.

Two respondents stated that rural areas would greatly benefit from the proposed changes, but that we should have no income limits at all.

Response: Once again, the Housing Act of 1949, as amended, requires that the program be delivered only to low- and moderate-income borrowers. By statute, the income limits cannot be made higher than low- and moderate-income levels. No action is taken based upon these comments.

One respondent commented that the Agency should consider the possibility of refinancing any type of loan into our program.

Response: Under Section 502(h)(14) of the Housing Act of 1949, as amended, only Section 502 Guaranteed and Direct loans may be refinanced with a Section 502 Guarantee. Refinance limitations are statutory and beyond the scope of this rule. No action is taken based upon this comment.

One respondent commented that the Agency is too strict with debt-to-income ratios and should be more flexible in this regard.

Response: USDA Rural Development already allows lenders to exceed the baseline ratio thresholds with documented compensating factors and Agency concurrence. This comment also is beyond the scope of this rule making. No action is taken based on this comment.

One respondent stated that borrowers would benefit from the program, but was hoping RHS would still allow income adjustments for day care expenses, a $480 deduction for dependents.

Response: This proposed income limit change will not affect eligible deductions currently allowed, and the adjustment referred by the commentator will still be permissible. No action is taken based on this comment.

Of the entire 429 comments received, each one had one or more positive comments. There were no negative responses.

Dated: October 23, 2008.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E8–25849 Filed 11–3–08; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

Direct Multi-Family Housing Loans and Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agency is revising its existing regulation governing Rural Rental Housing loans and grants. This action is necessary to provide editorial corrections to 7 CFR Part 3560, subpart N, ''Housing Preservation.'' The intended effect is to ensure the Agency's field offices have correct guidance on processing prepayment requests.

DATES: *Effective Date:* November 4, 2008.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese-Foxworth, Senior Loan Specialist, Multi-Family Housing Portfolio Management Division, Office of Rental Housing Preservation, U.S. Department of Agriculture, STOP 0782, 1400 Independence Avenue, SW., Washington, DC 20250, telephone: (202) 720–1940.

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only minor grammatical corrections and clarifications. This action is not published for prior notice and comment under the Administrative Procedure Act since it involves only minor grammatical corrections and clarifications and publication for comment is unnecessary and contrary to the public interest.

Programs Affected

The Catalog of Federal Domestic Assistance programs impacted by this action are as follows:

10.405—Farm Labor Housing Loans and Grants.

10.415—Rural Rental Housing Loans.

Intergovernmental Consultation

Programs with Catalog of Federal Domestic Assistance numbers 10.405 and 10.415 are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before litigation against the Department is instituted.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, the rule is not subject to the requirements of section 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.''

The Agencies have determined that this final action does not constitute a major Federal action significantly affecting the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, an Environmental Impact Statement is not required.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0575–0189 in accordance with the Paperwork Reduction Act of 1995. No person is required to respond to a collection of information unless it displays a valid OMB control number. This rule does not impose any new information collection requirements from those approved by OMB.

Discussion of Final Rule

On November 26, 2004, Rural Development published an Interim Final Rule which added 7 CFR part 3560, a consolidation of several Rural Development regulations. Since its publication, many comments have been received regarding errors and omissions. In some cases, requirements are referenced that are no longer requirements. With this final rule, the Agency is correcting errors and providing editorial corrections and clarifications to 7 CFR part 3560, subpart N, ''Housing Preservation.''

List of Subjects in 7 CFR Part 3560

Grant programs—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Nonprofit organizations.

■ For the reasons set forth in the preamble, chapter XVIII, title 7, of the Code of Federal Regulations is amended as follows:

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart N—Housing Preservation

■ 2. Section 3560.653 is amended in paragraph (b)(5) by removing ''(MFH)'' and by revising paragraphs (b)(4) and (b)(6) to read as follows:

§ 3560.653 Prepayment requests.

* * * * *

(b) * * *

(4) A copy of lease language to be used during the period between the submission date and the final resolution of the prepayment request notifying tenant applicants that the owner of the housing project has submitted a prepayment request to the Agency and explaining the potential effect of the request on the lease.

* * * * *

(6) A certification that the borrower has notified all governmental entities involved in providing affordable housing or financial assistance to tenants in the project and that the borrower has provided a statement specifying how long financial assistance from such parties will be provided to tenants after prepayment.

* * * * *

§ 3650.656 [Amended]

■ 3. Section 3560.656 is amended in paragraph (a)(2) by revising the word ''affect'' to read ''effect'' and in the introductory text of paragraph (e) by revising the words ''At the time the incentive is developed,'' to read ''At the time a specific incentive offer is developed,''.

■ 4. Section 3560.658 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2); by redesignating paragraphs (b)(1) through (b)(3) as (b)(2) through (b)(4) respectively; and by revising newly redesignated (a)(2) and by adding a new paragraph (b)(1) to read as follows:

§ 3560.658. Borrower rejection of the incentive offer.

(a) * * *

(2) If housing opportunities for minorities would be lost as a result of prepayment, the borrower will offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

(b) * * *

(1) If restrictive-use provisions are in place, the borrower will agree to sign the restrictive-use provisions, as determined by the Agency, and at the end of the restrictive-use period, offer to sell the housing to a qualified nonprofit organization or public body in accordance with § 3560.659.

* * * * *

§ 3650.659 [Amended]

■ 5. Section 3560.659 is amended in paragraph (e)(6) by revising the words ''bona fide'' to read ''good faith''.

§ 3650.662 [Amended]

■ 6. Section 3560.662 is amended in the following paragraphs by revising the references to section 3560.658 as follows:

■ a. In paragraph (a)(1) by revising ''§ 3560.658(a)(3)'' to read ''§ 3560.658(a)(2)'';

■ b. In paragraph (b)(2) by revising ''§ 3560.658(b)(2)'' to read ''§ 3560.658(b)(3)'';

■ c. In paragraph (b)(4) by revising ''§ 3560.658(a)(2)'' to read ''§ 3560.658(b)(1)''; and

■ d. In paragraph (b)(5) by revising ''§ 3560.658(a)(3)'' to read ''§ 3560.658 (a)(2)''.

Dated: October 23, 2008.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E8–25965 Filed 11–3–08; 8:45 am]

BILLING CODE 3410–XV–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1334]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule.

SUMMARY: The Board is revising its interim final rule amending Regulation D, Reserve Requirements of Depository Institutions, to alter the formula by which earnings on excess reserves of depository institutions are calculated. The remainder of the interim final rule, including the period during which comments may be submitted, is unchanged from the interim final rule as published on October 9, 2008.

DATES: Effective date is November 4, 2008; applicability date is October 23, 2008.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Counsel (202/452–3565), Legal Division, or Margaret Gillis DeBoer, Senior Financial Analyst

(202/452–3139), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263–4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

On October 9, 2008, the Board published in the **Federal Register** an interim final rule amending Regulation D (Reserve Requirements of Depository Institutions) to direct the Federal Reserve Banks to pay interest on balances held at Reserve Banks to satisfy reserve requirements (''required reserve balances'') and balances held in excess of required reserve balances and clearing balances (''excess balances'') (73 FR 59482) (Oct. 9, 2008). At that time, the Board announced two formulas by which the amount of earnings payable on required reserve balances and excess balances will be calculated. For required reserve balances, the Board set the initial rate of interest to be the average federal funds rate target established by the Federal Open Market Committee (FOMC) over the reserve maintenance period less 10 basis points. For excess balances, the Board set the initial rate of interest to be the lowest federal funds rate target established by the FOMC in effect during the reserve maintenance period minus 75 basis points. The Board stated that it may adjust the formula for the interest rate on excess balances in light of experience and evolving market conditions.

The Board has judged that a narrower spread between the target funds rate and the rate on excess balances at this time would help foster trading in the funds market at rates closer to the target rate. Accordingly, the Board is altering the formula so that the rate on excess balances will be set equal to the lowest FOMC target rate in effect during the reserve maintenance period less 35 basis points. This change will become effective for the maintenance periods beginning Thursday, October 23. The Board will continue to evaluate the appropriate setting of the rate on excess balances in light of evolving market conditions and make further adjustments as needed.

Administrative Procedure Act

In accordance with the Administrative Procedure Act (''APA'') section 553(b) (5 U.S.C. 553(b)), the Board finds, for good cause, that providing notice and an opportunity for public comment before the effective date of this rule would be contrary to the public interest. In addition, pursuant to APA section 553(d) (5 U.S.C. 553(d)), the Board finds good cause for making this amendment effective without 30 days advance publication. The Board has adopted this rule in light of, and to help address, the continuing unusual and exigent circumstances in the financial markets. This rule provides tools for carrying out monetary policy more effectively. Thus, the Board believes that any delay in implementing the rule would prove contrary to the public interest.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires an agency that is issuing a final rule to prepare and make available a regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The Regulatory Flexibility Act provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b), the Board certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. The rule implements a program for paying interest on certain balances held by eligible institutions at the Federal Reserve Banks and will benefit small institutions that receive such interest. There are no new reporting, recordkeeping, or other compliance requirements associated with this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the interim final rule under authority delegated to the Board by the Office of Management and Budget. The rule contains no collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

■ 2. In § 204.10, paragraph (b)(2) is revised to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

* * * * *

(2) For excess balances, at the lowest targeted federal funds rate during the reserve maintenance period less 35 basis points.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 29, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–26206 Filed 11–3–08; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0790; Directorate Identifier 2008–CE–042–AD; Amendment 39–15715; AD 2008–22–18]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 150 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) 150 series airplanes with the BRS–150 Parachute System installed via Supplemental Type Certificate (STC) SA64CH. This AD requires you to replace the pick-up collar support and nylon screws for the BRS–150 Parachute System. This AD results from notification by Ballistic Recovery Systems, Inc. (BRS) that the pick-up collar assembly may prematurely move off the launch tube and adversely affect rocket trajectory during deployment. We are issuing this AD to prevent premature separation of the collar. This condition could result in the parachute failing to successfully deploy.

DATES: This AD becomes effective on December 9, 2008.

On December 9, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Ballistic

Recovery Systems, Inc., 380 Airport Road, South Saint Paul, MN 55075–3551; *telephone*: (651) 457–7491; *fax:* (651) 457–8651; *e-mail: dkuefler@brsparachutes.com*; *Internet*: *http://www.brsparachutes.com.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2008–0790; Directorate Identifier 2008–CE–042–AD.

FOR FURTHER INFORMATION CONTACT: Gregory Michalik, Senior Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; *telephone:* (847) 294–7135; fax: (847) 294–7834; *e-mail: gregory.michalik@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On June 30, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Model 150 Series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 18, 2008 (73 FR 41305). The NPRM proposed to replace the pick-up collar support and nylon screws for the BRS–150 Parachute System.

Comments

We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 6 airplanes in the U.S. registry.

We estimate the following costs to do the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 work-hours × $80 per hour = $400	Not applicable	$400	$2,400

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 AD.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–0790; Directorate Identifier 2008–CE–042–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–22–18 Cessna Aircraft Company: Amendment 39–15715; Docket No. FAA–2008–0790; Directorate Identifier 2008–CE–042–AD.

Effective Date

(a) This AD becomes effective on December 9, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models 150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, A150K, 150L, A150L, 150M, A150M, 152, and A152 airplanes that:

(1) Have a BRS–150 Parachute System with a serial number in the range of 50001 through 50006 installed via Supplemental Type Certificate (STC) SA64CH; and

(2) Are certificated in any category.

Unsafe Condition

(d) This AD results from notification by Ballistic Recovery Systems, Inc. (BRS) that the pick-up collar assembly may prematurely move off the launch tube and adversely affect rocket trajectory during deployment. We are issuing this AD to prevent premature separation of the collar. This condition could result in the parachute failing to successfully deploy.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
Remove the pick-up collar support, nylon screws, and launch tube and replace with a new pick-up collar support, custom tension screws, and new launch tube.	Within the next 25 hours time-in-service after December 9, 2008 (the effective date of this AD).	Follow BRS Service Bulletin SB 2008–04–01 R1, issued April 24, 2008.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Chicago Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Gregory Michalik, Senior Aerospace Engineer, Chicago ACO, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; *telephone:* (847) 294–7135; *fax:* (847) 294–7834; *e-mail: gregory.michalik@faa.gov.* 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.

Material Incorporated by Reference

(g) You must use BRS Service Bulletin SB 2008–04–01 R1, issued April 24, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Ballistic Recovery Systems, Inc., 380 Airport Road, South Saint Paul, MN 55075–3551; *telephone:* (651) 457–7491; *fax:* (651) 457–8651; e-mail: *dkuefler@brsparachutes.com; Internet: http://www.brsparachutes.com.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on October 21, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25762 Filed 11–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0841; Directorate Identifier 2008–NE–23–AD; Amendment 39–15720; AD 2008–22–23]

RIN 2120–AA64

Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Model TAE 125–02–99 Reciprocating Engines

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the product listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

In-flight engine shutdown incidents have been reported on aircraft equipped with TAE 125–02–99 engines. Preliminary investigations showed that it was mainly the result of cracked disc springs in the clutch.

This AD requires actions that are intended to address the unsafe condition described in the MCAI, which could result in engine in-flight shutdown and the subsequent loss of control of the airplane.

DATES: This AD becomes November 19, 2008. The Director of the Federal Register approved the incorporation by reference of TAE Service Bulletin TM TAE 125–1006 P1, Revision 1, dated May 30, 2008, listed in the AD as of November 19, 2008.

We must receive comments on this AD by December 4, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: jason.yang@faa.gov;* telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0106–E, dated May 30, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

In-flight engine shutdown incidents have been reported on aircraft equipped with TAE 125–02–99 engines. Preliminary investigations showed that it was mainly the result of cracked disc springs in the clutch. This condition, if not corrected, could result in further cases of engine in-flight shutdown and the consequent loss of control of the aircraft.

To address this unsafe condition, AD 2008–0100–E was published to mandate repetitive inspections until a new clutch P/N 05–7211–K006001 is installed.

Since that publication, data collected from the performed inspections revealed that only the clutch assembly P/N 05–7211–K000304 was subject to failure.

For the reasons stated above, this EASA AD supersedes AD 2008–0100–E and requires the removal of the affected clutch

assemblies P/N 05–7211–K000304 on all TAE 125–02–99 engines and their replacement by new clutches of an improved design.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Thielert Aircraft Engines GmbH has issued Service Bulletin TM TAE 125–1006 P1, Revision 1, dated May 30, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of Germany, and is approved for operation in the United States. Pursuant to our bilateral agreement with Germany, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all the information provided by Germany and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short time to comply with this rule. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0841; Directorate Identifier 2008–NE–23–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this 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 AD.

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

For the reasons discussed above, I certify this AD:

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 AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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:

2008–22–23 Thielert Aircraft Engines GmbH: Amendment 39–15720.; Docket No. FAA–2008–0841; Directorate Identifier 2008–NE–23–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 19, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Thielert Aircraft Engines GmbH (TAE) model TAE 125–02–99 reciprocating engines with clutch, part number (P/N) 05–7211–K000304, installed. These engines are installed on, but not limited to, Cessna 172 and (Reims-built) F172 series (STC No. SA01303WI); and Diamond DA42 airplanes.

Reason

''(d) In-flight engine shutdown incidents have been reported on aircraft equipped with TAE 125–02–99 engines. Preliminary investigations showed that it was mainly the result of cracked disc springs in the clutch. This condition, if not corrected, could result in further cases of engine in-flight shutdown and the consequent loss of control of the aircraft.''

We are issuing this AD to prevent engine in-flight shutdown and the subsequent loss of control of the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) For engines that have accumulated, on the effective date of this AD, less than 50 flight hours (FH) since installing clutch, P/N 05–7211–K000304: Upon the accumulation of 50 FH since installing clutch, P/N 05–7211–K000304, replace the clutch as specified in TAE SB TM TAE 125–1006 P1, Revision 1, dated May 30, 2008.

(2) For engines that have accumulated, on the effective date of this AD, 50 or more FH since installing clutch, P/N 05–7211–K000304: Before further flight, replace the clutch as specified in TAE SB TM TAE 125–1006 P1, Revision 1, dated May 30, 2008.

FAA AD Differences

(f) We have further clarified the corrective action by specifying the P/N of each affected clutch, and timing the compliance period from when the clutch was installed instead of when it was last inspected.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Engine Certification

Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Special Flight Permits: We are limiting special flight permits to one ferry flight to a maintenance station to replace the engine clutch. The maximum flight duration must not exceed 2 hours and is limited to VFR conditions.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0106–E, dated May 30, 2008, for related information.

(i) Contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jason.yang@faa.gov*; telephone (781) 238–7747; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Thielert Aircraft Engines GmbH Service Bulletin TM TAE 125–1006 P1, Revision 1, dated May 30, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, *telephone:* +49–37204–696–0; *fax:* +49–37204–696–55; *e-mail: info@centurion-engines.com.*

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on October 23, 2008.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–25892 Filed 11–3–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29343; Directorate Identifier 2000–NE–13–AD; Amendment 39–15721; AD 2008–22–24]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 Series Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines. That AD currently requires initial and repetitive ultrasonic inspections of installed low pressure compressor (LPC) fan blade roots on-wing and during overhaul, and relubrication according to accumulated life cycles. Also, that AD introduces application of Metco 58 blade root coating as an optional terminating action. This AD requires the same actions but adds compliance paragraphs to relax the compliance schedule for repetitive inspections for fan blades operating within RB211–535E4 flight profiles A and B, if certain requirements are met. This AD also relaxes the initial compliance threshold by extending the cycles at which an initial inspection is required. This AD results from RR issuing Mandatory Service Bulletin (MSB) No. RB.211–72–C879, Revision 5 and Revision 6, that introduced a relaxed repetitive compliance schedule for fan blades operating within RB211–535E4 flight profiles A and B, if certain requirements are met, and introduced a relaxed initial compliance threshold. We are issuing this AD to detect cracks in LPC fan blade roots, which if not detected, could lead to uncontained multiple fan blade failure, and damage to the airplane.

DATES: This AD becomes effective December 9, 2008. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of December 9, 2008.

ADDRESSES: You can get the service information identified in this AD from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242–424; fax: 011–44–1332–249–936.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: ian.dargin@faa.gov; telephone:* (781) 238–7178; *fax:* (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2005–02–05, Amendment 39–13950 (70 FR 3863, January 27, 2005), with a proposed AD. The proposed AD applies to RR RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines. We published the proposed AD in the **Federal Register** on October 25, 2007 (72 FR 60606). That action proposed to require initial and repetitive ultrasonic inspections of installed LPC fan blade roots on-wing and during overhaul, and relubrication according to accumulated life cycles. That action also proposed to add compliance paragraphs to relax the compliance schedule for repetitive inspections for RB211–535E4 engines operating in flight profiles A and B, if certain requirements are met.

Examining the AD Docket

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

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received.

One commenter states that Rolls-Royce plc issued Mandatory Service Bulletin No. RB.211–72–C879, Revision 6, dated December 14, 2007, while the proposed AD comment period was still open, and the AD should reference Revision 6.

We agree. Revision 6 contains the changes from Revision 5, and relaxes the initial compliance threshold by extending the cycles at which an inspection is required. We changed the AD to reference Revision 6, and made the following changes based on Revision 6:

- We deleted proposed AD paragraph (f), which referenced full sets of fan blades modified using RR Service Bulletin No. RB.211–72–C946, Revision 2, dated September 26, 2002, as the reference is unnecessary. As a result we recodified paragraphs (f) through (n).
- We clarified that the ultrasonic inspection is performed on the fan blade roots.
- Proposed AD paragraph (g) is changed from ''On RB211–535E4 engines, operated to Flight Profile A, ultrasonically inspect, and if required,

relubricate using the following Table 2'' to the following:

''(f) On RB211–535E4 engines, operated to Flight Profile A:

(1) Ultrasonically inspect the fan blade root, and if required, relubricate using one of the methods in Table 2 of this AD.

(2) If the initial inspection is complete prior to 18,600 cycles-since-new (CSN), then the next inspection may be postponed until 20,000 CSN.''

• Proposed AD paragraph (h) is changed from ''On RB211–535E4 engines, operated to Flight Profile B, ultrasonically inspect, and if required, relubricate using the following Table 3:'' to the following:

''(g) On RB211–535E4 engines, operated to Flight Profile B:

(1) Ultrasonically inspect the fan blade root, and if required, relubricate using one of the methods in Table 3 of this AD.

(2) If the initial inspection is complete prior to 14,150 CSN, then the next inspection may be postponed until 15,000 CSN.''

• Proposed AD paragraph (i) is changed from ''On RB211–535E4 engines, operated to Flight Profile A and B, ultrasonically inspect, and if required, relubricate using the following Table 4:'' to the following:

''(i) For fan blades operated to any combination of RB211–535E4 Flight Profile A, –535E4 Flight Profile B, –535E4–B, –535E4–B and –535E4–C engines:

(1) Calculate an equivalent CSN as defined in the Time Limits Manual. See References Section 1.G.(3), of MSB RB.211–72–C879, Revision 6, dated December 14, 2007.

(2) For fan blades that are currently flying in Profile A, inspect using paragraph (f) and Table 2 of this AD using equivalent CSN.

(3) For fan blades that are currently flying in Profile B, inspect using paragraph (g) and Table 3 of this AD using equivalent CSN.

(4) For fan blades that are currently flying in an RB211–535E4–B engine, inspect using paragraph (h) and Table 4 of this AD using equivalent CSN.''

• We deleted proposed AD Table 4 because the information in it was redundant. We recodified proposed AD Table 5 to Table 4.

• We clarified in three of the proposed AD tables that relubrication is to be done at shop visit if blade life is more than 19,650 cycles, 14,650 cycles, and 19,650 respectively.

• Proposed AD paragraph (j) is changed from ''For RB211–535E4 engines that are currently flying in Profile A, if the initial inspection is completed before X minus 1,400 cycles then the next inspection may be delayed to X, where X is 65% of the revised life limit'' to ''(i)(2) For fan blades that are currently flying in Profile A, inspect using paragraph (f) and Table 2 of this AD using equivalent CSN''.

• Proposed AD paragraph (k) is changed from ''For RB211–535E4 engines that are currently flying in Profile B, if the initial inspection is completed before X minus 850 cycles then the next inspection may be delayed to X, where X is 65% of the revised life limit'' to ''(i)(3) For fan blades that are currently flying in Profile B, inspect using paragraph (g) and Table 3 of this AD using equivalent CSN''.

• Proposed AD paragraph (l) is deleted and incorporated into paragraph (i).

• Proposed AD paragraph (m) is changed from ''On RB211–535E4–B engines, ultrasonically inspect, and if required, relubricate using the following Table 5:'' to the following:

''(h) On RB211–535E4–B engines:

(1) Ultrasonically inspect the fan blade root, and if required, relubricate using one of the methods in Table 4 of this AD.

(2) If the initial inspection is complete prior to 18,800 CSN, then the next inspection may be postponed until 20,000 CSN.''

In addition, we updated our estimate of the total cost of the AD to U.S. operators to $441,280. The proposed AD estimated the total cost of the AD to U.S. operators to be $358,540. The estimate in the proposed AD was based on an estimated average labor rate of $65 per work-hour. The latest estimated average labor rate is $80 per work-hour.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 788 engines installed on airplanes of U.S. registry. We also estimate that it will take about 7 work-hours per engine to perform the actions, and that the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $441,280.

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

For the reasons discussed above, I certify that this AD:

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

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

(3) 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 summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 removing Amendment 39–13950 (70 FR 3863, January 27, 2005), and by adding a new airworthiness directive, Amendment 39–15721, to read as follows:

2008–22–24 Rolls-Royce plc: Amendment 39–15721. Docket No. FAA–2007–29343; Directorate Identifier 2000–NE–13–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 9, 2008.

Affected ADs

(b) This AD supersedes AD 2005–02–05, Amendment 39–13950.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines with low pressure compressor (LPC) fan blades with the part numbers (P/Ns) listed in Table 1 of this AD. These engines are installed on, but not limited to, Boeing 757 and Tupolev Tu204 series airplanes. Table 1 follows:

TABLE 1—APPLICABLE LPC FAN BLADE P/NS

UL16135	UL16171	UL16182	UL19643	UL20044
UL20132	UL20616	UL21345	UL22286	UL23122
UL24525	UL24528	UL24530	UL24532	UL24534
UL27992	UL28601	UL28602	UL29511	UL29556
UL30817	UL30819	UL30933	UL30935	UL33707
UL33709	UL36992	UL37090	UL37272	UL37274
UL37276	UL37278	UL38029	UL38032	

Unsafe Condition

(d) This AD results from RR issuing Mandatory Service Bulletin (MSB) No. RB.211–72–C879, Revision 5 and Revision 6, that introduced a relaxed repetitive compliance schedule for fan blades operating within RB211–535E4 flight profiles A and B, if certain requirements are met, and introduced a relaxed initial compliance threshold. We are issuing this AD to detect cracks in low pressure compressor (LPC) fan blade roots, which if not detected, could lead to uncontained multiple fan blade failure, and damage to the airplane.

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.

(f) On RB211–535E4 engines, operated to Flight Profile A:

(1) Ultrasonically inspect the fan blade root, and if required, relubricate using one of the methods in Table 2 of this AD.

(2) If the initial inspection is complete prior to 18,600 cycles-since-new (CSN), then the next inspection may be postponed until 20,000 CSN.

TABLE 2—RB211–535E4 FLIGHT PROFILE A

Engine location	Initial inspection within (CSN)	Type action	In accordance with mandatory service bulletin (MSB)	Repeat inspection within cycles since last inspection (CSLI)
(1) On-wing	20,000	(i) Root Probe inspect, OR	RB.211–72–C879 Revision 6, 3.A.(1) through 3.A.(7), dated December 14, 2007.	1,400
		(ii) Wave Probe inspect	RB.211–72–C879 Revision 6, 3.B.(1) through 3.B.(7), dated December 14, 2007.	1,150
(2) In shop	20,000	Root Probe inspect. Relubricate if blade life is more than 19,650 cycles.	RB.211–72–C879 Revision 6, 3.C.(1) through 3.C.(4), dated December 14, 2007.	1,400

(g) On RB211–535E4 engines, operated to Flight Profile B:

(1) Ultrasonically inspect the fan blade root, and if required, relubricate using one of the methods in Table 3 of this AD.

(2) If the initial inspection is complete prior to 14,150 CSN, then the next inspection may be postponed until 15,000 CSN.

TABLE 3—RB211–535E4 FLIGHT PROFILE B

Engine location	Initial inspection within (CSN)	Type action	In accordance with MSB	Repeat inspection within CSLI
(1) On-wing	15,000	(i) Root Probe inspect, OR	RB.211–72–C879 Revision 6, 3.A.(1) through 3.A.(7), dated December 14, 2007.	850
		(ii) Wave Probe inspect	RB.211–72–C879 Revision 6, 3.B.(1) through 3.B.(7), dated December 14, 2007.	700
(2) In shop	15,000	Root Probe, inspect. Relubricate if blade life is more than 14,650 cycles.	RB.211–72–C879 Revision 6, 3.C.(1) through 3.C.(4), dated December 14, 2007.	850

(h) On RB211–535E4–B engines:

(1) Ultrasonically inspect the fan blade root, and if required, relubricate using one of the methods in Table 4 of this AD.

(2) If the initial inspection is complete prior to 18,800 CSN, then the next inspection may be postponed until 20,000 CSN.

TABLE 4—RB211–535E4–B

Engine location	Initial inspection within (CSN)	Type action	In accordance with MSB	Repeat inspection within (CSLI)
(i) On-wing	20,000	(A) Root Probe inspect, OR	RB.211–72–C879 Revision 6, 3.A.(1) through 3.A.(7), dated December 14, 2007.	1,200
		(B) Wave Probe inspect	RB.211–72–C879 Revision 6, 3.B.(1) through 3.B.(7), dated December 14, 2007.	1,000
(ii) In shop	20,000	Root Probe inspect. Relubricate if blade life is more than 19,650 cycles.	RB.211–72–C879 Revision 6, 3.C.(1) through 3.C.(4), dated December 14, 2007.	1,200

(i) For fan blades operated to any combination of RB211–535E4 Flight Profile A, –535E4 Flight Profile B, –535E4–B, –535E4–B and –535E4–C engines:

(1) Calculate an equivalent CSN as defined in the Time Limits Manual. See References Section 1.G.(3), of MSB RB.211–72–C879, Revision 6, dated December 14, 2007.

(2) For fan blades that are currently flying in Profile A, inspect using paragraph (f) and Table 2 of this AD using equivalent CSN.

(3) For fan blades that are currently flying in Profile B, inspect using paragraph (g) and Table 3 of this AD using equivalent CSN.

(4) For fan blades that are currently flying in an RB211–535E4–B engine, inspect using paragraph (h) and Table 4 of this AD using equivalent CSN.

Optional Terminating Action

(j) Application of Metco 58 blade root coating using RR SB No. RB.211–72–C946, Revision 2, dated September 26, 2002, constitutes terminating action to the repetitive inspection requirements specified in paragraphs (f), (g), (h), and (i) of this AD.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Previous Credit

(l) Inspections and relubrication done before the effective date of this AD that use AD 2003–12–15 (Amendment 39–13200, 68 FR 37735, June 25, 2003), RR MSB No. RB.211–72–C879, Revision 3, dated October 9, 2002, MSB No. RB.211–72–C879, Revision 4, dated April 2, 2004, or MSB No. RB.211–72–C879, Revision 5, dated March 8, 2007, comply with the requirements specified in this AD.

Related Information

(m) United Kingdom Civil Aviation Authority airworthiness directive AD 002–01–2000, dated October 9, 2002, also addresses the subject of this AD.

(n) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: ian.dargin@faa.gov; telephone:* (781) 238–7178; *fax:* (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(o) You must use Rolls-Royce plc Mandatory Service Bulletin No. RB.211–72–C879, Revision 6, dated December 14, 2007 to perform the inspections and relubrication required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; *telephone:* 011–44–1332–242424; *fax:* 011–44–1332–249936, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on October 23, 2008.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E8–25891 Filed 11–3–08; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

Interpretative Statement Regarding Funds Related to Cleared-Only Contracts Determined To Be Included in a Customer's Net Equity

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretative Statement; correction.

SUMMARY: This interpretation by the Commodity Futures Trading Commission (''Commission'') is issued to clarify the appropriate treatment under the commodity broker provisions of the Bankruptcy Code and Part 190 of the Commission's Regulations of claims arising from contracts (''cleared-only contracts'') that, although not executed or traded on a Designated Contract Market or a Derivatives Transaction Execution Facility, are subsequently submitted for clearing through a Futures Commission Merchant (''FCM'') to a Derivatives Clearing Organization (''DCO''). The Commission first published this interpretation in the **Federal Register** of October 2, 2008 (73 FR 57235). A statement of concurrence on a different matter was printed at the end of the interpretation, in error. The Commission is republishing the interpretation to clarify that the statement of concurrence is not related to the interpretation.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, *rwasserman@cftc.gov,* (202) 418–5092, or Amanda Olear, Attorney-Advisor, Division of Clearing and Intermediary Oversight, *aolear@cftc.gov,* (202) 418–5283, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Section 20 of the Commodity Exchange Act [1] (Act) empowers the Commission to provide how the net equity of a customer is to be determined:

> The Commission may provide, with respect to a commodity broker that is a debtor under chapter 7 of title 11 of the United States Code, by rule or regulation—(1) that certain cash, securities, other property, or commodity contracts are to be included in or excluded from customer property or member property; * * * and (5) how the net equity of a customer is to be determined.

Subchapter IV of Chapter 7 of the Bankruptcy Code, governing commodity brokers, has the same effect, explicitly basing the definition of ''net equity'' on

[1] 7 U.S.C. 24.

''such rules and regulations as the Commission promulgates under the Act.'' [2]

The Commission has exercised this power in promulgating Part 190 of its regulations.[3] In particular, the term ''net equity'' is defined by Commission Regulation 190.07 [4] as:

> The total claim of a customer against the estate of the debtor based on the commodity contracts held by the debtor for or on behalf of such customer less any indebtedness of the customer to the debtor.

Therefore, the determination of whether claims relating to cleared-only contracts in section 4d accounts are properly includable within the meaning of ''net equity'' is dependent upon whether an entity holding such claims is properly considered a ''customer.'' This, in turn, as discussed below, requires an analysis of whether such claims are derived from ''commodity contracts.''

Cleared-Only Transactions as Commodity Contracts

Commission Regulation 190.01(k) defines ''customer'' through incorporation by reference of the definition of the term appearing in section 761(9) of the Bankruptcy Code, which provides, in relevant part:

> (9) ''Customer'' means—
> (A) With respect to a futures commission merchant—
> (i) Entity for or with whom such futures commission merchant deals and holds a claim against such futures commission merchant on account of a *commodity contract* made, received, acquired, or held by or through such futures commission merchant in the ordinary course of such future commission merchant's business as a futures commission merchant from or for the commodity futures account of such entity; or
> (ii) Entity that holds a claim against such futures commission merchant arising out of—
> (I) The making, liquidation, or change in the value of a *commodity contract* of a kind specified in clause (i) of this subparagraph;
> (II) A deposit or payment of cash, a security, or other property with such futures commission merchant for the purpose of making or margining such a *commodity contract;* or
> (III) The making or taking of delivery on such a *commodity contract* [.] [5]

Therefore, for an entity to be considered a ''customer'' of an FCM, such entity's claim must arise out of a ''commodity contract.'' [6]

A ''commodity contract,'' as the term appears within the context of section 761(9), is defined in section 761(4) of the Bankruptcy Code, which states, in pertinent part:

> (4) ''*Commodity Contract*'' means—
> (A) With respect to a futures commission merchant, contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade[.] [7]

This definition contains two elements: (1) The nature of the contract; and (2) the nature of the venue whose rules govern the contract.

With regard to the first element, over-the-counter contracts that are cleared-only contracts are contracts for the purchase or sale of a commodity for future delivery within the meaning of this section of the Bankruptcy Code. When cleared, they are subject to performance bond requirements, daily variation settlement, the potential for offset, and final settlement procedures that are substantially similar, and often identical, to those applicable to exchange-traded products at the same clearinghouse. *Cf.* 11 U.S.C. 761(4)(F). Although the creation and trading of these products is outside the Commission's jurisdiction, the clearing of these products by FCMs and DCOs is within the Commission's jurisdiction.

With regard to the second element, section 761(7) of the Bankruptcy Code states that a '' 'contract market' means a registered entity,'' and section 761(8), in turn, provides that a '' 'registered entity' * * * ha[s] the meaning[ ] assigned to [that] term[ ] in the [Commodity Exchange] Act.'' [8] Section 1a(29)(C) of the Act defines the term ''registered entity'' as including ''a derivatives clearing organization registered under section 5b'' of the Act.[9]

Thus, when a contract is cleared through a DCO, such a contract would be considered a ''commodity contract'' under section 761(4) of the Bankruptcy Code.[10] Therefore, an entity with a claim based on a cleared-only contract would be a ''customer'' within the meaning of section 761 of the Bankruptcy Code. Further, because Part 190 of the Commission's Regulations defines ''customer'' as having the meaning set forth in section 761, such entity with a claim based on a cleared-only contract would also be a ''customer'' for the purposes of Part 190 of the Commission's Regulations. Based on the foregoing, such claims arising out of cleared-only contracts are properly included within the meaning of ''net equity'' for the purposes of Subchapter IV of the Bankruptcy Code and Part 190 of the Commission's Regulations.

Portfolio Performance Bond as Net Equity

There is an alternative path to reach the same conclusion. In cases where cleared-only contracts are held in a commodity futures account at an FCM and margined as a portfolio with exchange-traded futures (*i.e.*, where the Commission has issued an order pursuant to section 4d(a)(2) of the Commodity Exchange Act), assets margining that portfolio are likely to be includable within ''net equity'' even if cleared-only contracts were found not to be ''commodity contracts'' within the meaning of the Bankruptcy Code and Part 190 of the Commission's Regulations.

Where the assets in an entity's account margin (*i.e.*, collateralize) both cleared-only contracts and exchange-traded futures, the entirety of those assets serves as performance bond for each of the exchange-traded futures and the cleared-only contracts. Therefore, (a) a claim for those assets constitutes a claim ''on account of a commodity contract made, received, acquired, or held by or through such futures commission merchant in the ordinary course of such future commission merchant's business as a futures commission merchant from or for the commodity futures account of such entity;'' [11] (b) the entity qualifies as a ''customer'' within the meaning of the Bankruptcy Code as a result of that claim; and (c) those margin assets are properly included within that entity's net equity.

The dynamics of futures trading render it unwise to distinguish between an account that *currently* is portfolio margined and one that was at one time or is intended to be so in the future. Indeed, Subchapter IV of the Bankruptcy Code includes as customers entities with certain claims arising out of property that is not currently margining a commodity contract. Specifically, section 761(9)(A)(ii) provides that an entity can qualify as a ''customer'' based on claims arising out of any of the following: (I) The ''liquidation, or change in the value of a commodity contract;'' (II) a deposit of property ''for the purpose of making or margining * * * a commodity contract;'' or (III) ''the making or taking of delivery of a commodity contract.''

[2] 11 U.S.C. 761(17).

[3] 17 CFR Part 190.

[4] 17 CFR 190.07.

[5] 11 U.S.C. 761(9) (emphasis added).

[6] A similar analysis would apply to a customer of a clearing organization (*i.e.*, a clearing member).

[7] 11 U.S.C. 761(4).

[8] 11 U.S.C. 761(7) and (8).

[9] 7 U.S.C. 1a(29)(C).

[10] *Cf.* H.R. Rep. No. 109–31(I) (2005) (emphasizing distinction between definitions for purposes of Bankruptcy Code and for purposes of other statutes).

[11] Section 761(9)(A) of the Bankruptcy Code provides that an entity holding such a claim is a ''customer.'' 11 U.S.C. 761(9)(A).

Accordingly, there is no requirement that the customer's assets be margining commodity contracts on the day that the bankruptcy petition is filed. Therefore, all assets contained in such an account are properly included within the customer's net equity.

Account Classes

Part 190 of the Commission's Regulations divides accounts into several classes, specifically: Futures accounts, foreign futures accounts, leverage accounts, commodity option accounts, and delivery accounts.[12]

In October 2004, the Commission issued an interpretation regarding the appropriate account class for funds attributable to contracts traded on non-domestic boards of trade, and the assets margining such contracts, that are included in accounts segregated in accordance with Section 4d of the Act pursuant to Commission Order.[13] In that context, the Commission concluded that the claim is properly against the Section 4d account class because customers whose assets are deposited in such an account pursuant to Commission Order should benefit from that pool of assets. The same rationale supports the Commission's conclusion that a claim arising out of a cleared-only contract, or the property margining such a contract, would be includable in the futures account class where, pursuant to Commission Order, the contract or property is included in an account segregated in accordance with Section 4d of the Act.

* * * * *

Issued in Washington, DC, on September 26, 2008, by the Commodity Futures Trading Commission.

David Stawick,

Secretary of the Commission.

[FR Doc. E8–26199 Filed 11–3–08; 8:45 am]

BILLING CODE 6351–01–P

[12] *See* 17 CFR 190.01.

[13] *See* Interpretative Statement Regarding Funds Determined To Be Held in the Futures Account Type of Customer Account Class, 69 FR 69510 (Nov. 30, 2004).

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232 and 270

[Release Nos. 33–8981; 34–58874; IC–28476 File No. S7–25–07]

RIN 3235–AJ81

Mandatory Electronic Submission of Applications for Orders Under the Investment Company Act and Filings Made Pursuant to Regulation E

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting several amendments to rules regarding our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. Specifically, we are amending our rules to make mandatory the electronic submission on EDGAR of applications for orders under any section of the Investment Company Act of 1940 (''Investment Company Act'') as well as Regulation E filings of small business investment companies and business development companies. We also are amending the electronic filing rules to make the temporary hardship exemption unavailable for submission of applications under the Investment Company Act. Finally, we are amending Rule 0–2 under the Investment Company Act, eliminating the requirement that certain documents accompanying an application be notarized and the requirement that applicants submit a draft notice as an exhibit to an application.

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: If you have questions about the rules, please contact one of the following members of our staff in the Division of Investment Management, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0506: in the Office of Legal and Disclosure, Ruth Armfield Sanders, Senior Special Counsel (EDGAR), at (202) 551–6989; in the Office of Investment Company Regulation, Michael W. Mundt, Assistant Director, at (202) 551–6821; or, in the Office of Insurance Products, Keith Carpenter, Senior Special Counsel, at (202) 551–6766; for technical questions relating to the EDGAR system, in the Office of Information Technology, Richard D. Heroux, EDGAR Program Manager, at (202) 551–8168.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is adopting amendments to Rules 101 and 201 of Regulation S–T [1] relating to electronic filing on the EDGAR system and to Rule 0–2 [2] under the Investment Company Act.[3]

I. Background

In the last several years, we initiated a series of amendments to keep EDGAR current technologically and to make it more useful to the investing public and Commission staff.[4] In April 2000, we adopted rule and form amendments in connection with the modernization of EDGAR.[5] In the Modernization Proposing Release, we noted that, as the use of electronic databases grows, it becomes increasingly important for members of the public to have electronic access to our filings. We also stated that we were contemplating future rulemaking to require more of our filings to be filed on EDGAR. In May 2002, we adopted rules requiring foreign private issuers and foreign governments to file most of their documents electronically.[6] In May 2003, we adopted rules requiring electronic filing of beneficial ownership reports filed by officers, directors and principal security holders under section 16(a) [7] of the Securities Exchange Act of 1934 (''Exchange Act'').[8] In July 2005, we adopted rules requiring certain open-end management investment companies and insurance companies separate accounts to identify in their EDGAR submissions information relating to their series and classes (or contracts, in the case of separate accounts) and mandating that fidelity bonds filed under section 17(g) [9] and sales literature filed with us under section 24(b) [10] be

[1] 17 CFR 232.101 and 232.201.

[2] 17 CFR 270.0–2.

[3] We proposed these amendments in November 2007. *See* Rulemaking for EDGAR System; Mandatory Electronic Submission of Applications for Orders under the Investment Company Act and Filings Made Pursuant to Regulation E, Release No. 33–8859 (Nov. 1, 2007) [72 FR 63513 (Nov. 9, 2007)] (''Proposing Release'').

[4] We recently announced the successor to the EDGAR Database. The new system is called IDEA, short for Interactive Data Electronic Applications, and will at first supplement and then eventually replace the EDGAR system. *See* ''SEC Announces Successor to EDGAR Database; ''IDEA'' Will Make Company and Fund Information Interactive,'' Press Release No. 2008–179, Aug. 19, 2008.

[5] *See* Rulemaking for EDGAR System, Release No. 33–7855 (Apr. 27, 2000) [65 FR 24788] (the ''Modernization Adopting Release''). *See also* Release No. 33–7803 (Mar. 3, 2000) [65 FR 11507] (''Modernization Proposing Release'').

[6] *See* Mandated EDGAR Filing for Foreign Issuers, Release No. 33–8099 (May 14, 2002) [67 FR 36678].

[7] 15 U.S.C. 78p(a).

[8] *See* Mandated EDGAR Filing and Web Site Posting for Forms 3, 4 and 5, Release No. 33–8230 (May 7, 2003) [68 FR 25788] (the ''EDGAR Section 16 Release'').

[9] 15 U.S.C. 80a–17(g).

[10] 15 U.S.C. 80a–24(b).

made by electronic submission on the EDGAR system.[11] In December 2006, we adopted amendments to the rules and forms under section 17A of the Exchange Act requiring that the forms filed with respect to transfer agent registration, annual reporting, and withdrawal from registration be filed with the Commission electronically on EDGAR.[12] On February 6, 2008, we adopted amendments to make mandatory the electronic submission of Form D on the EDGAR system.[13]

Today, we are amending our rules to require that applicants submit electronically on the EDGAR system their applications for orders under any section of the Investment Company Act (''applications''). In addition, we are adding Regulation E filings to the list of those that must be filed electronically through EDGAR. These amendments are designed to facilitate the efficient submission of applications and Regulation E filings, to enable the public to access them more quickly and search them more easily, and to improve the Commission's ability to track and process such applications and Regulation E filings. We are also making related amendments to Regulation S–T, our electronic filing rules, and revising Rule 0–2.

II. Mandatory Electronic Submission of Investment Company Applications

The rules under Regulation S–T previously provided that applications for exemptive relief under any section of the Investment Company Act shall not be made in electronic format.[14] The only applications under the Investment Company Act that were mandatory EDGAR submissions were applications for deregistration filed by investment companies.[15] Applicants for orders under the Investment Company Act can include registered investment companies, affiliated persons of registered investment companies, and issuers seeking to avoid investment company status, among other entities.[16] These applications were submitted in paper and available only from the Commission's public reference room or electronically from private services. Private services usually charge fees for electronic copies of applications; also, there is a delay of about thirty days between the submission of applications to the Commission and their electronic availability from the private sources.

We are amending certain provisions of Regulation S–T and Investment Company Act Rule 0–2 [17] to require electronic submission on EDGAR of applications pursuant to Rule 0–2 under the Investment Company Act. We are amending Rule 101(a)(1)(iv) of Regulation S–T to include within its mandatory electronic filing provisions any application for an order under any section of the Investment Company Act.[18]

In the Proposing Release, we requested comment on the impact of our making the submission of requests for orders under the Investment Company Act mandatory electronic submissions and whether we should implement this rule. We requested comment on whether it would be burdensome for us to require applicants to submit applications electronically. We also sought comments as to which applications the rule should apply. We asked commenters to address the issue of what the transition period should be for investment companies and other applicants to prepare for the mandatory electronic submission of these applications.

We requested comment not only on the specific issues that we discussed in the Proposing Release, but on any other approaches or issues that we should consider in connection with the submission of applications for orders and Regulation E filings on the EDGAR system. We sought comment from any interested person, including those required to file information with us on the EDGAR system, as well as investors, disseminators of EDGAR data, EDGAR filing agents, and other members of the public who have access to and use information from the EDGAR system.

We asked commenters to provide detailed information on any difficulties and considerations unique to these proposed requirements. In the event commenters believed that any aspect of the proposed requirements would be burdensome, we asked for specific details and alternative approaches.

We received two comment letters in response to our requests for comment. Both commenters expressed support for the rulemaking proposal to require that all applications be submitted electronically through the EDGAR system.[19] Both commenters expressed views about applications that are sent to the staff in draft that have not been officially filed. One commenter inquired about applications made under both the Investment Company Act and the Investment Advisers Act of 1940 (''Investment Advisers Act'') [20] and had certain concerns about amendments to Rule 0–2.[21] We received no comments in connection with the portion of our proposal related to Regulation E filings.

We are adopting these amendments, in light of the primary goals of the EDGAR system, to facilitate the rapid dissemination of financial and business information in connection with filings, including filings by investment companies. Requiring applications to be submitted electronically will benefit members of the investing public and the financial community by making information contained in these filings readily available and more easily searchable. In this age of information, we believe that filings and applications made with the Commission are more valuable to the public if they are available in electronic form and that adding applications to the EDGAR database will provide a more complete picture for the investing public. We believe that the amendments will benefit the public by making the EDGAR

[11] *See* Rulemaking for EDGAR System, Release No. 33–8590 (July 18, 2005) [70 FR 43558 (July 27, 2005)].

[12] *See* Electronic Filing of Transfer Agent Forms, Release No. 34–54864 (Dec. 4, 2006) [71 FR 74698 (Dec. 12, 2006)].

[13] *See* Electronic Filing and Revisions of Form D, Release No. 33–8891 (Feb. 6, 2008) [73 FR 10592 (Feb. 27, 2008)].

[14] Rule 101(a)(1)(iv) and (c)(11) of Regulation S–T [17 CFR 232.101(a)(1)(iv) and (c)(11)].

[15] These include applications and amendments submitted on Form N–8F [17 CFR 274.218] (EDGAR submission types N–8F and N–8F/A) and those submitted pursuant to Investment Company Act Rule 0–2 [17 CFR 270.0–2] (EDGAR submission types 40–8F–2 and 40–8F–2/A). *See* Release No. IC–23786 (Apr. 15, 1999) [76 19469 (Apr. 21, 1999)].

[16] There are several sections of the Investment Company Act pursuant to which entities may make applications for relief. For example, Section 6(c) [15 U.S.C. 80a–6(c)] provides the Commission with authority to exempt persons, securities or transactions from any provision of the Investment Company Act, or the regulations thereunder, if and to the extent that such exemption is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.

[17] Rule 0–2 is the Investment Company Act rule under which applications are submitted.

[18] *See* amendment to Rule 101(a)(1)(iv) under Regulation S–T. Paragraph (11) of Rule 101(c) provided that filings under Section 6(c) of the Investment Company Act, *i.e.*, applications for orders, be submitted in paper format only. As proposed, we are removing and reserving this paragraph.

[19] In support of the proposal, one commenter stated:

Like the Commission, the Institute believes that the proposal will help to facilitate both the efficient submission of applications and the retrieval of those applications by interested parties. We also applaud this effort by the Commission to improve its ability to track and process exemptive applications, which are of vital importance to the fund industry and, ultimately, to fund investors.

See Comment Letter dated Dec. 14, 2007, of Karrie McMillan, General Counsel, Investment Company Institute (the ''ICI Comment Letter''). *See also* Comment Letter dated Dec. 14, 2007, of Mercer Bullard, Founder and President, Fund Democracy (the ''Fund Democracy Comment Letter'').

[20] 15 U.S.C. 80b–1 *et seq.*

[21] *See* ICI Comment Letter.

page of our Web site a more comprehensive resource for most information on file with us related to the operation of investment companies.

Both of the commenters on the Proposing Release raised the issue of applications submitted to the Commission's staff in draft form. One commenter strongly believed that ''the Commission staff's willingness to consider exemptive applications in draft form and to grant requests for confidential treatment, when appropriate, is critical to encouraging innovation in the fund industry.'' [22] The other commenter was concerned that the new filing requirement might result in an increase of the use of draft applications to the detriment of the public interest.[23]

The staff's policy, as first stated in a Commission release in 1985, is that the staff will not, except in the most extraordinary situations, review draft applications.[24] Consistent with this policy, the staff will continue to accept draft applications only in situations where the applicant clearly demonstrates the extraordinary circumstances that necessitate the submission of a draft application.[25] We believe that this approach continues to strike an appropriate balance between encouraging innovation in the fund industry, making effective use of staff resources, and serving the interests of the public. While it is possible that applicants will seek permission to submit more applications as draft applications, as discussed above the staff's policy of reviewing draft applications only in the most extraordinary situations will not change, and as a result, we do not believe that the number of draft applications will increase. The new filing requirement will only change the format (from paper to electronic) of documents that were and will be publicly available.

As we noted in the Proposing Release, from time to time, an applicant may wish to submit an application for exemption under both the Investment Company Act and the Investment Advisers Act.[26] We did not propose to require that applications under the Investment Advisers Act be made on EDGAR. We noted that any document that is intended as an application for an order under both the Investment Company Act and the Investment Advisers Act should be submitted separately under each Act.

One commenter expressed the view that we should consider alternative approaches that would allow a single EDGAR filing for an application requesting relief under both Acts.[27] We note that, to date, the EDGAR system has not been a vehicle for the submission of Investment Advisers Act filings. Further, based on staff review of the contents of all Advisers Act applications submitted to us, we are not aware of any within the past ten years that also requested relief from Investment Company Act provisions. Therefore, we believe it is not cost-effective for us to make the programming changes at this time so that EDGAR would accept applications under both Acts, given that recently no applications requested relief from both statutes. EDGAR will accept applications under the Investment Company Act as proposed.

As with other entities that make submissions on EDGAR, applicants will be subject to the provisions of Regulation S–T [28] and the EDGAR Filer Manual. Regulation S–T includes detailed rules concerning mandatory and permissive electronic EDGAR submissions; it also makes clear that requests for confidential treatment must be made in paper format.[29]

Regulation S–T requires the electronic filing of any amendments and related correspondence and supplemental information pertaining to a document that is the subject of mandated EDGAR submission.[30] These requirements also apply to companies and persons who submit applications.[31] The requirement to file amendments electronically applies to applications filed electronically on EDGAR as well as to pending applications initially filed in paper.[32]

The Regulation also covers such matters as providing for the override of formatting requirements applicable to paper submissions.[33] The EDGAR Filer Manual contains detailed technical specifications concerning EDGAR submissions. The Manual also provides technical guidance concerning how to commence submissions on EDGAR by submitting Form ID to obtain a CIK [34] and confidential access codes and how to maintain and update company data, *e.g.*, how to change company names and contact information.[35]

One technical specification that the EDGAR Filer Manual includes is the electronic ''submission type'' for each submission made on EDGAR. The EDGAR electronic submission types for applications are designed to facilitate and expedite the review of these applications.

Consistent with our amendments, the EDGAR Filer Manual and the EDGARLink software provide for three EDGAR electronic submission types for applications: 40–APP, 40–OIP, and 40–6B. Applicants whose applications are typically processed by the Division of Investment Management's Office of Investment Company Regulation will use EDGAR submission type 40–APP; these applicants will submit amendments using EDGAR submission

[22] *See* ICI Comment Letter. In support of its position, the commenter stated:

The development of new investment products and more efficient and effective business practices can be a costly and time-consuming endeavor for fund sponsors and other applicants. In return for their investment of intellectual and financial capital, applicants should be rewarded for their innovation and creativity by being the ''first to market'' with their new product or practice.

[23] Noting this concern, the commenter stated that:

Permitting applicants to file draft applications is contrary to fundamental principles of administrative law and the public interest. It also is unfair to other applicants for Commission staff to spend time on draft applications while applications that have been properly filed are left on hold. In its adopting release, the Commission should clarify that the staff will not accept or review draft applications, and that concerns regarding the confidentiality of proprietary information should be addressed by appropriate redactions in a filed request.

See Fund Democracy Comment Letter.

[24] *See* Commission Policy and Guidelines for Filing of Applications for Exemption, Investment Company Act Release No. 14492 (Apr. 30, 1985).

[25] *See* IM Exemptive Application Processing, SEC Office of the Inspector General, Audit Report No. 408, Recommendation C (Sept. 29, 2006).

[26] *See* footnote 18 of the Proposing Release.

[27] *See* ICI Comment Letter.

[28] For a comprehensive discussion of Regulation S–T and electronic filing, *see* ''Electronic Filing and the EDGAR System: A Regulatory Overview,'' available on the Information for EDGAR Filers page of the Commission's Web site, *http://www.sec.gov/info/edgar.shtml*.

[29] *See* Rule 101 of Regulation S–T [17 CFR 232.101].

[30] Regulation S–T Rule 101(a)(2) [17 CFR 232.101(a)(2)].

[31] *See* amendments to paragraphs (a)(2) and (3) of Rule 101 of Regulation S–T. Related correspondence and supplemental information are not automatically disseminated publicly through the EDGAR system but are immediately available to the Commission staff.

[32] This provision dates back to 1993. *See* text at footnote 83 of Rulemaking for EDGAR System, Release No. 33–6977 (Feb. 23, 1993) [58 FR 14628 (Mar. 18, 1993)] (''Once a filer becomes subject to the mandated electronic filing rules, any documents, including amendments and supplements to documents previously filed in paper, will be required to be filed in electronic format, absent a hardship exemption.'').

[33] The paper formatting requirements continue to be applicable to paper submissions made pursuant to temporary and continuing hardship exemptions under Rules 201 and 202 of Regulation S–T [17 CFR 232.201 and 232.202].

[34] A filer's CIK (or ''central index key'') is a ten-digit number uniquely identifying that filer.

[35] We remind filers that, in the case of name changes, the changes must be made via the EDGAR filing Web site in advance of the change being reflected on an EDGAR submission. The name on past submissions will not change. The CIK and file number(s) of the company will provide a link to filings under the old name.

type 40–APP/A. Applicants whose applications are typically processed by the Division's Office of Insurance Products will use the new EDGAR submission type 40–OIP; these applicants will submit amendments using EDGAR submission type 40–OIP/A. Employees' securities company applications (also processed by the Office of Investment Company Regulation) will use EDGAR submission type 40–6B and submission type 40–6B/A for amendments. Applicants that have currently pending applications that were submitted in paper and recorded as submission type 40–6C will submit amendments to their applications using either EDGAR submission type 40–APP/A or 40–OIP/A, as appropriate.

The EDGAR Filer Manual provides guidance for applicants in choosing the correct submission type. Most applicants will submit their applications under EDGAR submission type 40–APP, the submission type designated for the Office of Investment Company Regulation. Applicants submitting the following categories of applications will use EDGAR submission type 40–OIP, the submission type for the Office of Insurance Products:

(1) Applications with regard to mixed and shared funding filed under section 6(c) of the Investment Company Act, for exemptions from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the Investment Company Act,[36] and Rules 6e–2(b)(15) and 6e–3(T)(b)(15);[37]

(2) Applications relating to the recapture of bonus credits filed under section 6(c) of the Investment Company Act for exemptions from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the Investment Company Act[38] and Rule 22c–1;[39]

(3) Applications relating to the substitution of securities held by a variable insurance separate account filed under section 26(c) of the Investment Company Act;[40] and

(4) Applications for approval of the terms of an exchange offer involving variable insurance contracts filed under section 11(a) of the Investment Company Act.[41]

These three submission types are designed to facilitate and expedite staff review of the submissions. Our internal system will quickly route the application to the appropriate Office. If applicants have any questions as to the appropriate EDGAR submission type, we encourage them to verify in advance the correct submission type so that the application can be routed automatically to the appropriate Office.[42] As proposed, for applications with multiple co-applicants, the applicants will submit the application with all co-applicants included in one submission. The applicants will choose one applicant to list first as the ''primary'' co-applicant. Then, they will include in the EDGAR template the information for all other co-applicants, *i.e.*, the CIK of each co-applicant and, for amendments, the file number assigned to each co-applicant when the original application was filed. Applicants can be dropped from or added to an application with each amendment submission.[43]

Our internal EDGAR system has been enhanced to allow for the upload and public dissemination via the EDGAR system of notices and orders in connection with applications. These documents will, of course, still be available in the **Federal Register**. The staff will commence the upload and dissemination of notice and orders on the EDGAR system as of the effective date of the amendments. The staff will upload and disseminate any notice or order issued on or after the effective date, regardless of whether the application, or any amendment to it, was submitted in paper or on EDGAR.

We asked commenters to address the issue of what the transition period should be for investment companies and other applicants to prepare for the mandatory electronic submission of these applications. We received no comments in response to this request other than the comments regarding draft applications. We believe applicants are prepared to submit their applications electronically on EDGAR as soon as our amendments become effective.

III. Amendments to Rule 0–2 and to Temporary Hardship Exemption of Regulation S–T

Rule 0–2 requires that every application for an order for which a form is not specifically prescribed and which is executed by a corporation, partnership or other company and filed with the Commission contain a statement of the applicable provisions of the articles of incorporation, bylaws or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the application is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions must be attached as an exhibit to or quoted in the application. Any amendment to the application must contain a similar statement as to the applicability of the original statement of authorization. When any application or amendment is signed by an agent or attorney, Rule 0–2 requires that the power of attorney evidencing his authority to sign shall state the basis for the agent's authority and shall be filed with the Commission. Every application subject to Rule 0–2 must be verified by the person executing the application by providing a notarized signature in substantially the form specified in the rule. Each application subject to Rule 0–2 must state the reasons why the applicant is deemed to be entitled to the action requested, the name and address of each applicant, and the name and address of any person to whom any questions regarding the application should be directed. Rule 0–2 requires that a proposed notice of the proceeding initiated by the filing of the application accompany each application as an exhibit and, if necessary, be modified to reflect any amendment to the application.

We proposed three amendments to Rule 0–2 governing the form of applications under the Investment Company Act and requested comment on these proposed amendments. The commenters supported the proposed amendments to Rule 0–2, and we are adopting these amendments as proposed. First, we are eliminating the requirement to have verifications of applications and statements of facts made in connection with applications notarized.[44] We believe that this requirement is unnecessary in the

[36] 15 U.S.C. 80a–9(a), 80a–13(a), 80a–15(a), 80a–15(b).

[37] 17 CFR 270.6e–2(b)(15), 270.6e–3(T)(b)(15).

[38] 15 U.S.C. 80a–2(a)(32), 80a–27(i)(2)(A).

[39] 17 CFR 270.22c–1.

[40] 15 U.S.C. 80a–26(c).

[41] 15 U.S.C. 80a–11(a).

[42] In case of doubt, applicants may call the IM EDGAR Inquiry Line (202–551–6989) in the Division of Investment Management for assistance.

[43] As is the case currently with paper applications, for each application, an applicant will receive a unique file number which will begin with the prefix ''812,'' or ''813'' in the case of applications made by employees'' securities companies. As also is currently the case with paper filings, each co-applicant's file number will be composed of the primary applicant's file number with an appended numerical suffix unique to that co-applicant. Each applicant or co-applicant will include this file number, in addition to its CIK, in the EDGAR template of all amendments to the application, which will also be required electronic submissions.

[44] *See* Rule 0–2(d).

context of an electronic filing.[45] Second, we are eliminating the requirement that applicants include draft notices as exhibits to applications.[46] The staff has found these exhibits to be of limited value because the staff prefers to draft its own notices of applications. Finally, we are amending Rule 0–2 to remove the last sentence of paragraph (b),[47] which was added in the initial EDGAR rulemaking and is inconsistent with mandatory electronic submission of applications on EDGAR.[48]

One commenter suggested that we further amend Rule 0–2 by eliminating from paragraph (c)(1) the requirement that a copy of any board resolution authorizing the actions of the person signing and filing the application be included as an exhibit to the application (or, alternatively, that the pertinent provisions of such resolution be quoted in the application).[49]

Because this suggestion goes beyond the scope of our proposal, we are not adopting the recommendation at this time. We may consider this recommendation in the future.

We proposed and are adopting an amendment to Rule 201 of Regulation S–T. Rules 201 and 202[50] of Regulation S–T address hardship exemptions from EDGAR filing requirements, and Rule 13(b) of Regulation S–T[51] addresses the related issue of filing date adjustments.

A filer may obtain a temporary hardship exemption under Rule 201 if it experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing by filing a properly legended paper copy[52] of the filing under cover of Form TH.[53] This process is self-executing. A filer who files in paper under the temporary hardship exemption must submit an electronic format copy of the filed paper document within six business days of the filing of the paper format document.[54]

A filer may apply for a continuing hardship exemption under Rule 202 if it cannot file all or part of a filing without undue burden or expense.[55] In contrast to the self-executing temporary hardship exemption process, a filer can obtain a continuing hardship exemption only by submitting a written application, upon which the Commission, or Commission staff pursuant to delegated authority, may then act.

We proposed making the temporary hardship exemption unavailable for submission of applications under the Investment Company Act, since there is generally no submission exigency or submission deadline associated with these submissions. We asked for comments on this proposed amendment. We received one comment questioning whether, if this provision were adopted, the staff would work with applicants that need additional time to file amendments, to prevent applications from being placed in an inactive status.[56] As has been the practice in the past, the staff will continue to work with applicants experiencing unanticipated technical or other difficulties to establish appropriate timeframes for the submission of amendments and ensure the timely processing of all applications.

We are amending Rule 201(a) of Regulation S–T as proposed to make the temporary hardship exemption unavailable for submission of applications under the Investment Company Act.[57] We restate our belief that there is generally no submission exigency or submission deadline associated with these submissions. An applicant will continue to have the ability to apply for a continuing hardship exemption under Rule 202 if it cannot submit all or part of an application without undue burden or expense. Also, while we expect the circumstances to be rare, the staff could use its delegated authority to grant a filing date adjustment pursuant to Rule 13(b) of Regulation S–T [17 CFR 232.13(b)]. While we do not expect an applicant to need a filing date adjustment in the context of an application, it will be available in the unlikely event it is needed. And, as stated above, the staff will continue to work with applicants experiencing unanticipated difficulties.

IV. Amendments To Mandate That Certain Filings of Small Business Investment Companies and Business Development Companies Be Made Electronically

Regulation E[58] provides for the exemption from registration of securities issued by small business investment companies registered under the Investment Company Act and business development companies regulated under the Investment Company Act, subject to the terms and conditions of the regulation. Rule 604[59] of Regulation E requires the filing of notification on Form 1–E[60] of sales of securities under Regulation E. Rule 607[61] of Regulation E requires the filing of sales material used in connection with the offering. Rule 609[62] of Regulation E requires the filing of reports of sales on Form 2–E.[63]

We proposed that Regulation E filings be mandatory electronic filings on the EDGAR system. Regulation E filers make most of their filings electronically on the EDGAR system. Since these filers are already EDGAR filers and most will have available electronic copies of their Form 1–E (and any related sales material)[64] and Form 2–E, we believe that making these filings electronically

[45] Regulation S–T requires that each signatory to an electronic filing manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form in the electronic filing. This document must be executed before or at the time the electronic filing is made, must be retained by the filer for a period of five years, and must be made available to the Commission upon request. *See* Rule 302(b) of Regulation S–T [17 CFR 232.302(b)]. We believe that this requirement provides sufficient assurance of the legitimacy of signatures contained in the electronic filings so that notarization is unnecessary.

[46] *See* Rule 0–2(g).

[47] The last sentence of Rule 0–2(b) read as follows: ''Every application for an order under any provision of the Act and every amendment to such application shall be submitted to the Commission in paper only, whether or not the applicant is otherwise required to file in electronic format, unless instructions for electronic filing are included on the form, if any, prescribed for such application.''

[48] *See* Rulemaking for EDGAR System—Investment Companies and Institutional Investment Managers, Release No. 33–6978 (Feb. 23, 1993) [58 FR 14848 (Mar. 18, 1993)].

[49] *See* ICI Comment Letter. The commenter also noted:

In our view, this requirement is unnecessary because the person signing the application is required to attest to such resolutions in the verification required by paragraph (d) of the rule. We further note that board resolutions do not have to be submitted with other types of filings with the Commission, such as fund registration statements and proxy statements, nor are we aware of any history of abuse that would suggest this requirement must be maintained.

[50] 17 CFR 232.202.

[51] 17 CFR 232.13(b).

[52] *See* 17 CFR 232.201(a).

[53] 17 CFR 239.65, 249.447, 269.10, and 274.404.

[54] *See* 17 CFR 232.201(b).

[55] *See* 17 CFR 232.202(a).

[56] *See* ICI Comment Letter. The staff typically places applications in an inactive status if the applicant does not respond to staff comments within sixty days of receiving the comments, such as by filing an amendment.

[57] *See* amendment to Rule 201(a) of Regulation S–T. As we noted in the Proposing Release, we have previously made unavailable the ability for filers to use the temporary hardship exemption for EDGAR submissions of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) of the Exchange Act [15 U.S.C. 78p(a)]. *See* Mandated EDGAR Filing and Web Site Posting for Forms 3, 4 and 5, Release No. 33–8230 (May 7, 2003) [68 FR 25788].

[58] 17 CFR 230.601 to 230.610a.

[59] 17 CFR 230.604.

[60] 17 CFR 239.200.

[61] 17 CFR 230.607.

[62] 17 CFR 230.609.

[63] 17 CFR 239.201.

[64] Requiring electronic filing on EDGAR of Rule 607 sales literature is consistent with the requirement to file electronically on EDGAR omitting prospectuses under Rule 482 of the Securities Act of 1933 (the ''Securities Act'') (referred to as ''482 ads'') and sales literature under Section 24(b) of the Investment Company Act.

on EDGAR will impose very little burden or cost on these companies. We requested but received no comment on this proposal. We are adopting the amendments as proposed, making these filings mandatory electronic submissions.[65]

V. Effective Date

Beginning on January 1, 2009, applications for orders under the Investment Company Act and Regulation E filings will become mandatory electronic submissions on the EDGAR system. This effective date will provide time for filers to prepare for the mandatory requirements. Also, since the effective date will be the start of a calendar year, the public will have a clear reference point for determining whether any particular application or Regulation E filing has been submitted either in paper or electronically.

VI. Cost-Benefit Analysis

We are sensitive to the costs and burdens of our rules. The rules we are adopting today reflect the addition of applications under the Investment Company Act as mandatory electronic submissions on EDGAR. In addition, they amend Rule 0–2 and make unavailable to applicants Regulation S–T's provision for temporary hardship exemptions. They also add Regulation E filings to the list of those that must be filed electronically through EDGAR.

A. Expected Benefits

We expect that the addition of applications under the Investment Company Act as mandatory electronic submissions on EDGAR will result in considerable benefits to the securities markets, investors, and other members of the public, by expanding the accessibility of information, and increasing the types of information, filed and made available for public review through the EDGAR system. The primary goal of the EDGAR system since its inception has been to facilitate the rapid dissemination of financial and business information in connection with filings, including filings by investment companies. The amendments will benefit investors, financial analysts and others by increasing the efficiency of retrieving and disseminating these applications. The mandated electronic transmission of these documents will enable the public to access them more quickly and search them more easily. Instead of having to come in person or through an agent to the Commission's public reference room to conduct a search for a particular submission that is in paper or microfiche, the public will be able to find and review the application on any computer with an Internet connection by accessing the EDGAR system through the Commission's Web site or through a third party Web site that links to EDGAR. We received one comment stating the belief that it is unlikely that investors would choose to access and review exemptive applications available via EDGAR.[66] We believe that these documents should be publicly available via EDGAR for any investors who do choose to access and review them.

The amendments will benefit the public by making the EDGAR page of our Web site a more comprehensive resource for most information on file with us related to the operation of investment companies. A further benefit will be to ensure that all applications are available to the public free of charge on our Web site without the cost of paying a third party for a copy.

Persons who may consider requesting a hearing on an application on the basis of a notice will be able to more easily obtain the actual application so that they can better evaluate the issues raised by the application. We believe this will be a significant improvement in the applications process.

We also expect that applicants will benefit from the increased efficiencies in the filing process for these submissions resulting from the amendments. By electronically transmitting these documents directly to the Commission, applicants will avoid the uncertainties and delays that can occur with the manual delivery of paper documents; we believe that it will be a simpler and more efficient means to submit applications. Applicants also will benefit from no longer having to submit multiple copies of paper documents to the Commission.

Because the Commission's staff will be able to retrieve and analyze information contained in these submissions more readily than under our current paper system, mandated electronic submission of these documents should facilitate the staff's retrieval and review of a particular document. Applicants and investors should benefit from increased efficiencies in the Commission's storage, retrieval, and analysis of these submissions which should result from the amendments.

We believe the amendments to Rule 0–2 will benefit applicants. Removing the notarization requirement will remove a requirement from filers that is unnecessary for electronic filings, and removing the requirement to include a draft notice as an exhibit will result in a cost-savings to applicants. And, we believe that making unavailable to applicants Regulation S–T's Rule 201 provision for temporary hardship exemptions will benefit applicants because applicants will not bear the cost of both submitting an application in paper and in electronic form as a confirming copy within six business days as required by the temporary hardship exemption rule. This is true in light of the fact that there is no deadline for the submission of an application.

We also expect that the addition of Regulation E filings as mandatory electronic submissions on EDGAR will result in benefits to the securities markets, investors, and other members of the public, by expanding the accessibility of information, and increasing the types of information, filed and made available for public review through the EDGAR system. Requiring these Regulation E filings to be submitted on EDGAR will benefit members of the investing public and the financial community by making information contained in these Commission filings more easily searchable and readily available to them. The amendments will result in the benefit to the public of the EDGAR page of our Web site being a comprehensive source from which to find filings of small business investment companies and business development companies.

We also expect that Regulation E filers will benefit from the amendments by increased efficiencies in the filing process for these submissions. By electronically transmitting these documents directly to the Commission, these filers will avoid the uncertainties and delays that can occur with the manual delivery of paper documents; we believe that it will be a simpler and more efficient means to submit these Regulation E filings. Regulation E filers also will benefit from no longer having to submit multiple copies of paper documents to the Commission.

The amendments will benefit investors, financial analysts and others by increasing the efficiency of retrieving and disseminating these filings. The mandated electronic transmission of these documents will enable the public to access them more quickly. Instead of having to come in person or through an agent to the Commission's public reference room to conduct a search for a particular submission that is in paper or microfiche, the public will be able to find and review the filing on any computer with an Internet connection

[65] *See* amendments to paragraphs (a)(1)(v) and (c)(6) of Rule 101 of Regulation S–T.

[66] *See* ICI Comment Letter at footnote 7.

by accessing the EDGAR system through the Commission's Web site or through a third party Web site that links to EDGAR. The amendments will also enable financial analysts and others to retrieve, analyze and disseminate more rapidly this information.

An investor will be able to more efficiently gather information of interest about Regulation E filers. Also, Regulation E filers and investors should benefit from the amendments by increased efficiencies in the Commission's storage, retrieval, and analysis of these submissions. Mandated EDGAR submission of these documents will result in their addition to the Commission's central electronic repository of filings that is free to anyone who has access to a computer linked to the Internet. Because the Commission's staff will be able to retrieve and analyze information contained in these Regulation E submissions more readily than under our current paper system, mandated electronic submission of these documents should facilitate the staff's retrieval and review of a particular document.

In the Paperwork Reduction Act section we estimate that, the amendments to Rule 0–2 will reduce the total burden by approximately $52,550 annually.

B. Expected Costs

We expect that the amendments will result in some initial and ongoing costs to applicants. We also expect, however, that many applicants will not bear the full range of costs that will result from the amendments for the reasons described below. Initial costs are those associated with filing a Form ID in order to obtain the access codes needed to submit an application electronically and otherwise preparing to make an application submission.[67] In order to file a Form ID, an applicant will need to learn the related electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Commission's EDGAR Filer Management Web site, respond to Form ID's information requirements and fax to the Commission a notarized authenticating document.

Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and additional costs arising from each subsequent submission of an application.

We expect that the vast majority of applicants will need to incur few, if any, additional costs related to obtaining computer and Internet access. We believe that the vast majority of applicants already will have access to a computer and the Internet.[68]

We expect no additional costs to applicants from amendments to Rule 0–2. We requested but received no comment on whether our amendments to Rule 0–2 to remove the current requirements for notarization and provision of a draft notice as an exhibit will result in any additional costs, although the two commenters supported these proposals. We expect no additional costs to applicants from our amendment to make unavailable to applicants Regulation S–T's Rule 201 provision for temporary hardship exemption. An applicant will still be able to request a continuing hardship exemption under Regulation S–T Rule 202 under appropriate circumstances.

We believe that mandatory EDGAR submission of Regulation E filings will result in minimal cost to these filers. For the following reasons, we also expect that Regulation E filers will not bear the full range of costs frequently associated with new electronic filing requirements. Initial costs are those associated with the purchase of compatible computer equipment and software, including EDGAR software if obtained from a third-party vendor and not from the Commission's Web site. Initial costs also include those resulting from the training of existing employees to be EDGAR proficient or the hiring of additional employees or agents that are already skilled in EDGAR processing. Initial costs further include those associated with the formatting and transmission of an applicant's first document submitted on EDGAR. These transmission costs may include those related to subscribing to an Internet service provider. Regulation E filers already file on EDGAR and will have minimal or no initial costs.

Ongoing costs are those associated with the electronic formatting and transmission of subsequent EDGAR filings. Regulation E filers may also incur future costs resulting from the training or hiring of employees regarding updated EDGAR filing requirements. The magnitude of these costs will depend on the filers' levels of technological proficiency and their previous familiarity with EDGAR filing requirements. Regulation E filers will incur the ongoing costs associated with formatting and transmitting their subsequent EDGAR filings. Consequently, the mandated EDGAR requirements should result only in costs related primarily to the electronic formatting of these documents in a format compatible with EDGAR, and transmission of the EDGAR formatted documents to the Commission. In any event, we believe that any costs for transmission, formatting, and education will be comparable to savings from not having to incur similar costs related to paper submissions.

VII. Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules that we adopt thereunder. Furthermore, section 2(b) of the Securities Act,[69] section 3(f) of the Exchange Act,[70] and section 2(c)[71] of the Investment Company Act require us, when engaging in rulemaking, and considering or determining whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. We requested comment on whether the amendments, if adopted, will burden competition and whether they will promote efficiency, competition, and capital formation. We encouraged commenters to provide empirical data or other facts to support their views. We received no comments in response.

The amendments regarding mandated electronic filing of applications and the related amendments to Rule 0–2 and Regulation S–T's Rule 201 are intended to simplify the requirements for submitting applications and facilitate more efficient transmission, analysis, storage and retrieval of information. We believe this will improve the accessibility and usefulness of information available to all applicants and the public, including those wishing to request a hearing on an application. It may make the investment products offered by applicants more competitive, since all applicants will have ready access to the applications of others. We believe the amendments will also improve the accessibility of information available to the public and investors about the operation of investment

[67] Applicants that already have EDGAR access codes will not need to file a Form ID. As further discussed in Part IX, however, we assume that a small number of applicants per year will not already have the codes.

[68] An applicant that did not already own a computer with Internet access could, for example, go to a public library to use its computer and obtain Internet access.

[69] 15 U.S.C. 77b(b).

[70] 15 U.S.C. 78c(f).

[71] 15 U.S.C. 80a–2(c).

companies. We believe the amendments will not impose a burden on competition and will not have an adverse impact on capital formation.

The amendments regarding mandated electronic filings under Regulation E by small business investment companies and business development companies are intended to facilitate more efficient transmission, analysis, storage and retrieval of information. We believe this will improve the accessibility and usefulness of information available for use by filers, investors, and the public. It may make the investment products offered by filers more competitive, since all filers will have immediate on-line access to Regulation E filings of their competitors. We believe that the amendments will also improve the accessibility of information available to the public about the operation of small business investment companies and business development companies and thereby improve investors' ability to make informed investment decisions. We believe the amendments will not impose a burden on competition and will not have an adverse impact on capital formation.

VIII. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to our amendments adding applications for orders under the Investment Company Act to the list of submissions that must be made electronically, amendments to amend Rule 0–2 and make unavailable to applicants the provision for temporary hardship exemptions in Rule 201 of Regulation S–T, and amendments adding Regulation E filings to the list of those that must be filed electronically through EDGAR.

A. Need for the Rule Amendments

The amendments will require applications for orders under any section of the Investment Company Act to be submitted electronically on EDGAR. The amendments to Rule 0–2 remove the requirements for notarization and provision of a draft notice, and the amendments to Rule 201 of Regulation S–T make applications ineligible for temporary hardship exemptions. We make these amendments because the absence of an electronic system for submitting applications for orders in the past limited the usefulness of the information collected and to reduce the burdens of submitting applications.

The amendments add Regulation E filings made by small business investment companies and business development companies to the list of those that must be filed electronically through EDGAR. We also make these amendments because the absence of an electronic system for submitting Regulation E filings in the past limited the usefulness of the information collected.

B. Significant Issues Raised by Public Comment

In the Initial Regulatory Flexibility Act Analysis (''IRFA'') for the proposed amendments, we encouraged the submission of written comments with respect to any aspect of the IRFA. We requested specifically comment on the number of small entities that will be affected by the amendments and the likely impact on small entities. We asked commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact. We received no comments with respect to this section of the proposal.

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[72] Approximately 159 registered investment companies meet this definition.[73] Approximately 38 business development companies may be considered small entities.[74] We estimate that few, if any, separate accounts registered on Form N–3, N–4, or N–6 are small entities.[75]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The amendments require applicants to submit requests for orders and small business investment companies and business development companies to submit Regulation E filings electronically on the EDGAR system. The Commission estimates some one-time formatting and ongoing burdens that will be imposed on all applicants and Regulation E filers, including those that are small entities. We note, however, that all Regulations E filers and most applicants currently make other filings on EDGAR. Furthermore, we believe that non-investment company applicants will have no greater burden than that of those filers of Section 16 reports or Schedules 13D and 13G[76] who will not otherwise make EDGAR filings and that the electronic submission should create only a *de minimis* burden.

There will be no change in reporting or recordkeeping requirements. The amendments to Rule 0–2 reduce compliance requirements to the extent that they will remove the requirements for notarization of the application and provision of a draft notice with the application.

We solicited comment on the effect the amendments would have on small entities. We received no comments in response.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that will accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, is not appropriate or consistent with investor protection. Different requirements for applicants or Regulation E filers that are small entities could make it more difficult for the public to locate Commission filings and disclosure documents for these applicants. We believe it is important that the benefits resulting from the amendments be provided to the public

[72] Rule 0–10(a) under the Investment Company Act [17 CFR 240.0–10(a)].

[73] The estimated number of reporting investment companies that may be considered small entities is based on December 2007 data from the Commission's EDGAR database and a third-party data provider.

[74] This estimate is based on analysis by the Division of Investment Management staff of information from databases compiled by third-party information providers.

[75] This estimate is based on figures compiled by the Division of Investment Management staff regarding separate accounts registered on Forms N–3, N–4, and N–6. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Rule 0–10(b) under the Investment Company Act [17 CFR 270.0–10(b)].

[76] 17 CFR 240.13d–101 and 240.13d–102.

for all applications and Regulation E filings, not just for applications and Regulation E filings for entities that are not considered small entities.

We have endeavored throughout the amendments to minimize the regulatory burden on all applicants and Regulation E filers, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as others. The Commission believes that further clarification, consolidation, or simplification of the amendments for those that are small entities would be inconsistent with the Commission's concern for investor protection. Further clarification, consolidation, or simplification of the amendments for those that are small entities would result in less information available about them. Similarly, we conclude that using performance rather than design standards would not be consistent with our statutory mandate of investor protection. We believe that the standard provided in the amendments (EDGAR filing) is already sufficiently clear and appropriately simple. A major goal of making these mandatory EDGAR submissions is a more complete and searchable EDGAR database of filings; we do not believe that there is a comparable performance standard that will achieve this goal.

IX. Paperwork Reduction Act

The rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[77] We submitted the collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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.

A. Rule 0–2

The title for the collection of information is ''General Requirements of Papers and Applications.'' OMB approved this collection of information under control number 3235–0636 (expiring on February 28, 2011). Provision of information under the rule is necessary to obtain a benefit. The information is not kept confidential. Respondents to the collection are applying for orders of the Commission under the Investment Company Act. The Commission uses the information required by Rule 0–2 to decide whether the applicant should be deemed to be entitled to the action requested by the application. The amendments to Rule 0–2 eliminate the requirement to have verifications of applications and statements of facts made in connection with applications notarized[78] and eliminate the requirement that applicants include draft notices as exhibits to applications.[79]

Burden Estimate for Rule 0–2

Applicants file applications as they deem necessary. The Commission receives approximately 125 applications per year under the Investment Company Act. Although each application typically is submitted on behalf of multiple entities, the entities in the vast majority of cases are related companies and are treated as a single applicant for purposes of this analysis.

Much of the work of preparing an application is performed by outside counsel. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required for preparation. Based on conversations with applicants and attorneys, the cost ranges from approximately $7,000 for preparing a well-precedented, routine application to approximately $80,000 to prepare a complex and/or novel application. We estimate that the Commission receives 20 of the most time-consuming applications annually, 80 applications of medium difficulty, and 25 of the least difficult applications. This distribution gives a total estimated annual cost burden to applicants of filing all applications of $5,255,000 [(20 × $80,000) + (80 × $43,500) + (25 × $7,000)].

In addition, based on conversations with applicants, we estimate that in-house counsel spend from ten to fifty hours helping to draft and review an application. We estimate a total annual hour burden to all respondents of 3,650 hours (50 hours × 20 applications) + (30 hours × 80 applications) + (10 hours × 25 applications).

We have decreased the burden associated with the existing collection of information for Rule 0–2 to reflect the amendments. The amendments to Rule 0–2 eliminate the requirement to have verifications of applications and statements of facts made in connection with applications notarized. The notary service was provided by a secretary or similar administrative employee of the applicant or the outside counsel preparing the application and represented a negligible cost or hour burden to the applicant, so elimination of the notarization requirement will not be likely to decrease the burden measurably.

The amendments also eliminate the requirement that applicants include proposed notices as exhibits to applications. A proposed notice is merely a summary of the statements in the application. We estimate that preparation of the proposed notice by outside counsel represents approximately 1% of the cost of preparing an application. Elimination of this requirement will reduce the estimated cost burden by approximately $52,550 (1% of $5,255,000). The amendments will not change the hour burden.

We estimate the total reduction in the burden will be approximately $52,550.

B. Regulation S–T

The title for the collection of information is ''General Rules and Regulations for Electronic Filing.'' (OMB Control No. 3235–0424, expiring on September 30, 2008). The purpose of Regulation S–T is to implement the Commission's EDGAR system. The EDGAR system enables the Commission to receive, store, process and disseminate information filed with the Commission under the provisions of the federal securities laws. The Commission's forms and rules require filings that make information available to the investing public and that permit the Commission to verify compliance with the federal securities laws. Electronic filing improves the availability to the public and to the Commission of information filed with the Commission. Regulation S–T specifies the requirements that govern the electronic submission of documents to the Commission. Provision of the information required by the Regulation is mandatory. Responses are not kept confidential.

Burden Estimate for Regulation S–T

The amendments to Regulation S–T revise Rule 101 under Regulation S–T to require electronic filing of applications for orders of the Commission under the Investment Company Act and of forms required by Regulation E under the Securities Act of 1933. The burden associated with the filing of applications under Rule 0–2 is reflected in the collection of information entitled ''General Requirements of Papers and Applications.'' We are not amending Regulation E. The burden associated with the filing of documents required by Regulation E is reflected in the collections of information required by

[77] 44 U.S.C. 3501 *et seq.*

[78] *See* Rule 0–2(d).

[79] *See* Rule 0–2(g).

Regulation E, and will not change as a result of the amendments to Regulation S–T. We are also amending Rule 201 under Regulation S–T, which governs temporary hardship exemptions from electronic filing. Rule 201 is part of Regulation S–T and does not impose any burden on respondents separate from Regulation S–T. The amendments to Rule 201 will not change the burden of Regulation S–T. The Paperwork Reduction Act requires that we obtain OMB approval for a collection of information, whether the collection has a burden or not. Regulation S–T is a collection of information with no burden to respondents. OMB requires us to assign a burden of one hour to Regulation S–T and to indicate that the Regulation has one respondent so the automated OMB system will be able to handle approval of the Regulation. OMB has already approved a burden of one hour for one respondent to the Regulation.

C. Form ID

The Commission estimates that each year a small number of applicants for orders under the Investment Company Act will need to file a Form ID (OMB Control Number 3235–0328, expiring April 30, 2009) with the Commission in order to gain access to EDGAR. Form ID is used to request the assignment of access codes to file on EDGAR. Most applicants will not need to file a Form ID because any applicant that has made at least one filing with the Commission since 2002 has been entered into the EDGAR system by the Commission and will not need to file Form ID to file electronically on EDGAR. However, applicants that have never made a filing with the Commission will need to file Form ID.

The Commission estimates that it will receive approximately 10 Forms ID a year under the amendments. Because the actual number of Forms ID the Commission receives each year is less than the current estimate, we are not revising the estimated number of respondents that file a Form ID.

We received no comments on the PRA section of the proposal.

X. Statutory Basis

We adopt the rule amendments outlined above under sections 6, 7, 8, 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a)], sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act [15 U.S.C. 78c, 78l, 78m, 78n, 78o(d), 78w(a), and 78ll], and sections 8, 30, 31 and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37].

List of Subjects

17 CFR Part 232

Reporting and recordkeeping requirements, Securities.

17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of the Rule Amendments

■ In accordance with the foregoing, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll (d), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.101 is amended by:
■ a. Revising paragraphs (a)(1)(iv) and (v), the introductory text of paragraph (a)(2), paragraph (a)(2)(i), the first sentence of paragraph (a)(3);
■ b. Removing ''and Regulation E (§§ 230.601–230.610a of this chapter)'' from paragraph (c)(6); and
■ c. Removing and reserving paragraph (c)(11).

The revisions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(iv) Documents filed with the Commission pursuant to sections 8, 17, 20, 23(c), 24(b), 24(e), 24(f), and 30 of the Investment Company Act (15 U.S.C. 80a–8, 80a–17, 80a–20, 80a–23(c), 80a–24(b), 80a–24(e), 80a–24(f), and 80a–29) and any application for an order under any section of the Investment Company Act (15 U.S. C. 80a–1 *et seq.*);

(v) Documents relating to offerings exempt from registration under the Securities Act filed with the Commission pursuant to Regulation E (§§ 230.601–230.610a of this chapter);

* * * * *

(2) The following amendments to filings and applications, including any related correspondence and supplemental information except as otherwise provided, shall be submitted as follows:

(i) Any amendment to a filing or application submitted by or relating to a registrant or an applicant that is required to file electronically, including any amendment to a paper filing or application, shall be submitted in electronic format;

* * * * *

(3) Supplemental information, including documents related to applications under any section of the Investment Company Act, shall be submitted in electronic format except as provided in paragraph (c)(2) of this section. * * *

* * * * *

■ 3. Amend § 232.201 by revising paragraph (a) introductory text to read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter), a Form D (§ 239.500 of this chapter), or an application for an order under any section of the Investment Company Act (15 U.S.C. 80a–1 *et seq.*), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

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

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

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

* * * * *

■ 5. Amend § 270.0–2 by:
■ a. Removing the last sentence in paragraph (b):
■ b. Revising paragraph (d);
■ c. Removing paragraph (g);
■ d. Redesignating paragraph (h) as paragraph (g); and
■ e. Removing the authority citation following the section.

The revision reads as follows:

§ 270.0–2 General requirements of papers and applications.

* * * * *

(d) *Verification of applications and statements of fact.* Every application for an order under any provision of the Act, for which a form with instructions is not

specifically prescribed and every amendment to such application, and every statement of fact formally filed in support of, or in opposition to, any application or declaration shall be verified by the person executing the same. An instrument executed on behalf of a corporation shall be verified in substantially the following form, but suitable changes may be made in such form for other kinds of companies and for individuals:

The undersigned states that he or she has duly executed the attached _____ dated _____, 20 ___ for and on behalf of (*name of company*); that he or she is (*title of officer*) of such company; and that all action by stockholders, directors, and other bodies necessary to authorize the undersigned to execute and file such instrument has been taken. The undersigned further states that he or she is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his or her knowledge, information and belief.

(Signature)

* * * * *

Dated: October 29, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26183 Filed 11–3–08; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM01–8–009 and RM01–8–010]

Revised Public Utility Filing Requirements for Electric Quarterly Reports

Issued October 28, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order No. 2001–I; Order Revising Electric Quarterly Report (EQR) Data Dictionary.

SUMMARY: In this order, the Federal Energy Regulatory Commission (Commission) revises the EQR Data Dictionary to define and rename Field 22 of the EQR to ''Commencement Date of Contract Terms'' and to clarify the information to be reported in the EQR concerning ancillary services. These revisions will make reporting this information less burdensome and more accessible.

DATES: *Effective Date:* This order will become effective upon publication in the **Federal Register**. The definitions adopted in this order shall be used in filing the Q1, 2009 EQR due on April 30, 2009 and in subsequent filings of the EQR.

FOR FURTHER INFORMATION CONTACT:

Mark Blazejowski (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6055.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8321.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff.

1. In this order, after consideration of the comments filed in response to our notices seeking comment,[1] we are revising the Electric Quarterly Report (EQR) Data Dictionary. Specifically, we are revising the EQR Data Dictionary to define and rename Field 22 of the EQR to ''Commencement Date of Contract Terms,'' as this field is intended to be used to identify when the current terms of the reported contract became effective. This order also clarifies the information to be reported in the EQR concerning ancillary services.

I. Background

A. EQRs and EQR Data Dictionary

2. On April 25, 2002, the Commission issued Order No. 2001, a final rule establishing revised public utility filing requirements. This rule requires public utilities to file EQRs summarizing specified pertinent data about their currently effective contracts (contract data) and data about wholesale power sales they made during the reporting period (transaction data).[2] The requirement to file EQRs replaced the requirement to file quarterly transaction reports summarizing a utility's market-based rate transactions and sales agreements that conformed to the utility's tariff.

3. In Order No. 2001, the Commission also adopted a new section in its regulations, 18 CFR 35.10b, which requires that the EQRs are to be prepared in conformance with the Commission's software and guidance posted and available from the Commission's Web site. This provision obviates the need to revise the Commission's regulations to implement revisions to the EQR software and guidance. Since the issuance of Order No. 2001, as need has arisen, the Commission has issued orders to resolve questions raised by EQR users and has directed Staff to issue additional guidance on how to report certain transactions.[3]

4. On September 24, 2007, the Commission issued Order No. 2001–G, adopting an EQR Data Dictionary that collected in one document the definitions of certain terms and values used in filing EQR data and providing formal definitions for fields that were previously undefined.

B. Commencement Date

5. On December 20, 2007, the Commission issued Order No. 2001–H, which addressed a pending request for rehearing and clarified the information to be reported in several EQR data fields. In Order No. 2001–H, the Commission defined Field 22 in the Contract Data section of the EQR, named ''Contract Commencement Date,'' as:

> The date the terms of the contract reported in the EQR were effective. If the terms reported in the Contract Data section of the EQR became effective or if service under those terms began on multiple dates (*i.e.*, due to an amendment), the date to be reported as the Commencement Date is the date when service began pursuant to the most recent amendment to the terms reported in the Contract Data section of the EQR.[4]

6. On February 26, 2008, the Commission held a technical conference to ''review the EQR Data Dictionary and address questions from EQR users.''[5]

[1] *Revised Public Utility Filing Requirements for Electric Quarterly Reports*, 73 FR 12983 (Mar. 11, 2008), FERC Stats. & Regs. ¶ 35,557 (2008) (EQR Ancillary Services Notice); *Revised Public Utility Filing Requirements for Electric Quarterly Reports*, 73 FR 30543 (May 28, 2008), FERC Stats. & Regs. ¶ 35,558 (2008) (Commencement Date Notice).

[2] *Revised Public Utility Filing Requirements*, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (2002), *reh'g denied*, Order No. 2001–A, 100 FERC ¶ 61,074 (2002), *reh'g denied*, Order No. 2001–B, 100 FERC ¶ 61,342 (2002).

[3] *See, e.g., Notice Providing Guidance on the Filing of Information on Transmission Capacity Reassignments in Electric Quarterly Reports*, 124 FERC ¶ 61,244 (2008), which provided guidance on complying with the Commission's Order No. 890–B reporting requirements; *Revised Public Utility Filing Requirements*, Order No. 2001–E, 105 FERC ¶ 61,352 (2003), where the Commission standardized the terminology for control areas; and *Revised Public Utility Filing Requirements*, 67 FR 65973 (Oct. 29, 2002), FERC Stats. & Regs. ¶ 35,045 (Oct. 21, 2002), which provided general guidance for using the EQR software.

[4] *Revised Public Utility Filing Requirements for Electric Quarterly Reports*, Order No. 2001–H, 121 FERC ¶ 61,289 (2007), Data Dictionary at Field 22.

[5] *See Notice of Electric Quarterly Reports Technical Conference*, 73 FR 2477 (Jan. 15, 2008).

During this technical conference, the participants discussed, among other matters, whether the Commission intended in Order No. 2001–H for the commencement date field to be used to report the date the contract terms reported in the EQR (original or amended) became effective. On April 17, 2008, in response to participants' requests, the Commission's Director, Office of Enforcement, issued a waiver, for the first quarter of 2008, of the requirement to file EQRs using the commencement date definition as clarified in Order No. 2001–H.[6] On July 9, 2008, the waiver was extended until final action is taken in this docket.[7]

7. On May 28, 2008, the Commission issued the Commencement Date Notice to invite comment on the issues raised in the technical conference. In addition, the Commencement Date Notice proposed defining commencement date as:

> The date the terms of the contract reported in the Contract Products section of the EQR (Field Nos. 26 through 45) were effective. If the terms reported in the Contract Data section of the EQR became effective on multiple dates (*i.e.*, due to one or more amendments), the date to be reported as the Commencement Date is the date the most recent amendment became effective. If the contract or the most recent reported amendment does not have an effective date, the date when service began pursuant to the contract or most recent reported amendment may be used. If the terms of the contract reported in the Contract Products section have not been amended since January 1, 2008, the initial date the contract became effective may be used.

8. The Commission also proposed renaming the field to ''Commencement Date of Contract Terms.''[8] On April 10, 2008, three entities filed timely comments on the Commencement Date Notice.[9]

C. Ancillary Service Reporting

9. Order No. 888 adopted six ancillary services to be included in the open access transmission tariff (OATT): Scheduling, System Control and Dispatch (Schedule 1); Reactive Supply and Voltage Control (Schedule 2); Regulation and Frequency Response (Schedule 3); Energy Imbalance (Schedule 4); Operating Reserve—Spinning-or Spinning Reserve—(Schedule 5); and Operating Reserve—Supplemental—or Supplemental Reserve—(Schedule 6).[10]

10. The six ancillary services established in Order No. 888 are now offered under the Order No. 890 *pro forma* OATT. In Order No. 890, the Commission also adopted ''generator imbalance'' as a new ancillary service.[11]

11. On June 21, 2007, the Commission issued Order No. 697, a Final Rule that codified and, in certain respects, revised the Commission's standards for market-based rate authority for sales of electric energy, capacity, and ancillary services.[12] Among other matters, Order No. 697 addressed the posting and reporting requirements for third-party sellers of ancillary services at market-based rates.

12. The matter of third-party sellers of ancillary services at market-based rates had previously been addressed in *Avista Corporation*, 87 FERC ¶ 61,223, *order on reh'g*, 89 FERC ¶ 61,136 (1999) (*Avista*), among other cases. *Avista* provided a policy that third-party ancillary service providers that could not perform a market power study would be allowed to sell ancillary services at market-based rates, under certain conditions. The authorization in *Avista* extended only to the following four ancillary services: Regulation Service; Energy Imbalance Service; Spinning Reserves; and Supplemental Reserves.

13. On March 3, 2008, the Commission issued the EQR Ancillary Services Notice to clarify the requirement to report third-party ancillary service transactions. The notice proposed adding the phrase ''Reported for power sales and transmission-related transactions'' to clarify the EQR reporting requirements with regard to Energy Imbalance, Regulation & Frequency Response, Spinning Reserve, and Supplemental Reserve—the four products identified in *Avista*—''to clarify that sales of these services must be reported both in the Contract and Transaction sections of the EQR.'' The notice also proposed to add Generator Imbalance as a Product Name in the EQR.[13] On June 27, 2008, three entities filed comments in response to the EQR Ancillary Services Notice.[14]

II. Discussion

A. Commencement Date

1. Comments

14. CAISO states that it supports the intent of the proposed clarification of the definition of the ''Contract Commencement Date'' in the EQR Data Dictionary and the proposal to rename that EQR field as ''Commencement Date of Contract Terms.'' However, CAISO is concerned that the proposed commencement date definition (Field 22) is confusing because it refers to ''the Contract Data section of the EQR'' in the second sentence and ''the Contract Products section'' elsewhere.[15] CAISO recommends that the Commission only require that entries to Field 22 be changed as a result of matters affecting the Contract Products section of the contract data and not based on any other revisions to a contract. CAISO argues that other information included in the EQR has no substantive effect on Field 22. CAISO also suggests that, rather than referring to the ''Commencement Date,'' the definition should refer specifically to ''Commencement Date of Contract Terms.''

15. EEI's comments generally support the proposed modification. EEI, however, requests that the Commission modify the definition to make clear that if the terms of the contract reported in the Contract Products section have not been amended since January 1, 2008, the filer may, at its election, use the initial date the contract became effective (or absent an effective date the initial

[6] *See Edison Electric Institute*, Docket Nos. RM01–8–000, RM01–8–007 and ER02–2001–000 (Apr. 17, 2008) (unpublished letter order).

[7] *See Edison Electric Institute*, Docket Nos. RM01–8–000, RM01–8–007 and ER02–2001–000 (July 9, 2008) (unpublished letter order).

[8] As noted above, Field 22 has been previously titled ''Contract Commencement Date.''

[9] Timely comments on the Commencement Date Notice were filed by: Edison Electric Institute (EEI); Sempra Energy, Inc. (Sempra); and Occidental Power Services, Inc. (Occidental).

[10] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS* v. *FERC*), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[11] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, at P 668 (2007), *order on reh'g*, Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. and Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890–B, 123 FERC ¶ 61,299 (2008).

[12] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 FR 39904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252 (2007), *clarifying order*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697–A, 73 FR 25,832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268 (2008).

[13] *EQR Ancillary Services Notice*, FERC Stats. & Regs. ¶ 35,557 at P 12.

[14] Timely comments on the EQR Ancillary Services Notice were filed by: EEI; California Independent System Operator Corporation (CAISO); and PJM Interconnection, L.L.C. (PJM).

[15] EQR filers summarize their contracts in the Contract Data section of the EQR: Fields 14 through 45. Fields 14 through 20 of the Contract Data section capture the seller/customer identification information and fields 21 through 25 capture relevant contract dates such as commencement and termination dates. The Contract Products section (Fields 26 through 45) is a subset of the Contract Data section describing the various offerings under the contract such as firm and non-firm, long-term, short-term.

date when service began) as the contract commencement date, even if the terms of the contract reported in the Contract Products section were amended prior to January 1, 2008.

16. PJM states that the proposed commencement date definition seems to raise the possibility that an EQR filer may begin reporting a contract upon its effective date. PJM raises the concern that this conflicts with the statement in Order No. 2001 that ''the requirement to file contract data and transaction data begins with the first Electric Quarterly Report filed after service commences under an agreement.'' [16] PJM asks that the Commission ''permit public utilities to report agreements in their EQRs upon their effective dates * * * rather than when service is taken under the agreements.''

2. Commission Determination

17. With regard to CAISO's comments regarding which revisions to contract terms necessitate changes to the date reported in the commencement date field, we note that, in Order No. 2001–H, the Commission stated:

> There is a very real public interest in identifying when key terms of the contract were determined. As market conditions change over time, it is imperative to be able to sort the deals that occurred years ago from those that were confirmed more recently. To better understand the market conditions at the time a contract was put in place, it is necessary to document the date that key terms were established.[17]

18. As discussed below, based on our consideration of the comments, the Commission concludes that additional specificity is needed to provide clarity. As an initial matter, we adopt the NOPR's proposal to change the name of Field 22 to ''Commencement Date of Contract Terms.'' We note that several commenters filed comments supporting such a change, and no comment was filed that raised objections to this proposal.

19. In addition, as discussed below, we are also revising the definition of Field 22 to clearly delineate the contractual changes that would require a change in the date reported.

20. With regard to EEI's comments, we agree with the suggestion regarding pre-2008 amendments. In particular, EEI suggests we add the phrase ''or absent an effective date the initial date when service began.'' We find this additional phrase further clarifies that the Commission does not intend to require filers to research contract histories to comply with its requirements for this field and, accordingly, we will adopt this proposal.

21. Second, we reject EEI's suggestion that we add the phrase ''the Filer at its election may use'' because we find that such a phrase would result in greater ambiguity, rather than clarity, by offering a range of options on what may be reported rather than requiring a standard by which all filers must comply. Further, the notion of inconsistent filings is contrary to the intention of the EQR Data Dictionary, which was created to reduce the range of possible interpretations for appropriate entries in the EQR. Such allowable disparities make the data less uniform and less useful.

22. Finally, we reject the EEI suggestion to add the phrase, ''even if the terms of the contract reported in the Contract Products section were amended prior to January 1, 2008'' because we find it redundant and subject to conflicting interpretations.

23. Accordingly, we rename Field 22 in the EQR as ''Commencement Date of Contract Terms.'' The field is defined as:

> The date the terms of the contract reported in fields 18, 23 and 25 through 45 (as defined in the data dictionary) became effective. If those terms became effective on multiple dates (*i.e.*, due to one or more amendments), the date to be reported in this field is the date the most recent amendment became effective. If the contract or the most recent reported amendment does not have an effective date, the date when service began pursuant to the contract or most recent reported amendment may be used. If the terms reported in fields 18, 23 and 25 through 45 have not been amended since January 1, 2009, the initial date the contract became effective (or absent an effective date the initial date when service began) may be used.

24. This definition will become effective on January 1, 2009 and will be applicable for EQRs filed beginning in the first quarter of 2009. The start date for the reporting of contract amendments has been changed in the definition to January 1, 2009, to account for the effective date of the revised EQR Data Dictionary that we are adopting in this order. The limited waiver for compliance that the Commission granted on April 17, 2008 and extended on July 9, 2008 will apply to all 2008 EQRs.[18]

25. PJM is incorrect in its interpretation that the proposed commencement date definition raises the possibility that an EQR filer may begin reporting a contract upon its effective date. The commencement date definition specifies which date should be used to populate the field and does not otherwise address when a contract must first be reported in the EQR. The Commission recognizes that, logistically, it may be more convenient to begin reporting a contract upon execution. Although the requirement to file a contract in the EQR once service under that contract commences will remain in effect, the Commission neither prohibits nor discourages the earlier reporting of contracts.

B. Ancillary Service Reporting

1. Comments

26. With regard to third-party ancillary service transactions, the EQR Ancillary Services Notice proposed to add to the phrase ''Reported for power sales and transmission-related transactions'' to clarify the EQR reporting requirements with regard to Energy Imbalance, Regulation & Frequency Response, Spinning Reserve, and Supplemental Reserve in Appendix A (Product Names) to the EQR Data Dictionary. The notice also proposed to add the product ''Generator Imbalance'' in the Appendix.

27. In response to this notice, EEI filed comments arguing that ancillary services associated with transmission contracts should not be reported in the EQR. Thus, EEI suggests that the reporting requirements regarding Energy Imbalance, Regulation & Frequency Response, Spinning Reserve, and Supplemental Reserve be changed to read as follows: ''For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (*i.e.*, non-transmission function) are reported.'' EEI argues that its proposed language is superior to that proposed by the Commission, because the language proposed in the EQR Ancillary Services Notice may cause confusion over whether transmission-related agreements are to be reported in the EQR. EEI states that ''the Commission has never required transmission functions to report ancillary service sales in the Transactions portion of the EQR, which was established in Order No. 2001,'' and ''the suggested changes to the Appendix A definitions may not clearly enough reflect this existing policy.''

28. EEI also states that ''the definition for Energy Imbalance and the proposed definition for Generator Imbalance do not indicate that they may be Ancillary Services'' and asks ''the Commission to clarify that Energy Imbalance and Generator Imbalance can be an [sic] Ancillary Services, and that * * *

[16] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 216.

[17] Order No. 2001–H, 121 FERC ¶ 61,289 at P 12.

[18] The expiration date of the limited waiver also applies to the Increment Name fields (Fields 28 and 60), for which additional time was provided to comply with Order No. 2001–G.

[o]nly ancillary services provided by a marketer are reportable transactions, though both marketers and transmission functions must list them in the Contracts section of the EQR.''

2. Commission Determination

29. Order No. 2001 stated:

> We clarify that ancillary service transaction data associated with transmission need not be reported when the transmission services are provided on an unbundled basis * * * On the other hand, ancillary service transaction data associated with power sales are currently required to be filed in Quarterly Transaction Reports and the requirement to file these data is retained in this rule.[19]

30. Our proposal in the EQR Ancillary Services Notice was intended to provide clarification regarding the EQR reporting requirements for ancillary services provided in association with unbundled sales of transmission services rather than to change the policy (quoted immediately above) that we established in Order No. 2001.[20]

31. Accordingly, with regard to EEI's suggested changes to the reporting requirements for Energy Imbalance, Regulation & Frequency Response, Spinning Reserve, and Supplemental Reserve, the Commission finds that EEI's proposal provides additional clarity and we therefore adopt EEI's proposal.

32. Specifically, we revise the ancillary service Product Names as follows:

Energy Imbalance: Service provided when a difference occurs between the scheduled and the actual delivery of energy to a load obligation (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (*i.e.*, non-transmission function) are reported.

Generator Imbalance: Service provided when a difference occurs between the output of a generator located in the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (*i.e.*, non-transmission function) are reported.

Regulation & Frequency Response: Service providing for continuous balancing of resources (generation and interchange) with load, and for maintaining scheduled interconnection frequency by committing on-line generation where output is raised or lowered and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (*i.e.*, non-transmission function) are reported.

Spinning Reserve: Unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in a short time period or non-generation resources capable of providing this service (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (*i.e.*, non-transmission function) are reported.

Supplemental Reserve: Service needed to serve load in the event of a system contingency, available with greater delay than SPINNING RESERVE. This service may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load or other non-generation resources capable of providing this service (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (*i.e.*, non-transmission function) are reported.

C. Reporting of Ancillary Service Product Type Names

1. Comments

33. EEI asks the Commission to ''clarify the appropriate manner to report the Product Type Name [Field No. 30] for ancillary service sales in the Contracts portion of the EQR,'' namely, that an ancillary service ''reported by a transmission function'' should be identified with a Product Type Name of ''T,'' indicating the product was sold under a FERC-approved transmission tariff. Alternatively, a merchant sale would be reported as sold under a FERC-approved cost-based tariff by entering ''CB'' or market-based tariff by entering ''MB'' as ''factual circumstances dictate.''

34. Occidental seeks clarification ''that imbalances that are settled in the real-time markets operated by the ISOs and RTOs are not intended to be reported as 'Generator Imbalances' under the proposed revisions to the EQR Data Dictionary.'' Occidental states that ''imbalances that are settled within the organized markets [are] handled through the settlement process, in which the generator pays the real-time price for any under production and is paid the real-time price for any over production [and] should not be reported in the EQRs as 'Generator Imbalances' under this [FERC-proposed] definition.''

2. Commission Determination

35. Regarding EEI's request for clarification, if the transmission provider (*i.e.*, non-merchant function) makes an ancillary service sale, the product type is ''T.'' With respect to third-party sales, the product type is listed as ''CB,'' if the third-party sale is made under a cost-based rate tariff or ''MB,'' if the third-party sale is made under a market-based rate tariff. We believe that Product Type Name [Field No. 30] adequately addresses this distinction and, thus, do not find any reason to revise the ancillary service reporting requirements that we proposed in the EQR Ancillary Services Notice to add clarity on this issue.

36. In addition, we find that Occidental is correct in its interpretation of the difference between energy imbalance service offered as an ancillary service in general and the method by which organized markets address imbalances through settlement in the Real-Time market. The Commission has adopted conventions for reporting trading within Real-Time markets.[21] This order does not change those conventions.

D. Whether Ancillary Services Not Included in the OATT Should Be Reported in EQRs

1. Comments

37. The EQR Ancillary Services Notice invited comment on the need to include additional non-OATT ancillary services in the list of Product Names in the EQR Data Dictionary. Two commenters filed comments addressing this issue. EEI states that it ''recommends against including any other ancillary services in the EQR at this time.''

38. Sempra comments that ''the industry may benefit from additional clarification with respect to the reporting of ISO/RTO-specific ancillary services that may not be currently reflected'' in the OATT. Sempra also suggests that there are benefits to clarifying ''the reporting of other ISO/RTO-specific products.'' To this end, Sempra asks that the Commission clarify ''the appropriate reporting 'bucket' for other CAISO products, such

[19] Order No. 2001 at P 271.

[20] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 1058.

[21] *Revised Public Utility Filing Requirements for Electric Quarterly Reports*, Order No. 2001–G, 120 FERC ¶ 61,270, at P 55 (2007).

as Instructed Imbalance Energy and Uninstructed Imbalance Energy.'' As to whether the Commission should add specific new ancillary services to the EQR Data Dictionary, Sempra asks that the Commission ''consider whether any additional CAISO products or ancillary services should be included in the EQR Data Dictionary once the CAISO MRTU [Market Redesign and Technology Upgrade] program is put into effect.'' [22]

2. Commission Determination

39. The Commission will continue its policy of identifying only the standard OATT ancillary services as ancillary services in the Product Name field of the EQR. This policy is consistent with the Commission's intention, in establishing the EQR filing requirements, that the same kinds of information be reported by all EQR filers, in the same format and using the same definitions. This approach is intended to allow EQR users and Commission staff to readily compare and contrast the transactions and contracts reported by one utility to those of other utilities. We will continue to add products that reflect common and new offerings by the industry where it appears that these products are widely offered, but, in this case, we agree with EEI that the current list of ancillary service product names to be reported in the EQR is sufficient.

40. As to Sempra's comments about providing clarification regarding the appropriate reporting of the specific products offered by CAISO, in Order No. 2001–E, the Commission encouraged RTOs and ISOs to work with Commission staff to develop EQR-ready reports to ease the filing process for respondents and to improve consistency in reporting within and among the organized markets.[23] Three ISOs—New York ISO, Midwest ISO and ISO New England—currently provide reports to their members that format settlement data for the EQR. PJM expects to begin doing so by the end of 2008.

41. In addition, we note that CAISO's staff met with Commission staff and market participants on May 18, 2004 to map the CAISO's products to the EQR product list.[24] Likewise, we encourage CAISO to meet with Commission staff on MRTU product mapping and provide EQR-ready reports to ease the filing process for respondents.

III. Document Availability

42. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

43. From the Commission's Home Page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type ''RM01–8'' in the docket number field. User assistance is available for eLibrary and the Commission's Web site during the Commission's normal business hours. For assistance contact the Commission's Online Support services at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The Commission orders:

(A) The Commission hereby adopts the changes in the EQR Data Dictionary shown in the Attachment, as discussed in the body of this order.

(B) This order will become effective upon publication in the **Federal Register**. The definitions adopted in this order shall be used in filing the Q1, 2009 EQR due on April 30, 2009 and in subsequent filings of the EQR.

(C) The limited waiver for compliance granted on April 17, 2008 and extended on July 9, 2008 will apply to all 2008 EQRs and only to 2008 EQRs, regardless of when they are filed.

By the Commission.

Kimberly D. Bose,

Secretary.

Attachment

Electric Quarterly Report Data Dictionary Version 1.1 (Issued October 28, 2008)

EQR DATA DICTIONARY

Field No.	Field	Required	Value	Definition
			ID Data	
1	Filer Unique Identifier	X	FR1	(Respondent)—An identifier (i.e., ''FR1'') used to designate a record containing Respondent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FR1 identifier may be imported into an EQR for a given quarter.
1	Filer Unique Identifier	X	FS# (where ''#'' is an integer).	(Seller)—An identifier (e.g., ''FS1'', ''FS2'') used to designate a record containing Seller identification information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each seller company may be imported into an EQR for a given quarter.
1	Filer Unique Identifier	X	FA1	(Agent)—An identifier (i.e., ''FA1'') used to designate a record containing Agent identification information in a comma-delimited (csv) file that is imported into the EQR filing. Only one record with the FA1 identifier may be imported into an EQR for a given quarter.
2	Company Name	X	Unrestricted text (100 characters).	(Respondent)—The name of the company taking responsibility for complying with the Commission's regulations related to the EQR.

[22] We note that, while Sempra asks the Commission to consider these matters, it does not explicitly advocate that the Commission add any additional products to the EQR Data Dictionary.

[23] Order No. 2001–E, 105 FERC ¶ 61,352 at P 11.

[24] *Notice of Electric Quarterly Reports Western Outreach Session*, 69 FR 25897 (May 10, 2004). The mapping developed in this meeting is available on the Commission's Web site (*http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=1096&CalType=%20&Date=5/18/2004&CalendarID=116*).

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
2	Company Name	X	Unrestricted text (100 characters).	(Seller)—The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Company Name of the Respondent.
2	Company Name	X	Unrestricted text (100 characters).	(Agent)—The name of the entity completing the EQR filing. The Agent's Company Name need not be the name of the company under Commission jurisdiction.
3	Company DUNS Number	for Respondent and Seller.	Nine digit number	The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field Number 2.
4	Contact Name	X	Unrestricted text (50 characters).	(Respondent)—Name of the person at the Respondent's company taking responsibility for compliance with the Commission's EQR regulations.
4	Contact Name	X	Unrestricted text (50 characters).	(Seller)—The name of the contact for the company authorized to make sales as indicated in the company's FERC tariff(s). This name may be the same as the Contact Name of the Respondent.
4	Contact Name	X	Unrestricted text (50 characters).	(Agent)—Name of the contact for the Agent, usually the person who prepares the filing.
5	Contact Title	X	Unrestricted text (50 characters).	Title of contact identified in Field Number 4.
6	Contact Address	X	Unrestricted text	Street address for contact identified in Field Number 4.
7	Contact City	X	Unrestricted text (30 characters).	City for the contact identified in Field Number 4.
8	Contact State	X	Unrestricted text (2 characters).	Two character state or province abbreviations for the contact identified in Field Number 4.
9	Contact Zip	X	Unrestricted text (10 characters) CA—Canada, MX—Mexico.	Zip code for the contact identified in Field Number 4.
10	Contact Country Name	X	US—United States, UK—United Kingdom.	Country (USA, Canada, Mexico, or United Kingdom) for contact address identified in Field Number 4.
11	Contact Phone	X	Unrestricted text (20 characters).	Phone number of contact identified in Field Number 4.
12	Contact E-Mail	X	Unrestricted text	E-mail address of contact identified in Field Number 4.
13	Filing Quarter	X	YYYYMM	A six digit reference number used by the EQR software to indicate the quarter and year of the filing for the purpose of importing data from csv files. The first 4 numbers represent the year (e.g., 2007). The last 2 numbers represent the last month of the quarter (e.g., 03 = 1st quarter; 06 = 2nd quarter, 09 = 3rd quarter, 12 = 4th quarter).
			Contract Data	
14	Contract Unique ID	X	An integer preceded by the letter "C" (only used when importing contract data).	An identifier beginning with the letter "C" and followed by a number (e.g., "C1", "C2") used to designate a record containing contract information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each contract product may be imported into an EQR for a given quarter.
15	Seller Company Name	X	Unrestricted text (100 characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's "Company Name" in Field Number 2 of the ID Data (Seller Data).
16	Customer Company Name	X	Unrestricted text (70 characters).	The name of the counterparty.
17	Customer DUNS Number	X	Nine digit number	The unique nine digit number assigned by Dun and Bradstreet to the company identified in Field Number 16.
18	Contract Affiliate	X	Y (Yes), N (No)	The customer is an affiliate if it controls, is controlled by or is under common control with the seller. This includes a division that operates as a functional unit. A customer of a seller who is an Exempt Wholesale Generator may be defined as an affiliate under the Public Utility Holding Company Act and the FPA.

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
19	FERC Tariff Reference	X	Unrestricted text (60 characters).	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales, power sales or sales of related jurisdictional services at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.
20	Contract Service Agreement ID.	X	Unrestricted text (30 characters).	Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed with and accepted by the Commission, or it may be generated as part of an internal identification system.
21	Contract Execution Date	X	YYYYMMDD	The date the contract was signed. If the parties signed on different dates, use the most recent date signed.
22	Commencement Date of Contract Terms.	X	YYYYMMDD	The date the terms of the contract reported in fields 18, 23 and 25 through 45 (as defined in the data dictionary) became effective. If those terms became effective on multiple dates (i.e.: due to one or more amendments), the date to be reported in this field is the date the most recent amendment became effective. If the contract or the most recent reported amendment does not have an effective date, the date when service began pursuant to the contract or most recent reported amendment may be used. If the terms reported in fields 18, 23 and 25 through 45 have not been amended since January 1, 2009, the initial date the contract became effective (or absent an effective date the initial date when service began) may be used.
23	Contract Termination Date	If specified in the contract.	YYYYMMDD	The date that the contract expires.
24	Actual Termination Date	If contract terminated.	YYYYMMDD	The date the contract actually terminates.
25	Extension Provision Description.	X	Unrestricted text	Description of terms that provide for the continuation of the contract.
26	Class Name	X		See definitions of each class name below.
26	Class Name	X	F—Firm	For transmission sales, a service or product that always has priority over non-firm service. For power sales, a service or product that is not interruptible for economic reasons.
26	Class Name	X	NF—Non-firm	For transmission sales, a service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm service. For an energy sale, a service or product for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
26	Class Name	X	UP—Unit Power Sale	Designates a dedicated sale of energy and capacity from one or more than one specified generation unit(s).
26	Class Name	X	N/A—Not Applicable	To be used only when the other available Class Names do not apply.
27	Term Name	X	LT—Long Term, ST—Short Term, N/A—Not Applicable.	Contracts with durations of one year or greater are long-term. Contracts with shorter durations are short-term.
28	Increment Name	X		See definitions for each increment below.
28	Increment Name	X	H—Hourly	Terms of the contract (if specifically noted in the contract) set for up to 6 consecutive hours (≤ 6 consecutive hours).
28	Increment Name	X	D—Daily	Terms of the contract (if specifically noted in the contract) set for more than 6 and up to 60 consecutive hours (> 6 and ≤ 60 consecutive hours).
28	Increment Name	X	W—Weekly	Terms of the contract (if specifically noted in the contract) set for over 60 consecutive hours and up to 168 consecutive hours (> 60 and ≤ 168 consecutive hours).

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
28	Increment Name	X	M—Monthly	Terms of the contract (if specifically noted in the contract) set for more than 168 consecutive hours up to, but not including, one year (>168 consecutive hours and < 1 year).
28	Increment Name	X	Y—Yearly	Terms of the contract (if specifically noted in the contract) set for one year or more (≥ 1 year).
28	Increment Name	X	N/A—Not Applicable	Terms of the contract do not specify an increment.
29	Increment Peaking Name	X		See definitions for each increment peaking name below.
29	Increment Peaking Name	X	FP—Full Period	The product described may be sold during those hours designated as on-peak and off-peak in the NERC region of the point of delivery.
29	Increment Peaking Name	X	OP—Off-Peak	The product described may be sold only during those hours designated as off-peak in the NERC region of the point of delivery.
29	Increment Peaking Name	X	P—Peak	The product described may be sold only during those hours designated as on-peak in the NERC region of the point of delivery.
29	Increment Peaking Name	X	N/A—Not Applicable	To be used only when the increment peaking name is not specified in the contract.
30	Product Type Name	X		See definitions for each product type below.
30	Product Type Name	X	CB—Cost Based	Energy or capacity sold under a FERC-approved cost-based rate tariff.
30	Product Type Name	X	CR—Capacity Reassignment.	An agreement under which a transmission provider sells, assigns or transfers all or portion of its rights to an eligible customer.
30	Product Type Name	X	MB—Market Based	Energy or capacity sold under the seller's FERC-approved market-based rate tariff.
30	Product Type Name	X	T—Transmission	The product is sold under a FERC-approved transmission tariff.
30	Product Type Name	X	Other	The product cannot be characterized by the other product type names.
31	Product Name	X	See Product Name Table, Appendix A.	Description of product being offered.
32	Quantity	If specified in the contract.	Number with up to 4 decimals.	Quantity for the contract product identified.
33	Units	If specified in the contract.	See Units Table, Appendix E.	Measure stated in the contract for the product sold.
34	Rate	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	The charge for the product per unit as stated in the contract.
35	Rate Minimum	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	Minimum rate to be charged per the contract, if a range is specified.
36	Rate Maximum	One of four rate fields (34, 35, 36, or 37) must be included.	Number with up to 4 decimals.	Maximum rate to be charged per the contract, if a range is specified.

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
37	Rate Description	One of four rate fields (34, 35, 36, or 37) must be included.	Unrestricted text	Text description of rate. If the rate is currently available on the FERC Web site, a citation of the FERC Accession Number and the relevant FERC tariff including page number or section may be included instead of providing the entire rate algorithm. If the rate is not available on the FERC Web site, include the rate algorithm, if rate is calculated. If the algorithm would exceed the 150 character field limit, it may be provided in a descriptive summary (including bases and methods of calculations) with a detailed citation of the relevant FERC tariff including page number and section. If more than 150 characters are required, the contract product may be repeated in a subsequent line of data until the rate is adequately described.
38	Rate Units	If specified in the contract.	See Rate Units Table, Appendix F.	Measure stated in the contract for the product sold.
39	Point of Receipt Balancing Authority (PORBA).	If specified in the contract.	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) where service begins for a transmission or transmission-related jurisdictional sale. The Balancing Authority will be identified with the abbreviation used in OASIS applications. If receipt occurs at a trading hub specified in the EQR software, the term ''Hub'' should be used.
40	Point of Receipt Specific Location (PORSL).	If specified in the contract.	Unrestricted text (50 characters). If ''HUB'' is selected for PORCA, see Hub Table, Appendix C.	The specific location at which the product is received if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used. If more points of receipt are listed in the contract than can fit into the 50 character space, a description of the collection of points may be used. 'Various,' alone, is unacceptable unless the contract itself uses that terminology.
41	Point of Delivery Balancing Authority (PODBA).	If specified in the contract.	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) where a jurisdictional product is delivered and/or service ends for a transmission or transmission-related jurisdictional sale. The Balancing Authority will be identified with the abbreviation used in OASIS applications. If delivery occurs at the interconnection of two control areas, the control area that the product is entering should be used. If delivery occurs at a trading hub specified in the EQR software, the term ''Hub'' should be used.
42	Point of Delivery Specific Location (PODSL).	If specified in the contract.	Unrestricted text (50 characters). If ''HUB'' is selected for PODCA, see Hub Table, Appendix C.	The specific location at which the product is delivered if designated in the contract. If receipt occurs at a trading hub, a standardized hub name must be used.
43	Begin Date	If specified in the contract.	YYYYMMDDHHMM	First date for the sale of the product at the rate specified.
44	End Date	If specified in the contract.	YYYYMMDDHHMM	Last date for the sale of the product at the rate specified.
45	Time Zone	X	See Time Zone Table, Appendix D.	The time zone in which the sales will be made under the contract.
			Transaction Data	
46	Transaction Unique ID	X	An integer preceded by the letter ''T'' (only used when importing transaction data).	An identifier beginning with the letter ''T'' and followed by a number (e.g., ''T1'', ''T2'') used to designate a record containing transaction information in a comma-delimited (csv) file that is imported into the EQR filing. One record for each transaction record may be imported into an EQR for a given quarter. A new transaction record must be used every time a price changes in a sale.

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
47	Seller Company Name	X	Unrestricted text (100 Characters).	The name of the company that is authorized to make sales as indicated in the company's FERC tariff(s). This name must match the name provided as a Seller's ''Company Name'' in Field 2 of the ID Data (Seller Data).
48	Customer Company Name	X	Unrestricted text (70 Characters).	The name of the counterparty.
49	Customer DUNS Number	X	Nine digit number	The unique nine digit number assigned by Dun and Bradstreet to the counterparty to the contract.
50	FERC Tariff Reference	X	Unrestricted text (60 Characters).	The FERC tariff reference cites the document that specifies the terms and conditions under which a Seller is authorized to make transmission sales, power sales or sales of related jurisdictional services at cost-based rates or at market-based rates. If the sales are market-based, the tariff that is specified in the FERC order granting the Seller Market Based Rate Authority must be listed.
51	Contract Service Agreement ID.	X	Unrestricted text (30 Characters).	Unique identifier given to each service agreement that can be used by the filing company to produce the agreement, if requested. The identifier may be the number assigned by FERC for those service agreements that have been filed and approved by the Commission, or it may be generated as part of an internal identification system.
52	Transaction Unique Identifier.	X	Unrestricted text (24 Characters).	Unique reference number assigned by the seller for each transaction.
53	Transaction Begin Date	X	YYYYMMDDHHMM (csv import), MMDDYYYYHHMM (manual entry).	First date and time the product is sold during the quarter.
54	Transaction End Date	X	YYYYMMDDHHMM (csv import), MMDDYYYYHHMM (manual entry).	Last date and time the product is sold during the quarter.
55	Time Zone	X	See Time Zone Table, Appendix D.	The time zone in which the sales will be made under the contract.
56	Point of Delivery Balancing Authority (PODBA).	X	See Balancing Authority Table, Appendix B.	The registered NERC Balancing Authority (formerly called NERC Control Area) abbreviation used in OASIS applications.
57	Point of Delivery Specific Location (PODSL).	X	Unrestricted text (50 characters). If ''HUB'' is selected for PODBA, see Hub Table, Appendix C.	The specific location at which the product is delivered. If receipt occurs at a trading hub, a standardized hub name must be used.
58	Class Name	X		See class name definitions below.
58	Class Name	X	F—Firm	A sale, service or product that is not interruptible for economic reasons.
58	Class Name	X	NF—Non-firm	A sale for which delivery or receipt of the energy may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.
58	Class Name	X	UP—Unit Power Sale	Designates a dedicated sale of energy and capacity from one or more than one specified generation unit(s).
58	Class Name	X	BA—Billing Adjustment	Designates an incremental material change to one or more transactions due to a change in settlement results. ''BA'' may be used in a refiling after the next quarter's filing is due to reflect the receipt of new information. It may not be used to correct an inaccurate filing.
58	Class Name	X	N/A—Not Applicable	To be used only when the other available class names do not apply.
59	Term Name	X	LT—Long Term, ST—Short Term, N/A—Not Applicable.	Power sales transactions with durations of one year or greater are long-term. Transactions with shorter durations are short-term.
60	Increment Name	X		See increment name definitions below.
60	Increment Name	X	H—Hourly	Terms of the particular sale set for up to 6 consecutive hours (≤ 6 consecutive hours). Includes LMP based sales in ISO/RTO markets.
60	Increment Name	X	D—Daily	Terms of the particular sale set for more than 6 and up to 60 consecutive hours (> 6 and ≤ 60 consecutive hours). Includes sales over a peak or off-peak block during a single day.

EQR DATA DICTIONARY—Continued

Field No.	Field	Required	Value	Definition
60	Increment Name	X	W—Weekly	Terms of the particular sale set for over 60 consecutive hours and up to 168 consecutive hours (> 60 and ≤ 168 consecutive hours). Includes sales for a full week and sales for peak and off-peak blocks over a particular week.
60	Increment Name	X	M—Monthly	Terms of the particular sale set for more than 168 consecutive hours up to, but not including, one year (> 168 consecutive hours and < 1 year). Includes sales for full month or multi-week sales during a given month.
60	Increment Name	X	Y—Yearly	Terms of the particular sale set for one year or more (≥ 1 year). Includes all long-term contracts with defined pricing terms (fixed-price, formula, or index).
60	Increment Name	X	N/A—Not Applicable	To be used only when other available increment names do not apply.
61	Increment Peaking Name	X		See definitions for increment peaking below.
61	Increment Peaking Name	X	FP—Full Period	The product described was sold during Peak and Off-Peak hours.
61	Increment Peaking Name	X	OP—Off-Peak	The product described was sold only during those hours designated as off-peak in the NERC region of the point of delivery.
61	Increment Peaking Name	X	P—Peak	The product described was sold only during those hours designated as on-peak in the NERC region of the point of delivery.
61	Increment Peaking Name	X	N/A—Not Applicable	To be used only when the other available increment peaking names do not apply.
62	Product Name	X	See Product Names Table, Appendix A.	Description of product being offered.
63	Transaction Quantity	X	Number with up to 4 decimals.	The quantity of the product in this transaction.
64	Price	X	Number with up to 6 decimals.	Actual price charged for the product per unit. The price reported cannot be averaged or otherwise aggregated.
65	Rate Units	X	See Rate Units Table, Appendix F.	Measure appropriate to the price of the product sold.
66	Total Transmission Charge	X	Number with up to 2 decimals.	Payments received for transmission services when explicitly identified.
67	Total Transaction Charge	X	Number with up to 2 decimals.	Transaction Quantity (Field 63) times Price (Field 64) plus Total Transmission Charge (Field 66).

EQR DATA DICTIONARY

[Appendix A. Product Names]

Product name	Contract product	Transaction product	Definition
BLACK START SERVICE	X	X	Service available after a system-wide blackout where a generator participates in system restoration activities without the availability of an outside electric supply (Ancillary Service).
BOOKED OUT POWER		X	Energy or capacity contractually committed bilaterally for delivery but not actually delivered due to some offsetting or countervailing trade (Transaction only).
CAPACITY	X	X	A quantity of demand that is charged on a $/KW or $/MW basis.
CUSTOMER CHARGE	X	X	Fixed contractual charges assessed on a per customer basis that could include billing service.
DIRECT ASSIGNMENT FACILITIES CHARGE.	X		Charges for facilities or portions of facilities that are constructed or used for the sole use/benefit of a particular customer.
EMERGENCY ENERGY	X		Contractual provisions to supply energy or capacity to another entity during critical situations.
ENERGY	X	X	A quantity of electricity that is sold or transmitted over a period of time.
ENERGY IMBALANCE	X	X	Service provided when a difference occurs between the scheduled and the actual delivery of energy to a load obligation (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.
EXCHANGE	X	X	Transaction whereby the receiver accepts delivery of energy for a supplier's account and returns energy at times, rates, and in amounts as mutually agreed if the receiver is not an RTO/ISO.
FUEL CHARGE	X	X	Charge based on the cost or amount of fuel used for generation.

EQR DATA DICTIONARY—Continued

[Appendix A. Product Names]

Product name	Contract product	Transaction product	Definition
GENERATOR IMBALANCE.	X	X	Service provided when a difference occurs between the output of a generator located in the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.
GRANDFATHERED BUNDLED.	X	X	Services provided for bundled transmission, ancillary services and energy under contracts effective prior to Order No. 888's OATTs.
INTERCONNECTION AGREEMENT.	X	.....	Contract that provides the terms and conditions for a generator, distribution system owner, transmission owner, transmission provider, or transmission system to physically connect to a transmission system or distribution system.
MEMBERSHIP AGREEMENT.	X	.....	Agreement to participate and be subject to rules of a system operator.
MUST RUN AGREEMENT	X	.....	An agreement that requires a unit to run.
NEGOTIATED-RATE TRANSMISSION.	X	X	Transmission performed under a negotiated rate contract (applies only to merchant transmission companies).
NETWORK	X	.....	Transmission service under contract providing network service.
NETWORK OPERATING AGREEMENT.	X	.....	An executed agreement that contains the terms and conditions under which a network customer operates its facilities and the technical and operational matters associated with the implementation of network integration transmission service.
OTHER	X	X	Product name not otherwise included.
POINT-TO-POINT AGREEMENT.	X	.....	Transmission service under contract between specified Points of Receipt and Delivery.
REACTIVE SUPPLY & VOLTAGE CONTROL.	X	X	Production or absorption of reactive power to maintain voltage levels on transmission systems (Ancillary Service).
REAL POWER TRANSMISSION LOSS.	X	X	The loss of energy, resulting from transporting power over a transmission system.
REGULATION & FREQUENCY RESPONSE.	X	X	Service providing for continuous balancing of resources (generation and interchange) with load, and for maintaining scheduled interconnection frequency by committing on-line generation where output is raised or lowered and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.
REQUIREMENTS SERVICE.	X	X	Firm, load-following power supply necessary to serve a specified share of customer's aggregate load during the term of the agreement. Requirements service may include some or all of the energy, capacity and ancillary service products. (If the components of the requirements service are priced separately, they should be reported separately in the transactions tab.)
SCHEDULE SYSTEM CONTROL & DISPATCH.	X	X	Scheduling, confirming and implementing an interchange schedule with other Balancing Authorities, including intermediary Balancing Authorities providing transmission service, and ensuring operational security during the interchange transaction (Ancillary Service).
SPINNING RESERVE	X	X	Unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in a short time period or non-generation resources capable of providing this service (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.
SUPPLEMENTAL RESERVE.	X	X	Service needed to serve load in the event of a system contingency, available with greater delay than SPINNING RESERVE. This service may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load or other non-generation resources capable of providing this service (Ancillary Service). For Contracts, reported if the contract provides for sale of the product. For Transactions, sales by third-party providers (i.e., non-transmission function) are reported.
SYSTEM OPERATING AGREEMENTS.	X	.....	An executed agreement that contains the terms and conditions under which a system or network customer shall operate its facilities and the technical and operational matters associated with the implementation of network.
TOLLING ENERGY	X	X	Energy sold from a plant whereby the buyer provides fuel to a generator (seller) and receives power in return for pre-established fees.
TRANSMISSION OWNERS AGREEMENT.	X	.....	The agreement that establishes the terms and conditions under which a transmission owner transfers operational control over designated transmission facilities.
UPLIFT	X	X	A make-whole payment by an RTO/ISO to a utility.

EQR DATA DICTIONARY

[Appendix B. Balancing Authority]

Balancing authority	Abbreviation	Outside US *
AESC, LLC—Wheatland CIN	AEWC	
Alabama Electric Cooperative, Inc	AEC	
Alberta Electric System Operator	AESO	X
Alliant Energy Corporate Services, LLC—East	ALTE	
Alliant Energy Corporate Services, LLC—West	ALTW	
Ameren Transmission	AMRN	
Ameren Transmission, Illinois	AMIL	
Ameren Transmission, Missouri	AMMO	
American Transmission Systems, Inc	FE	
Aquila Networks—Kansas	WPEK	
Aquila Networks—Missouri Public Service	MPS	
Aquila Networks—West Plains Dispatch	WPEC	
Arizona Public Service Company	AZPS	
Associated Electric Cooperative, Inc	AECI	
Avista Corp	AVA	
Batesville Balancing Authority	BBA	
Big Rivers Electric Corp	BREC	
Board of Public Utilities	KACY	
Bonneville Power Administration Transmission	BPAT	
British Columbia Transmission Corporation	BCTC	X
California Independent System Operator	CISO	
Carolina Power & Light Company—CPLW	CPLW	
Carolina Power and Light Company—East	CPLE	
Central and Southwest	CSWS	
Central Illinois Light Co	CILC	
Chelan County PUD	CHPD	
Cinergy Corporation	CIN	
City of Homestead	HST	
City of Independence P&L Dept	INDN	
City of Tallahassee	TAL	
City Water Light & Power	CWLP	
Cleco Power LLC	CLEC	
Columbia Water & Light	CWLD	
Comision Federal de Electricidad	CFE	X
Constellation Energy Control and Dispatch—Arkansas	PUPP	
Constellation Energy Control and Dispatch—City of Benton, AR	BUBA	
Constellation Energy Control and Dispatch—City of Ruston, LA	DERS	
Constellation Energy Control and Dispatch—Conway, Arkansas	CNWY	
Constellation Energy Control and Dispatch—Gila River	GRMA	
Constellation Energy Control and Dispatch—Harquehala	HGMA	
Constellation Energy Control and Dispatch—North Little Rock, AK	DENL	
Constellation Energy Control and Dispatch—West Memphis, Arkansas	WMUC	
Dairyland Power Cooperative	DPC	
DECA, LLC—Arlington Valley	DEAA	
Duke Energy Corporation	DUK	
East Kentucky Power Cooperative, Inc	EKPC	
El Paso Electric	EPE	
Electric Energy, Inc	EEI	
Empire District Electric Co., The	EDE	
Entergy	EES	
ERCOT ISO	ERCO	
Florida Municipal Power Pool	FMPP	
Florida Power & Light	FPL	
Florida Power Corporation	FPC	
Gainesville Regional Utilities	GVL	
Georgia System Operations Corporation	GSOC	
Georgia Transmission Corporation	GTC	
Grand River Dam Authority	GRDA	
Grant County PUD No. 2	GCPD	
Great River Energy	GRE	
Great River Energy	GREC	
Great River Energy	GREN	
Great River Energy	GRES	
GridAmerica	GA	
Hoosier Energy	HE	
Hydro-Quebec, TransEnergie	HQT	X
Idaho Power Company	IPCO	
Illinois Power Co	IP	
Illinois Power Co	IPRV	
Imperial Irrigation District	IID	
Indianapolis Power & Light Company	IPL	

EQR DATA DICTIONARY—Continued

[Appendix B. Balancing Authority]

Balancing authority	Abbreviation	Outside US *
ISO New England Inc	ISNE	
JEA	JEA	
Kansas City Power & Light Co	KCPL	
Lafayette Utilities System	LAFA	
LG&E Energy Transmission Services	LGEE	
Lincoln Electric System	LES	
Los Angeles Department of Water and Power	LDWP	
Louisiana Energy & Power Authority	LEPA	
Louisiana Generating, LLC	LAGN	
Madison Gas and Electric Company	MGE	
Manitoba Hydro Electric Board, Transmission Services	MHEB	X
Michigan Electric Coordinated System	MECS	
Michigan Electric Coordinated System—CONS	CONS	
Michigan Electric Coordinated System—DECO	DECO	
MidAmerican Energy Company	MEC	
Midwest ISO	MISO	
Minnesota Power, Inc	MP	
Montana-Dakota Utilities Co	MDU	
Muscatine Power and Water	MPW	
Nebraska Public Power District	NPPD	
Nevada Power Company	NEVP	
New Brunswick Power Corporation	NBPC	X
New Horizons Electric Cooperative	NHC1	
New York Independent System Operator	NYIS	
North American Electric Reliability Council	TEST	
Northern Indiana Public Service Company	NIPS	
Northern States Power Company	NSP	
NorthWestern Energy	NWMT	
Ohio Valley Electric Corporation	OVEC	
Oklahoma Gas and Electric	OKGE	
Ontario—Independent Electricity Market Operator	IMO	X
OPPD CA/TP	OPPD	
Otter Tail Power Company	OTP	
P.U.D. No. 1 of Douglas County	DOPD	
PacifiCorp-East	PACE	
PacifiCorp-West	PACW	
PJM Interconnection	PJM	
Portland General Electric	PGE	
Public Service Company of Colorado	PSCO	
Public Service Company of New Mexico	PNM	
Puget Sound Energy Transmission	PSEI	
Reedy Creek Improvement District	RC	
Sacramento Municipal Utility District	SMUD	
Salt River Project	SRP	
Santee Cooper	SC	
SaskPower Grid Control Centre	SPC	X
Seattle City Light	SCL	
Seminole Electric Cooperative	SEC	
Sierra Pacific Power Co.—Transmission	SPPC	
South Carolina Electric & Gas Company	SCEG	
South Mississippi Electric Power Association	SME	
South Mississippi Electric Power Association	SMEE	
Southeastern Power Administration—Hartwell	SEHA	
Southeastern Power Administration—Russell	SERU	
Southeastern Power Administration—Thurmond	SETH	
Southern Company Services, Inc	SOCO	
Southern Illinois Power Cooperative	SIPC	
Southern Indiana Gas & Electric Co	SIGE	
Southern Minnesota Municipal Power Agency	SMP	
Southwest Power Pool	SWPP	
Southwestern Power Administration	SPA	
Southwestern Public Service Company	SPS	
Sunflower Electric Power Corporation	SECI	
Tacoma Power	TPWR	
Tampa Electric Company	TEC	
Tennessee Valley Authority ESO	TVA	
Trading Hub	HUB	
TRANSLink Management Company	TLKN	
Tucson Electric Power Company	TEPC	
Turlock Irrigation District	TIDC	
Upper Peninsula Power Co	UPPC	

EQR DATA DICTIONARY—Continued

[Appendix B. Balancing Authority]

Balancing authority	Abbreviation	Outside US *
Utilities Commission, City of New Smyrna Beach	NSB	
Westar Energy—MoPEP Cities	MOWR	
Western Area Power Administration—Colorado-Missouri	WACM	
Western Area Power Administration—Lower Colorado	WALC	
Western Area Power Administration—Upper Great Plains East	WAUE	
Western Area Power Administration—Upper Great Plains West	WAUW	
Western Farmers Electric Cooperative	WFEC	
Western Resources dba Westar Energy	WR	
Wisconsin Energy Corporation	WEC	
Wisconsin Public Service Corporation	WPS	
Yadkin, Inc	YAD	

* Balancing authorities outside the United States may only be used in the Contract Data section to identify specified receipt/delivery points in jurisdictional transmission contracts.

EQR DATA DICTIONARY

[Appendix C. Hub]

HUB	Definition
ADHUB	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the AEP/Dayton Hub.
AEPGenHub	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the AEPGenHub.
COB	The set of delivery points along the California-Oregon commonly identified as and agreed to by the counterparties to constitute the COB Hub.
Cinergy (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Cinergy balancing authority.
Cinergy Hub (MISO)	The aggregated Elemental Pricing nodes (''Epnodes'') defined by the Midwest Independent Transmission System Operator, Inc., as Cinergy Hub (MISO).
Entergy (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Entergy balancing authority.
FE Hub	The aggregated Elemental Pricing nodes (''Epnodes'') defined by the Midwest Independent Transmission System Operator, Inc., as FE Hub (MISO).
Four Corners	The set of delivery points at the Four Corners power plant commonly identified as and agreed to by the counterparties to constitute the Four Corners Hub.
Illinois Hub (MISO)	The aggregated Elemental Pricing nodes (''Epnodes'') defined by the Midwest Independent Transmission System Operator, Inc., as Illinois Hub (MISO).
Mead	The set of delivery points at or near Hoover Dam commonly identified as and agreed to by the counterparties to constitute the Mead Hub.
Michigan Hub (MISO)	The aggregated Elemental Pricing nodes (''Epnodes'') defined by the Midwest Independent Transmission System Operator, Inc., as Michigan Hub (MISO).
Mid-Columbia (Mid-C)	The set of delivery points along the Columbia River commonly identified as and agreed to by the counterparties to constitute the Mid-Columbia Hub.
Minnesota Hub (MISO)	The aggregated Elemental Pricing nodes (''Epnodes'') defined by the Midwest Independent Transmission System Operator, Inc., as Minnesota Hub (MISO).
NEPOOL (Mass Hub)	The aggregated Locational Marginal Price (''LMP'') nodes defined by ISO New England Inc., as Mass Hub.
NIHUB	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the Northern Illinois Hub.
NOB	The set of delivery points along the Nevada-Oregon border commonly identified as and agreed to by the counterparties to constitute the NOB Hub.
NP15	The set of delivery points north of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the NP15 Hub.
NWMT	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Northwestern Energy Montana balancing authority.
PJM East Hub	The aggregated Locational Marginal Price nodes (''LMP'') defined by PJM Interconnection, LLC as the PJM East Hub.
PJM South Hub	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the PJM South Hub.
PJM West Hub	The aggregated Locational Marginal Price (''LMP'') nodes defined by PJM Interconnection, LLC as the PJM Western Hub.
Palo Verde	The switch yard at the Palo Verde nuclear power station west of Phoenix in Arizona. Palo Verde Hub includes the Hassayampa switchyard 2 miles south of Palo Verde.
SOCO (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Southern Company balancing authority.
SP15	The set of delivery points south of Path 15 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the SP15 Hub.
TVA (into)	The set of delivery points commonly identified as and agreed to by the counterparties to constitute delivery into the Tennessee Valley Authority balancing authority.

EQR DATA DICTIONARY—Continued

[Appendix C. Hub]

HUB	Definition
ZP26	The set of delivery points associated with Path 26 on the California transmission grid commonly identified as and agreed to by the counterparties to constitute the ZP26 Hub.

EQR DATA DICTIONARY

Appendix D. Time Zone

Time zone	Definition
AD	Atlantic Daylight.
AP	Atlantic Prevailing.
AS	Atlantic Standard.
CD	Central Daylight.
CP	Central Prevailing.
CS	Central Standard.
ED	Eastern Daylight.
EP	Eastern Prevailing.
ES	Eastern Standard.
MD	Mountain Daylight.
MP	Mountain Prevailing.
MS	Mountain Standard.
NA	Not Applicable.
PD	Pacific Daylight.
PP	Pacific Prevailing.
PS	Pacific Standard.
UT	Universal Time.

EQR DATA DICTIONARY

Appendix E. Units

Units	Definition
KV	Kilovolt.
KVA	Kilovolt Amperes.
KVR	Kilovar.
KW	Kilowatt.
KWH	Kilowatt Hour.
KW–DAY	Kilowatt Day.
KW–MO	Kilowatt Month.
KW–WK	Kilowatt Week.
KW–YR	Kilowatt Year.
MVAR–YR	Megavar Year.
MW	Megawatt.
MWH	Megawatt Hour.
MW–DAY	Megawatt Day.
MW–MO	Megawatt Month.
MW–WK	Megawatt Week.
MW–YR	Megawatt Year.
RKVA	Reactive Kilovolt Amperes.
FLAT RATE	Flat Rate.

EQR DATA DICTIONARY

Appendix F. Rate Units

Rate units	Definition
$/KV	dollars per kilovolt.
$/KVA	dollars per kilovolt amperes.
$/KVR	dollars per kilovar.
$/KW	dollars per kilowatt.
$/KWH	dollars per kilowatt hour.
$/KW–DAY	dollars per kilowatt day.
$/KW–MO	dollars per kilowatt month.
$/KW–WK	dollars per kilowatt week.
$/KW–YR	dollars per kilowatt year.
$/MW	dollars per megawatt.
$/MWH	dollars per megawatt hour.

EQR DATA DICTIONARY—Continued

Appendix F. Rate Units

Rate units	Definition
$/MW–DAY	dollars per megawatt day.
$/MW–MO	dollars per megawatt month.
$/MW–WK	dollars per megawatt week.
$/MW–YR	dollars per megawatt year.
$/MVAR–YR	dollars per megavar year.
$/RKVA	dollars per reactive kilovar amperes.
CENTS	cents.
CENTS/KVR	cents per kilovolt amperes.
CENTS/KWH	cents per kilowatt hour.
FLAT RATE	rate not specified in any other units.

[FR Doc. E8–26209 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2007–0093]

RIN 0960–AG02

Technical Revisions to Overpayment Rules

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: These rules amend our title II regulations to explicitly provide that we apply an underpayment due an individual to reduce an overpayment to that individual in certain cases. Our title XVI regulations already state this policy. Additionally, these rules reflect our procedures for collecting overpayments when a payment of more than the correct amount is made to a representative payee on behalf of a beneficiary after the beneficiary's death. These rules clarify that we collect overpayments in this situation from only the representative payee or his estate but not from the representative payee's spouse or from the spouse's estate.

DATES: These rules are effective December 4, 2008.

FOR FURTHER INFORMATION CONTACT: Joshua Silverman, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 594–2128, for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Explanation of Changes

Reducing Overpayments

We can apply underpayments to reduce overpayments. 42 U.S.C. 404(a)(1)(A) and 1383(b)(1)(A). Our current title XVI regulations explicitly provide that we ''apply any underpayment due an individual to reduce any overpayment to that individual that we determine to exist * * * for a different period, unless we have waived recovery of the overpayment * * *.'' 20 CFR 416.543. However, there is no parallel section in our current title II regulations. We are modifying our regulations to reflect our current process of applying underpayments to reduce overpayments under title II.

We are amending 20 CFR 404.503 to state that we will apply any underpayment due an individual to reduce any overpayment owed by that individual that we determine to exist for a different period, unless we waive recovery. In cases when the underpaid individual has died, we will make the adjustment before distributing any underpayment according to the priority list in 20 CFR 404.503(b).

Overpayments Made to Representative Payees

Under title II, we currently collect overpayments from an overpaid beneficiary, from any other beneficiary entitled to benefits based an overpaid beneficiary's earnings, or from the estate of a deceased overpaid individual. 20 CFR 404.502. Under title XVI, we may collect overpayments from the overpaid recipient, his eligible spouse, or the recipient's or eligible spouse's estate if one of them dies before we finish

collecting the overpayment. 20 CFR 416.570.

When a representative payee receives benefits on behalf of a beneficiary, we generally collect any overpayment using these same procedures. However, when a representative payee receives benefits intended for a beneficiary after the beneficiary has died, the representative payee is liable for repaying the overpayment. 42 U.S.C. 404(a)(2) and 1383(b)(2). We are updating our regulations to reflect these statutory changes that became effective on December 14, 2000.

These rules clarify that we collect these overpayments solely from the representative payee and his estate. We do not collect from the benefits of the representative payee's spouse, the estate of the spouse, the auxiliaries of the overpaid representative payee, or the deceased beneficiary's estate. We will continue to use all means for collecting such overpayments allowed by federal law, including adjustment of benefits or lump sums, cross-program recovery, administrative offset, tax refund offset, administrative wage garnishment, and federal salary offset. See 20 CFR 404.520, 404.527, 404.530, 416.572, 416.580, 416.590, 422.310, and 422.403.

For title II, we are adding a new paragraph, 20 CFR 404.502(a)(3), which states that we apply the procedures found in paragraph 20 CFR 404.502(a)(1) to recover an overpayment made to a representative payee after the death of a beneficiary. In this situation, we will not recover these overpayments from any other individual entitled to benefits based on the beneficiary's earnings because only the representative payee or his estate is liable for repayment. We also are adding paragraph 20 CFR 404.502(b)(5) to state that, if an overpaid representative payee dies before we recover the full amount of the overpayment, we will collect the overpayment from the representative payee's estate, but we will not adjust the benefits based on the representative payee's record owed to the representative payee's spouse or children.

For title XVI, we are redesignating the existing language in 20 CFR 416.570 as paragraph (a) and are adding a new paragraph (b). This new paragraph provides that some of the procedures in paragraph (a) will apply to recover overpayments from a representative payee or his estate. We are clarifying that we will not adjust benefits owed to the representative payee's eligible spouse or the eligible spouse's estate because only the representative payee is liable.

Public Comments

In the notice of proposed rulemaking we published at 73 FR 40997 (July 17, 2008), we provided the public with a 60-day period in which to comment on the proposed changes. That comment period ended on September 15, 2008. We did not receive any comments.

Corrections

We are making three minor corrections. First, we have corrected the last sentence in 20 CFR 404.502(b)(5) because words were unintentionally omitted from the proposed rules. The revised sentence clarifies that we do not collect the overpayments at issue under 20 CFR 404.502(b)(3) from anyone other than the representative payee, but we may use any underpayment due to the representative payee to reduce an outstanding overpayment. We also corrected the title of 20 CFR 416.570(b) to use the term ''recipient'' instead of ''beneficiary'' for consistency with our rules. Finally, we have amended the language in 20 CFR 416.570(b)(2) to make clear that we will not collect these overpayments from the eligible spouse or the eligible spouse's estate.

Regulatory Procedures

Executive Order 12866, as Amended

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended. Thus, they were not subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This rule will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: October 23, 2008.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, we are amending subpart F of part 404 and subpart E of Part 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart F—[Amended]

■ 1. The authority citation for subpart F of part 404 continues to read as follows:

Authority: Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b–17); 31 U.S.C. 3720A.

■ 2. Amend § 404.502 by adding paragraphs (a)(3) and (b)(5) to read as follows:

§ 404.502 Overpayments.

* * * * *

(a) * * *

(3) If a representative payee receives a payment on behalf of a beneficiary after that beneficiary dies, the representative payee or his estate is solely liable for repaying the overpayment. If the representative payee is entitled to a monthly benefit or a lump sum under title II of the Act at the time we determine that an overpayment exists or at any time thereafter, except as provided in paragraphs (c) and (d) of this section, we will not pay the monthly benefits or the lump sum to the representative payee until the amount of the overpayment has been repaid. We will make such adjustments against any monthly benefit or lump sum under title II of the Act to which the representative payee is entitled whether payable on the basis of such representative payee's earnings or the earnings of another individual.

(b) * * *

(5) The methods in paragraphs (b)(1) and (b)(2) of this section for overpayments owed by a representative payee for payments made after the beneficiary's death. We will not recover such overpayments from any person other than the individual who was representative payee or his estate, but we may recover these overpayments

from such other person under § 404.503(b).

* * * * *

■ 3. Amend § 404.503 by adding a second sentence to paragraph (a) and revising paragraph (b) introductory text to read as follows:

§ 404.503 Underpayments.

* * * * *

(a) *Individual underpaid is living.* * * * However, if we determine that the individual to whom an underpayment is due also received an overpayment as defined in § 404.501(a) for a different period, we will apply any underpayment due the individual to reduce that overpayment, unless we have waived recovery of the overpayment under the provisions of §§ 404.506 through 404.512.

(b) *Individual dies before adjustment of underpayment.* If an individual who has been underpaid dies before receiving payment or negotiating a check or checks representing such payment, we first apply any amounts due the deceased individual against any overpayments as defined in § 404.501(a) owed by the deceased individual, unless we have waived recovery of such overpayment under the provisions of §§ 404.506 through 404.512. We then will distribute any remaining underpayment to the living person (or persons) in the highest order of priority as follows:

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart E—[Amended]

■ 4. The authority citation for subpart E of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1147, 1601, 1602, 1611(c) and (e), and 1631(a)–(d) and (g) of the Social Security Act (42 U.S.C. 902(a)(5), 1320b–17, 1381, 1381a, 1382(c) and (e), and 1383(a)–(d) and (g)); 31 U.S.C. 3720A.

■ 5. Amend § 416.570 by revising the section heading, redesignating the existing text as paragraph (a), adding a heading to redesignated paragraph (a), and adding new paragraph (b) to read as follows:

§ 416.570 Adjustment.

(a) *General.* * * *

(b) *Overpayment made to representative payee after the recipient's death.* A representative payee or his estate is solely liable for repaying an overpayment made to the representative payee on behalf of a recipient after the recipient's death. In such case, we will recover the overpayment according to paragraph (a) of this section, except that:

(1) We will not adjust any other payment due to the eligible spouse of the overpaid representative payee to recover the overpayment, and

(2) If the overpaid representative payee dies before we complete adjustment, we will not seek to recover the overpayment from the eligible spouse or the estate of the eligible spouse.

[FR Doc. E8–26224 Filed 11–3–08; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 359

Offering of United States Savings Bonds, Series I

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: A Series I savings bond accrues interest based on both a fixed rate of return and a semiannual inflation rate. A single, annual interest rate called the composite rate reflects the combined effects of the fixed rate and the semiannual inflation rate. This amendment clarifies that the fixed rate of return and the composite rate will always be greater than or equal to 0%. This amendment is for clarification purposes only and makes no substantive change to the existing regulations.

DATES: Effective: November 4, 2008.

ADDRESSES: You can download this final rule at the following Internet addresses: *http://www.publicdebt.treas.gov* or *http://www.gpoaccess.gov/ecfr.*

FOR FURTHER INFORMATION CONTACT: Karthik Ramanathan, Director, Office of Debt Management, Domestic Finance, Departmental Offices, Department of the Treasury, at (202) 622–2042 or *karthik.ramanathan@do.treas.gov.*

Elisha Whipkey, Director, Division of Program Administration, Office of Retail Securities, Bureau of the Public Debt, at (304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Dean Adams, Attorney-Adviser, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *dean.adams@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: A Series I savings bond accrues interest based on both a fixed rate of return and a semiannual inflation rate. The Secretary of the Treasury determines the fixed rate of return. The fixed rate is established for the life of the bond. This amendment clarifies that the fixed rate of return will always be greater than or equal to 0%. The Department of the Treasury issues these regulations pursuant to the authority contained in 5 U.S.C. 301 and 31 U.S.C. 3105.

The composite rate is a single, annual interest rate that reflects the combined effects of the fixed rate and the semiannual inflation rate. The composite rate could possibly be less than the fixed rate in deflationary situations. This amendment clarifies that the composite rate will always be greater than or equal to 0%.

This amendment makes no substantive change to the regulations but will benefit investors by clarifying that neither the fixed rate of return nor the composite rate will be negative under any market conditions.

Procedural Requirements:

This final rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Because this final rule relates to matters of public contract and procedures for United States securities, notice and public procedure and delayed effective date requirements are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR Part 359

Bonds, Federal Reserve system, Government securities, Securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

PART 359—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES I

■ 1. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 2. Revise § 359.10 to read as follows:

§ 359.10 What is the fixed rate of return?

The Secretary, or the Secretary's designee, determines the fixed rate of return. The fixed rate is established for the life of the bond. The fixed rate will always be greater than or equal to

0.00%.[1] The most recently announced fixed rate is only for bonds purchased during the six months following the announcement, or for any other period of time announced by the Secretary.

■ 3. Revise § 359.13 to read as follows:

§ 359.13 What are composite rates?

Composite rates are single, annual interest rates that reflect the combined effects of the fixed rate and the semiannual inflation rate. The composite rate will always be greater than or equal to 0.00%.

Dated: October 28, 2008.

Kenneth E. Carfine,

Fiscal Assistant Secretary.

[FR Doc. E8–26173 Filed 10–29–08; 4:15 pm]

BILLING CODE 4810–39–P

[1] However, the fixed rate is not a guaranteed minimum rate. The composite rate is composed of both the fixed rate and a semiannual inflation rate, which could possibly be less than the fixed rate or negative in deflationary situations. In all cases, however, the composite rate will always be greater than or equal to 0.00%.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1055]

RIN 1625–AA00

Safety Zone; Shoreacres Country Club Fireworks, Lake Bluff, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Michigan in Lake Bluff Illinois. This zone is intended to restrict vessels from a portion of Sector Lake Michigan during the November 8, 2008 Shoreacres Country Club Fireworks. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks events.

DATES: This rule is effective from 8:30 p.m. to 9:30 p.m. on November 8, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1055 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the U.S. Coast Guard Sector Lake Michigan, 2420 S. Lincoln Memorial Drive, Milwaukee, WI 53110, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, contact Petty Officer Eric Vogel, U.S. Coast Guard Sector Lake Michigan, 2420 S. Lincoln Memorial Drive, Milwaukee, WI 53110, at (414) 747–7154. If you have questions on viewing the docket call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when an agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under U.S.C. 553 (b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of spectators and vessels in the vicinity of the fireworks events on the date and times this rule will be effective and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks events. Based on recent accidents that have occurred in other Captain of the Port zones, the Captain of the Port Sector Lake Michigan has determined that fireworks events pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, and alcohol use, could easily result in serious injuries or fatalities.

Discussion of Rule

The proposed safety zone will encompass all waters of Lake Michigan within the arc of a circle with a 1000 foot radius from the fireworks launch site at position 42°17′59″ N, 087°50′03″ W. (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Michigan, Lake Bluff, IL between 8:30 p.m. and 9:30 p.m. on November 8, 2008.

This safety zone will not have a significant economic impact on a

substantial number of small entities for the following reasons. This rule will be in effect for one hour for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sector Lake Michigan to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

A final environmental analysis check list and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 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. A new temporary § 165.T09–1055 is added as follows:

§ 165.T09–1055 Safety Zone; Shoreacres Country Club Fireworks, Lake Bluff, Illinois.

(a) *Location.* All waters of Lake Michigan within the arc of a circle with a 1,000 foot radius from the fireworks launch site at position 42°17′59″ N, 087°50′03″ W. (NAD 83).

(b) *Enforcement period.* This regulation is effective from 8:30 p.m. to 9:30 p.m. on November 8, 2008.

(c) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Sector Lake Michigan, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Sector Lake Michigan or his on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Sector Lake Michigan or his on-scene representative.

Dated: October 23, 2008.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Sector Lake Michigan.

[FR Doc. E8–26222 Filed 11–3–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596–AC79

Sale and Disposal of National Forest Service System Timber; Timber Sale Contracts; Market-Related Contract Term Additions

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The original Market-Related Contract Term Addition (MRCTA) regulation was adopted in 1990 to provide financial relief to timber sale purchasers during cyclic downturns in forest products markets. However, the current drastic reduction in Forest Product markets, which began in late 2004, revealed several problems with the existing MRCTA regulation. Therefore, this final rule is needed to help ensure that the MRCTA regulation functions as originally intended.

This final rule makes four changes to the MRCTA regulation. First, the regulation now allows more than 3 years to be added to a contract's term pursuant to MRCTA when there is a drastic reduction in wood product prices that lasts for more than 10 out of 12 consecutive quarters. Second, the regulation now gives contracting officers the flexibility needed to assign the most appropriate Bureau of Labor Statistics Producer Price Index (PPI) to a timber sale contract. Third, the regulation now prevents any single 3-month MRCTA from extending a contract's term by more than 1 year. Finally, the regulation now explicitly states what types of sales are ineligible for any MRCTA relief.

DATES: This rule is effective December 4, 2008.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management staff, at (202) 205–0858, or Richard Fitzgerald, Forest Management staff, at (202) 205–1753.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

In order to encourage the retention of a viable established industry capable of supplying the wood fiber needs of the public for housing and other products, the Chief of the Forest Service issued a final rule (36 CFR 223.52) on December 7, 1990, finding that the substantial overriding public interest justifies MRCTAs whenever there is a drastic reduction in wood product prices (55 FR 50643). The Chief's finding was based on the fact that MRCTAs (1) help purchasers avoid severe financial hardship; (2) ensure that the Federal government receives payments due from purchasers by reducing the likelihood of defaults; and (3) help ensure that receipts to States and counties from timber sales are not adversely affected by contract defaults. Additionally, MRCTAs help promote stability in the wood products industry, which helps promote competition, employment, investment, productivity, innovation and the industry infrastructure needed by the Forest Service to accomplish land management objectives most economically done with timber sales. (73 FR 53817).

In accordance with the December 7, 1990, final rule, the Forest Service uses PPIs to determine when a drastic reduction in wood product prices has occurred. The Forest Service currently uses the Softwood Lumber Index (WPU0811), the Hardwood Lumber index (WPU0812) and the Wood Chips index (PCU3211133211135) to monitor different wood products. Except for sales of timber subject to rapid deterioration, each contract over 1 year in length is assigned the index that represents more than one-half of the advertised volume. When a drastic reduction in the assigned index has occurred for two consecutive quarters during the contract period, the Forest Service notifies purchasers and, upon a purchaser's written request, adds 1 year to the contract term. For each additional consecutive quarter a drastic reduction occurs, the Forest Service, upon a purchaser's written request, adds an additional 3-month period to the normal operating season of the contract.

Under the current rule, no more than twice the original contract length or 3 years, whichever is less, may be added to a contract's term by MRCTA. Pursuant to the National Forest Management Act of 1976 (16 U.S.C. 472a(c)), total contract length cannot exceed 10 years as the result of a MRCTA. Further, MRCTA may not be granted for those portions of the contracts (1) with a required completion date other than the contract termination date, (2) with timber the Forest Service determines is in need of urgent removal, or (3) where the Forest Service determines timber deterioration or resource damage may result from delay.

Since the MRCTA rule was adopted in 1990, a drastic reduction in softwood lumber prices occurred for five quarters in 1994–1995, three quarters in 1998, six quarters in 2000–2001, and for 12 quarters beginning in September 2005, through June 2008. The hardwood index has also shown a drastic reduction for three quarters in 2005–2006 and in the first two quarters of 2008. As a result, many purchasers requested and received MRCTA for qualifying timber sales.

The MRCTA regulation's intent is to avert widespread contract defaults and attendant adverse economic impacts on industry and dependent communities. Using MRCTA to add no more than 3 years to a contract's term met that objective during previous drastic reductions. However, when a drastic reduction in wood prices continues for more than 3 straight years, like the current softwood lumber market,

purchasers holding high priced sales bid when the markets were stronger face severe economic hardship without the ability to rely on additional MRCTA for relief.

To respond to the poor market conditions and associated adverse economic impacts on industry and dependent communities, Section 8401 of the Food, Conservation, and Energy Act of 2008, Public Law No. 110–246, 122 Stat. 1651 (June 18, 2008), authorized the Forest Service to use MRCTA to add up to 4 years to the original length of contracts awarded prior to January 1, 2007. While section 8401 provided immediate relief to contracts that had or were about to reach the 3-year limit, the committee notes for section 8401 state *''the Managers encourage the Forest Service to revise the existing regulations within 90 days of enactment of this Act to reflect provisions of this section for future market problems.''*

In response, on September 3, 2008, the Forest Service sought public comment on proposed amendments to the MRCTA regulation. (73 FR 51388).

Agency Response to Major Public Comments

The Forest Service received comments responsive to the merits of the rule from three respondents. Two of the responses were from timber industry associations who supported the intent of the proposed changes. However, one of those respondents recommended changes. The third response was from an environmental organization that raised several issues related to the rule. Agency responses to the public comments are as follows:

Comment: The proposed amended rules would have an overall positive effect on the Forest Service timber sale program and are in the best interest of the people of the United States. The Forest Service should move ahead with amending the regulations to expand the maximum amount of additional contract time contracts can receive during prolonged periods of market price reductions and to modify the procedure for selecting the proper producer price index.

Response: While these are statements for which no response is necessary, it is noted that all three respondents specifically supported the proposed changes to establishing the appropriate producer price index.

Comment: We are concerned that the agency has proposed allowing additional quarters of MRCTA only after the relevant producer price index has triggered for 11 consecutive quarters. This would potentially exclude numerous contracts if there is a temporary rebound in the market with the longer term decline trend resuming quickly thereafter. ''We strongly urge the agency to modify the final rule to allow additional quarters of MRCTA when the relevant PPI triggers for 6 of the 8 previous quarters, allowing MRCTA up to 10 years. At this point, a sale may only be extended by a determination of the Chief that doing so will lead to better utilization of the forest resources.''

Response: The comment addresses three issues: (1) The number of qualifying quarters needed to trigger additional MRCTA time; (2) the proposed requirement that those triggering quarters must be consecutive; and (3) the 10-year limit on total contract length pursuant to the National Forest Management Act of 1976 (NFMA). These issues will be responded to separately as follows:

(1) Under the old rule, the maximum amount of time that could be added to a contract's term by MRCTA was 3 years. The proposed rule was designed to only allow MRCTA to extend a contract's term beyond 3 years when there is a drastic reduction in forest products markets that lasts over 2½ years, like the current decline and the decline in the early 1980s. The Forest Service looked at all the trigger periods for the softwood lumber and hardwood lumber PPIs from the late 1970s to the present and used the two longest declines as a basis for the proposed rule. Table 1 below shows quarters triggering MRCTA for the softwood lumber and hardwood lumber PPIs since 1978. Since the MRCTA procedures were not adopted until December 1990, and have been amended several times since then, the data shows quarters that would have qualified using the procedures in the rule being amended. Also, because the Bureau of Labor Statistics PPIs are not adjusted for inflation, the Forest Service calculates a relative index adjusted for inflation that allows comparisons to be made over time on a constant dollar basis. Qualifying quarters occur when the relative index is less than 88.5 percent of the average high of the four highest quarters in the previous eight quarters.

TABLE 1—BUREAU OF LABOR STATISTICS PPI DATA

Qtr/yr	Relative softwood index	Avg. high 4 of 8 prior qtrs	88.5% of high 4 qtrs	Qualifying quarter	Relative hardwood index	Avg. high 4 of 8 prior qtrs	88.5% of high 4 qtrs	Qualifying quarter
Sep–78	155.8	152.6	135.0		131.7	123.8	109.5	
Dec–78	155.3	154.6	136.9		130.9	126.7	112.1	
Mar–79	154.0	155.3	137.5		129.9	129.3	114.5	
Jun–79	151.5	155.4	137.5		127.8	130.4	115.4	
Sep–79	155.9	155.4	137.5		122.7	130.4	115.4	
Dec–79	134.4	155.2	137.4	Yes	118.6	130.4	115.4	
Mar–80	128.8	155.2	137.4	Yes	112.6	130.4	115.4	Yes.
Jun–80	115.2	155.2	137.4	Yes	107.6	130.4	115.4	Yes.
Sep–80	118.4	155.2	137.4	Yes	102.9	130.1	115.1	Yes.
Dec–80	117.9	154.2	136.4	Yes	101.0	127.9	113.2	Yes.
Mar–81	110.9	148.9	131.8	Yes	98.5	124.8	110.4	Yes.
Jun–81	112.7	142.7	126.3	Yes	99.0	120.4	106.6	Yes.
Sep–81	105.6	134.4	118.9	Yes	99.8	115.4	102.1	Yes.
Dec–81	101.2	124.9	110.5	Yes	99.8	110.4	97.7	
Mar–82	99.6	120.1	106.3	Yes	99.6	106.0	93.8	
Jun–82	102.0	116.1	102.7	Yes	100.1	102.8	91.0	
Sep–82	99.8	115.0	101.8	Yes	100.0	101.0	89.3	
Dec–82	99.8	111.8	98.9		100.9	100.2	88.7	
Mar–83	114.4	107.8	95.4		103.1	100.2	88.7	
Jun–83	122.5	108.7	96.2		105.4	101.0	89.4	
Sep–83	109.4	111.1	98.3		109.0	102.4	90.6	
Dec–83	109.5	112.1	99.2		114.1	104.6	92.6	

TABLE 1—BUREAU OF LABOR STATISTICS PPI DATA—Continued

Qtr/yr	Relative softwood index	Avg. high 4 of 8 prior qtrs	88.5% of high 4 qtrs	Qualifying quarter	Relative hardwood index	Avg. high 4 of 8 prior qtrs	88.5% of high 4 qtrs	Qualifying quarter
Mar–84	114.5	114.0	100.8		115.5	107.9	95.5	
Jun–84	105.4	115.2	102.0		119.5	111.0	98.2	
Sep–84	101.5	115.2	102.0	Yes	119.6	114.5	101.4	
Dec–84	102.7	115.2	102.0		115.8	117.2	103.7	
Mar–85	104.8	115.2	102.0		115.8	117.6	104.1	
Jun–85	112.6	114.0	100.9		113.4	117.7	104.2	
Sep–85	102.4	111.5	98.7		113.0	117.7	104.2	
Dec–85	98.5	110.5	97.8		110.7	117.7	104.2	
Mar–86	105.7	109.3	96.8		116.3	117.7	104.2	
Jun–86	108.4	107.1	94.8		118.2	117.8	104.3	
Sep–86	111.8	107.9	95.5		119.8	117.5	104.0	
Dec–86	108.9	109.6	97.0		121.2	117.5	104.0	
Mar–87	112.7	110.4	97.7		122.7	118.9	105.2	
Jun–87	112.5	111.5	98.7		122.8	120.5	106.6	
Sep–87	118.7	111.5	98.7		123.9	121.6	107.6	
Dec–87	112.3	113.9	100.8		126.1	122.7	108.5	
Mar–88	114.6	114.1	100.9		126.8	123.9	109.6	
Jun–88	114.1	114.6	101.5		124.3	124.9	110.5	
Sep–88	110.4	115.0	101.8		119.2	125.3	110.9	
Dec–88	107.2	115.0	101.8		116.7	125.3	110.9	
Mar–89	111.1	115.0	101.8		114.3	125.3	110.9	
Jun–89	116.5	115.0	101.8		113.9	125.3	110.9	
Sep–89	114.9	116.0	102.6		113.9	125.3	110.9	
Dec–89	108.2	115.0	101.8		114.6	124.1	109.8	
Mar–90	112.3	115.0	101.8		114.6	121.8	107.8	
Sep–90	109.9	114.4	101.3		115.0	118.7	105.1	
Sep–90	103.0	113.7	100.6		111.0	116.4	103.0	
Dec–90	97.8	113.7	100.6	Yes	109.6	115.2	102.0	
Mar–91	100.9	113.7	100.6		110.9	114.6	101.5	
Jun–91	118.7	113.4	100.4		109.6	114.5	101.4	
Sep–91	108.6	114.0	100.8		110.1	114.5	101.3	
Dec–91	111.9	112.4	99.5		112.6	113.8	100.7	
Mar–92	131.7	113.2	100.2		115.6	113.3	100.3	
Jun–92	125.6	118.1	104.5		118.2	113.5	100.5	
Sep–92	124.8	122.0	108.0		122.7	114.3	101.2	
Dec–92	135.7	125.2	110.8		128.7	117.3	103.8	
Mar–93	178.6	129.5	114.6		133.0	121.3	107.3	
Jun–93	155.5	142.9	126.5		139.2	125.7	111.2	
Sep–93	156.6	150.4	133.1		140.7	130.9	115.8	
Dec–93	176.1	156.6	138.6		140.1	135.4	119.8	
Mar–94	175.6	166.7	147.5		140.3	138.2	122.3	
Jun–94	165.8	171.7	152.0		139.9	140.0	123.9	
Sep–94	159.4	174.0	154.0		139.5	140.2	124.1	
Dec–94	154.9	174.0	154.0		138.7	140.2	124.1	
Mar–95	149.6	174.0	154.0	Yes	137.2	140.2	124.1	
Jun–95	138.6	169.2	149.8	Yes	133.4	140.2	124.1	
Sep–95	143.7	169.2	149.8	Yes	132.2	140.2	124.1	
Dec–95	134.7	169.2	149.8	Yes	130.0	139.9	123.8	
Mar–96	138.1	163.9	145.1	Yes	130.1	139.6	123.5	
Jun–96	153.8	157.4	139.3		127.7	138.8	122.9	
Sep–96	159.0	154.4	136.7		127.5	137.2	121.4	
Dec–96	156.8	154.3	136.6		128.6	135.4	119.8	
Mar–97	165.4	154.8	137.0		134.5	133.2	117.9	
Jun–97	166.3	158.7	140.5		136.6	132.5	117.3	
Sep–97	158.4	161.9	143.2		138.7	133.3	118.0	
Dec–97	153.6	162.3	143.6		140.6	135.0	119.5	
Mar–98	155.3	162.3	143.6		144.2	137.6	121.8	
Jun–98	141.9	162.3	143.6	Yes	143.7	140.0	123.9	
Sep–98	141.5	162.3	143.6	Yes	143.9	141.8	125.5	
Dec–98	142.6	161.7	143.1	Yes	143.5	143.1	126.6	
Mar–99	157.7	161.3	142.8		143.5	143.8	127.3	
Jun–99	164.5	159.4	141.1		141.1	143.8	127.3	
Sep–99	154.2	159.0	140.7		138.5	143.8	127.3	
Dec–99	150.9	157.9	139.8		142.6	143.8	127.3	
Mar–00	147.6	157.9	139.8		141.5	143.8	127.3	
Jun–00	134.2	156.8	138.8	Yes	139.4	143.6	127.1	
Sep–00	124.4	156.8	138.8	Yes	138.7	143.4	126.9	
Dec–00	121.1	156.8	138.8	Yes	137.0	142.8	126.4	
Mar–01	121.9	156.8	138.8	Yes	135.8	142.2	125.8	
Jun–01	138.2	154.3	136.5		133.4	141.1	124.9	

TABLE 1—BUREAU OF LABOR STATISTICS PPI DATA—Continued

Qtr/yr	Relative softwood index	Avg. high 4 of 8 prior qtrs	88.5% of high 4 qtrs	Qualifying quarter	Relative hardwood index	Avg. high 4 of 8 prior qtrs	88.5% of high 4 qtrs	Qualifying quarter
Sep–01	130.1	147.7	130.7	Yes	134.2	140.6	124.4	
Dec–01	125.7	142.7	126.3	Yes	138.4	140.6	124.4	
Mar–02	137.3	137.5	121.7		136.4	139.5	123.5	
Jun–02	130.0	134.9	119.4		135.3	138.4	122.5	
Sep–02	128.1	133.9	118.5		135.1	137.6	121.8	
Dec–02	124.0	133.9	118.5		136.0	136.9	121.2	
Mar–03	116.5	133.9	118.5	Yes	130.9	136.7	120.9	
Jun–03	119.5	133.9	118.5		137.7	136.5	120.8	
Sep–03	132.7	131.4	116.3		137.9	137.1	121.4	
Dec–03	128.0	132.0	116.9		138.8	137.6	121.8	
Mar–04	143.0	132.0	116.9		138.2	137.7	121.9	
Jun–04	148.5	133.5	118.1		135.7	138.1	122.3	
Sep–04	156.5	138.1	122.2		136.3	138.1	122.3	
Dec–04	130.6	145.2	128.5		132.8	138.1	122.3	
Mar–05	140.0	145.2	128.5		128.0	138.1	122.3	
Jun–05	135.8	147.0	130.1		126.7	138.1	122.3	
Sep–05	124.8	147.0	130.1	Yes	121.0	137.8	121.9	Yes.
Dec–05	119.8	147.0	130.1	Yes	120.9	137.2	121.4	Yes.
Mar–06	127.4	147.0	130.1	Yes	120.5	135.7	120.1	Yes.
Jun–06	117.1	145.2	128.5	Yes	117.8	133.2	117.9	No.
Sep–06	108.9	140.7	124.5	Yes	117.7	130.9	115.9	
Dec–06	100.1	133.4	118.1	Yes	117.9	127.1	112.5	
Mar–07	103.2	132.0	116.8	Yes	114.0	124.1	109.9	
Jun–07	100.3	127.0	112.4	Yes	111.0	122.2	108.2	
Sep–07	97.7	122.3	108.2	Yes	110.8	120.0	106.2	
Dec–07	89.0	118.3	104.7	Yes	106.8	119.3	105.5	
Mar–08	80.6	114.2	101.0	Yes	100.3	118.5	104.8	Yes.
Jun–08	83.4	107.4	95.1	Yes	92.5	116.8	103.4	Yes.

The situation described by the commenter of a brief break in triggering MRCTA followed by a continuation of a long term decline has merit. Table 1 shows the current decline with the softwood index triggering for 12 consecutive quarters beginning with the 3rd quarter 2005. Even though it was a qualifying quarter, the index showed a slight rebound in the 1st quarter of 2006. If that rebound had been high enough to prevent that single quarter from triggering, instead of having 12 consecutive qualifying quarters, only eleven of the previous 12 quarters would have been qualifying quarters and the longest consecutive string of qualifying quarters would have been nine. That minor break would not have been sufficient to change the need for additional contract time provided by the 2008 Farm Bill and the final rule. Table 1 contains another example pertinent to this issue. The softwood lumber index triggered for four consecutive quarters beginning with the 2nd quarter 2000; didn't trigger in the 2nd quarter 2001, and then triggered for two additional quarters. Using the old rule, a sale awarded prior to April 1, 2000, could have its contract term extended by 1 year for the first two qualifying quarters, plus 3 months of normal operating season time for each of the second two qualifying quarters, and 1 year for the last two qualifying quarters following the break. Depending on the length of the normal operating season, the sale's term would have been extended by 2½ to 3 years. Using the above example, the commenter's suggestion of allowing additional MRCTA when the PPI triggers for 6 of the previous 8 quarters, could result in the sale being extended by more than 3 years. However, while the Forest Service agrees that requiring 11 consecutive qualifying quarters before triggering additional MRCTA is overly limiting, the commenter's suggestion is unacceptable because it could trigger additional MRCTA in a market decline as short as 1½ years. Accordingly the rule has been revised to allow more than 3 years to be added to a contract's term pursuant to MRCTA when there is a drastic reduction in wood product prices that lasts for more than 10 out of 12 consecutive quarters.

The Forest Service chose at least 10 of the previous 12 quarters as the trigger point because most contracts are already eligible to have their terms extended by 3 years pursuant to MRCTA. The Forest Service does not believe that there is a need to allow MRCTA to extend a contract's term by more than 3 years unless there is a drastic reduction in the market that lasts more than 2½ years (10 quarters). The rationale for allowing 3 years of MRCTA for a 2½ year market decline is that after recovery begins purchasers need a reasonable amount of time to conclude operations where they are were working and then move back to sales that were receiving MRCTA. Up to 6 months is considered reasonable. The final rule has been revised accordingly.

(2) The commenter also recommended allowing up to 10 years of MRCTA. Following that recommendation would allow contracts to exceed 10 years in total length as the result of MRCTA. For example, 3-or 4-year contracts could become 13 or 14 year contracts. Section 472a(c) of NFMA provides, in part, as follows: ''Unless there is a finding by the Secretary of Agriculture that better utilization of the various forest resources (consistent with the provisions of the Multiple-Use, Sustained-Yield Act of 1960) will result, sales contracts shall be for a period not to exceed ten years.'' Considering the language in NFMA, the Forest Service believes the decision to extend any timber sale or group of timber sales beyond 10 years in total length should be made on a case-by-case basis. No change will be made in the final rule relative to the 10-year limit on total contract length.

Comment: ''We are extremely concerned and strongly opposed to the proposed change to the regulation

which would disqualify any contract for which all advertised species reach base rates from receiving additional MRCTA.''

Response: The commenter noted that many sales at base rates may include high associated charges for such things as brush disposal or the base rates may have been increased substantially for essential regeneration. In addition, a sale at base rates may have high operational costs for such things as helicopter logging or road construction. As a result, even though the stumpage rates for one or more species included in a sale are set at the lowest rate the Forest Service may accept for the timber, the costs of operating the sale may still be very high, especially during a depressed market period. The Forest Service agrees with the commenter and has revised the final rule accordingly.

Comment: One respondent believed that additional analysis and direction should be included before issuing a final rule. The respondent disagreed with the Agency's conclusion that the rule has no direct effect upon the amount, location, or manner of timber offered for purchase. The respondent believed extensions of timber sale contracts may have a significant effect on the environment by delaying needed vegetative and habitat management work such that adverse effects to habitat, species, or people could accrue. The respondent suggested making changes in sections of the Forest Service Handbook and Manual, and agency National Environmental Policy Act (NEPA) procedures as a better way to accomplish Forest Service management objectives while responding to agency and industry concerns regarding market conditions. The respondent also noted that the citation to the categorical exclusion was out of date.

Response: The Forest Service agrees that contract extensions might in some instances have environmental consequences. However, this rule is not self-executing and does not by itself cause contract extensions to occur. Further, this rule is categorically excluded from documentation in an environmental assessment or an environmental impact statement.

The Forest Service disagrees that its NEPA policies and procedures should be changed to ''better accomplish Forest Service management objectives while responding to agency and industry concerns regarding market conditions.'' However, the Forest Service agrees that additional NEPA analysis might be necessary when a project is authorized or when a contract receives additional time under this rule. The determination of whether such analysis is necessary will be made by the responsible official in full accordance with the law. The Forest Service's NEPA policies and procedures currently provide for such situations and do not need to be changed. This notice's regulatory certification section now correctly refers to 36 CFR 220.6(d)(2).

Comment: We cannot find any definition for ''urgent removal'' in 36 CFR part 223. It is unclear how the agency maintains consistency in the application of this term and how the lack of clarity would affect market related extensions.

Response: The commenter is correct that the term ''urgent removal'' is not specifically defined in 36 CFR part 223. However, § 223.53(b) and Forest Service Handbook (FSH) 2409.18, chapter 50, section 55.21, addresses sales in urgent need of harvesting, as dead and dying timber subject to rapid deterioration as the result of catastrophic events such as fire, disease or weather-related damage. Other examples of timber in need for urgent removal are addressed in the following comment/response. Ultimately, the determination of whether timber in a specific sale or project is in need of urgent removal is a decision the Forest Service makes on a case-by-case basis.

Comment: If fuel reduction and/or HFRA projects are considered urgent, then the regulations at 36 CFR part 223 should explicitly state so to eliminate any confusion as to whether they are eligible for an extension. The same type of specificity should apply to projects proposing to use commercial timber sales to accomplish needed endangered or threatened species habitat work under the Endangered Species Act.

Response: Section 223.52(c)(1) of the old rule specifies that additional contract time may not be granted for those portions of the contract which have a required completion date, or for those portions where the Forest Service determines that the timber is in need of urgent removal, or that timber deterioration or resource damage will result from delay. While this appears to address the concerns raised in the comment, § 223.52(c)(1) only pertains to portions of the sale area. Addressing the sale as a whole, § 223.52(a)(3) in the old rule specifies that a market-related contract term addition provision shall not be included in contracts where the sale has a primary objective of harvesting timber subject to rapid deterioration. The Forest Service agrees that many sales, in addition to those where the timber is subject to rapid deterioration, have timing needs that if not met may jeopardize the purpose and intended objective of the project. Examples include treating hazardous fuels in a wildland-urban interface area, removing hazardous trees adjacent to developed sites such as roads and campgrounds, and sales where trees are designated by diameter and delay could change the treatment as the result of trees either growing into or out of the diameter range specified for treatment. But to attempt to list specific classes of sales such as HFRA projects as the respondent suggests runs the risk of being too exclusive. In order to provide resource managers with the flexibility to determine which sales should be excluded from receiving MRCTA, § 223.52(a)(3) has been amended in the final rule to state that a market-related contract term addition provision shall not be included in contracts where fulfilling the primary objective is dependent upon timely completion of harvest. The final rule also requires notifying purchasers in the prospectus when a sale is precluded from receiving a MRCTA.

Regulatory Certifications

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this final rule is not a significant regulatory action and is not subject to Office of Management and Budget (OMB) review. This final rule will not have an annual effect of $100 million or more on the economy and will not adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. This final rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Little or no effect on the national economy will result from this regulatory action, which consists of necessary, technical changes to the regulation governing market-related contract term additions. Using the replacement indices and the modified formula contained in this final rule, the Forest Service will be able to determine whether a drastic decline in wood products prices has occurred. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*), and it is hereby certified that this action

will not have a significant economic impact on a substantial number of small entities as defined by that act. As revised in this final rule, the Forest Service will be able to grant additional market-related contract term additions to small and large purchasers when there is a prolonged drastic reduction in wood product prices. This will have the intended effect of averting massive defaults and attendant adverse economic impacts on industry and dependent communities by providing purchasers additional contract time until markets improve.

Proper Consideration of Small Entities

This final rule has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Forest Service has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

To the extent that the final rule imposes additional requirements on small entities, these requirements are the minimum necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Forest Service has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Environmental Impact

This final rule concerns the extension of timber sale contracts when warranted by a drastic reduction in wood product prices, and, as such, has no direct effect upon the amount, location, or manner of timber offered for purchase. Code of Federal Regulations at 36 CFR 220.6(d)(2) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Controlling Paperwork Burdens on the Public

This final rule includes information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 apply. The Office of Management and Budget (OMB) has approved the collection of this information under OMB control number 0596–0212.

Energy Effects

This final rule has been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this final rule does not constitute a significant energy action as defined in the Executive order.

Federalism

The agency has considered this final rule under the requirements of Executive Order 13132, Federalism. The agency has made an assessment that the final rule conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications as defined in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and, therefore, advance consultation with tribes is not required.

No Takings Implications

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of Constitutionally-protected private property.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The agency has not identified any State or local laws or regulations that are in conflict with this regulation or that would impede full implementation of this rule. In any event, after adoption of this final rule: (1) All State and local laws or regulations that conflict with this rule or that would impede full implementation would be preempted; (2) no retroactive effect would be given to this final rule, except as described herein; and (3) the final rule would not require the use of administrative proceedings before parties could file suit in court challenging its provisions.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National forests, Reporting and recordkeeping requirements.

■ Therefore, for the reasons set forth in the preamble, Part 223 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213; 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

■ 2. In § 223.52 revise paragraphs (a)(2), (a)(3), (c)(1) through (c)(4) and add a new paragraph (c)(5) to read as follows:

§ 223.52 Market-related contract term additions.

(a) * * *

(2) The contract term addition provision of the contract must specify the index to be applied to each sale. The Forest Supervisor shall determine and select from paragraph (b) of this section, the index to be used for each sale based on the species and product characteristics, by volume, being harvested on the sale. The index specified shall represent more than one-half of the advertised volume. If none of the indices in paragraph (b) of this section represent more than one-half of the advertised volume, the index specified shall represent the species product combination representing the highest percentage of volume for which there is an index. When the Forest Supervisor determines that the species and potential product characteristics are such that more than one index could be used, the prospectus will state that the Contracting Officer may, upon the purchaser's written request, select an alternative index from paragraph (b) of this section, and may modify the contract by mutual agreement, at time of contract execution, to include an alternative index that the Contracting Officer has determined represents the

highest percentage of products the purchaser intends to produce or have produced from the sale. Purchasers seeking a change of index at time of award must substantiate the need for an alternative index by providing the Contracting Officer with a written request that includes a list of products by volume the purchaser intends to produce or expects will be produced from the timber on that sale. In the event a mutual agreement to modify a contract to include an alternative index is not reached at time of contract execution, the index specified in the sample contract shall apply.

(3) A market-related contract term addition provision shall not be included in contracts where the primary management objective requires prompt removal of the timber, such as, timber is subject to rapid deterioration, timber is in a wildland-urban interface area, or hazard trees adjacent to developed sites.

* * * * *

(c) * * *

(1) Additional contract time may not be granted for those portions of the contract:

(i) With a required completion date;

(ii) Where the Forest Service determines that the timber is in need of urgent removal;

(iii) Where timber deterioration or resource damage may result from delay; or

(iv) Where included timber is designated by diameter and delay may change the treatment as a result of trees growing into or out of the specified diameter range(s).

(2) For each additional consecutive quarter in which a contract qualifies for market-related contract term addition, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract, except that no single 3-month addition shall extend the term of a contract by more than 1 year.

(3) No more than 3 years shall be added to a contract's term by market-related contract term addition unless the following conditions are met:

(i) The sale was awarded after December 31, 2006;

(ii) A drastic reduction in wood product prices occurred in at least ten of twelve consecutive quarters during the contract term, but not including the quarter in which the contract was awarded; and

(4) For each qualifying quarter meeting the criteria in paragraph (c)(3)(ii) of this section, the Forest Service will, upon the purchaser's written request, add an additional 3 months during the normal operating season to the contract, except no single 3-month addition shall extend the term of a contract by more than 1 year.

(5) In no event shall a revised contract term exceed 10 years as a result of market-related contract term addition.

* * * * *

Dated: October 24, 2008.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. E8–26203 Filed 11–3–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AM22

Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA): Expansion of Benefit Coverage for Prostheses and Enuretic (Bed-Wetting) Devices; Miscellaneous Provisions

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts a final rule amending the Department of Veterans Affairs (VA) medical regulations for the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) to expand benefits by covering any non-dental prostheses determined medically necessary for the treatment of certain medical conditions and by removing the exclusion from coverage of enuretic (bed-wetting) devices. In addition, this final rule makes changes in delegations of authority, technical changes, and nonsubstantive changes for purposes of clarity in VA's regulations governing CHAMPVA.

DATES: *Effective Date:* This final rule is effective December 4, 2008.

FOR FURTHER INFORMATION CONTACT: Richard M. Trabert, Policy Management Division, VA Health Administration Center, P.O. Box 65020, Denver, CO 80206–9020; (303) 331–7549. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on February 19, 2008 (73 FR 9068), VA proposed to amend its medical regulations at 38 CFR part 17 concerning CHAMPVA benefits. Specifically, it proposed to extend prosthetic coverage to any prostheses (other than dental prostheses) considered medically necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. Also, it proposed to remove the exclusion of enuretic (bed-wetting) devices (alarms) but would continue to exclude enuretic conditioning programs. Additionally, the document proposed to amend the delegations of authority in 38 CFR 17.275, Claim filing deadline, and 38 CFR 17.276, Appeal/review process. Finally, the document proposed to make technical and other nonsubstantive changes for purposes of clarity, including to conform with Public Law 107–135, which redesignated the statutory section authorizing the CHAMPVA program as 38 U.S.C. 1781 (formerly 38 U.S.C. 1713). VA provided a 60-day comment period that ended April 19, 2008. VA received no comments. Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change, except for a technical change regarding the authority citation for 38 CFR part 17.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a rule as a ''significant regulatory action'' requiring review by Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity,

competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Individuals eligible for CHAMPVA benefits are widely dispersed geographically and thus services provided to them would not have a significant impact on any small entity. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

This final rule affects the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), for which there is no Catalog of Federal Domestic Assistance program number.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health facilities, Health professionals, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Travel and transportation expenses, and Veterans.

Approved: October 28, 2008.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

■ For the reasons stated above, VA amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. Revise the authority citation for part 17 to read as follows:

Authority: 38 U.S.C. 501, 1721, and as noted in specific sections.

■ 2. Amend § 17.270 by:

■ a. In paragraph (a), removing ''1713'' and adding, in its place, ''1781''.

■ b. In paragraph (b), removing ''this section'' and adding, in its place, ''§§ 17.270 through 17.278'', removing ''fiscal'' year refers to October 1'', and adding, in its place, ''fiscal year'' refers to October 1''.

■ c. Revising the authority citation.

The revision reads as follows:

§ 17.270 General provisions.

* * * * *

(Authority: 38 U.S.C. 501, 1781)

■ 3. Amend § 17.271 by revising the authority citations after paragraph (a) and at the end of the section to read as follows:

§ 17.271 Eligibility.

(a) * * *

(Authority: 38 U.S.C. 501, 1781)

* * * * *

(Authority: 38 U.S.C. 501, 1781)

■ 4. Amend § 17.272 by:

■ a. Redesignating paragraphs (a)(44)(i) through (a)(44)(iv) as paragraphs (a)(44)(ii)(A) through (D), respectively.

■ b. Redesignating paragraph (a)(44)(v) as new paragraph (a)(44)(i).

■ c. Adding paragraphs (a)(44)(ii) introductory text and (a)(44)(ii)(E).

■ d. Revising paragraph (a)(52) and the authority citation.

The additions and revisions read as follows:

§ 17.272 Benefits limitations/exclusions.

(a) * * *

(44) * * *

(ii) Any prostheses, other than dental prostheses, determined to be medically necessary because of significant conditions resulting from trauma, congenital anomalies, or disease, including, but not limited to:

* * * * *

(E) Ears, noses, and fingers.

* * * * *

(52) Enuretic (bed-wetting) conditioning programs.

* * * * *

(Authority: 38 U.S.C. 501, 1781)

■ 5. Amend § 17.273 by revising the authority citation to read as follows:

§ 17.273 Preauthorization.

* * * * *

(Authority: 38 U.S.C. 501, 1781)

■ 6. Amend § 17.274 by revising the authority citation to read as follows:

§ 17.274 Cost sharing.

* * * * *

(Authority: 38 U.S.C. 501, 1781)

■ 7. Amend § 17.275 by:

■ a. In paragraph (b), removing ''Center Director'' and adding, in its place, ''Director, Health Administration Center, or his or her designee''; and removing ''paragraph (a) if'' and adding, in its place, ''paragraph (a) of this section if''.

■ b. Adding an authority citation at the end of the section.

The addition reads as follows:

§ 17.275 Claim filing deadline.

* * * * *

(Authority: 38 U.S.C. 501, 1781)

■ 8. Amend § 17.276 by:

■ a. Removing ''Center Director'' and ''Director'' each time they appear and adding, in their place, ''Director, Health Administration Center, or his or her designee''.

■ b. Revising the authority citation.

■ c. In the Note, removing ''20 CFR'' and adding, in its place ''38 CFR''.

The revision reads as follows:

§ 17.276 Appeal/review process.

* * * * *

(Authority: 38 U.S.C. 501, 1781)

* * * * *

■ 9. Amend § 17.277 by adding an authority citation to read as follows:

§ 17.277 Third-party liability/medical care cost recovery.

* * * * *

(Authority: 28 U.S.C. 2651; 38 U.S.C. 501, 1781)

■ 10. Amend § 17.278 by adding an authority citation to read as follows:

§ 17.278 Confidentiality of records.

* * * * *

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 501, 1781, 5701, 7332)

[FR Doc. E8–26245 Filed 11–3–08; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 75

[EPA–HQ–OAR–2008–0800; FRL–8737–5]

RIN 2060–AP39

Stay of the Effectiveness of Requirements for Air Emission Testing Bodies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to stay the effectiveness of requirements for air emission testing bodies.

On January 24, 2008, final amendments to regulations on competency requirements for air emission testing bodies (AETBs) were published in the **Federal Register**. The AETB provision generally requires stack testers and stack testing companies to meet certain minimum competency requirements described in ASTM D 7036 by January 1, 2009.

On March 25, 2008, the Utility Air Regulatory Group (UARG) filed a Petition for Review primarily claiming that EPA could not by the AETB requirement hold utilities responsible for something they cannot control. While EPA is considering revisions to the requirements to address UARG's concerns, it cannot propose and complete any such revision through notice and comment rulemaking before the compliance date contained in the existing rule, thus necessitating this action. EPA needs to complete this action staying effectiveness of the AETB requirements in order to secure an extension of an Order Granting Abeyance of Further Proceedings which expires on October 29, 2008, when the Agency must file Motions to Govern Further Proceedings.

DATES: Effective on November 4, 2008, in Appendix A to 40 CFR Part 75, the effectiveness of Section 6.1.2(a) through (c) is stayed indefinitely.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2008–0800. All documents in the docket are listed in the Federal Docket Management System index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: John Schakenbach, U.S. Environmental Protection Agency, Clean Air Markets Division, MC 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9158, e-mail at *schakenbach.john@epa.gov.* Electronic copies of this document can be accessed through the EPA Web site at: *http://epa.gov/airmarkets.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry	221112 and others	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities which EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. 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.

Judicial Review. Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before January 5, 2009. 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, does not extend the time within which a petition for judicial review may be filed, and does not postpone the effectiveness of this rule. Under CAA section 307(b)(2), the requirements established by this rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The following outline is provided to aid in locating information in this preamble.

I. Overview
II. Administrative Procedures Used in This Action
III. Staying the Effectiveness of Requirements for Air Emission Testing Bodies
A. Rule revision staying the effectiveness of requirements for air emission testing bodies
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Overview

On January 24, 2008, final amendments to 40 CFR part 75 on competency requirements for air emission testing bodies (AETBs) were published in the **Federal Register** (See 73 FR 4365, 4367, and 4372). The AETB provision generally requires stack testers and stack testing companies to meet certain minimum competency requirements described in ASTM D 7036 by January 1, 2009.

On March 25, 2008, the Utility Air Regulatory Group (UARG) filed a Petition for Review primarily claiming that EPA could not by the AETB requirement hold utilities responsible for something they cannot control. While EPA is considering revisions to the requirements to address UARG's concerns, it cannot propose and complete any such revision through notice and comment rulemaking before the compliance date contained in the existing rule, thus necessitating this action. EPA needs to complete this action staying effectiveness of the AETB requirements in order to secure an extension of an Order Granting Abeyance of Further Proceedings which expires on October 29, 2008, when the Agency must file Motions to Govern Further Proceedings.

EPA believes that this rulemaking qualifies for the ''good cause'' exemption under section 553(b)(3)(B) of the APA. EPA has determined that prior proposal and opportunity for comment are unnecessary because the public is not likely to be particularly interested, and notice and opportunity for comment were previously provided for the AETB provision (*see,* proposed rule 71 FR 49300, August 22, 2006).

EPA believes that this rulemaking qualifies for the ''good cause'' exemption to make the rule effective immediately under section 553(d) of the APA because it is a relaxation of a restriction by staying the effectiveness of requirements for air emission testing bodies.

II. Administrative Procedures Used in This Action

Under CAA section 307(d)(1)(S), this action revising the Acid Rain Program rules is subject to the requirements of CAA section 307(d). Section 307(d)(3) provides that a notice of proposed rulemaking, providing an opportunity for a public hearing and comment, must be published in the **Federal Register**, except under certain circumstances, as provided in the Administrative Procedure Act (5 U.S.C. 553(b)). Two examples of where the requirement for such a notice does not apply are: (1) The public is not likely to be particularly interested; and (2) notice and opportunity for comment were previously provided (See 5 U.S.C. 553(b)(B)).

EPA finds, for the following reasons, that notice and opportunity for public hearing and comment concerning the stay of effectiveness of requirements for air emission testing bodies is not required because (1) the public is not likely to be particularly interested because of the relatively minor nature of this rulemaking action; and (2) notice and opportunity for comment were previously provided for the AETB provision (*see,* proposed rule 71 FR 49300, August 22, 2006). As discussed above, this rule revision was finalized—after notice and opportunity for comment—on January 24, 2008.

In addition, EPA also finds that there is good cause under 5 U.S.C. 553(d) to make this final rule—staying the effectiveness of requirements for air emission testing bodies—immediately effective upon publication in the **Federal Register**. As explained above, the final rule provides a relaxation of a requirement by staying the effectiveness of requirements for air emission testing bodies.

III. Staying the Effectiveness of Requirements for Air Emission Testing Bodies

In this final rule, EPA is staying the effectiveness of requirements for air emission testing bodies.

IV. 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 (Oct. 4, 1993)) and is therefore not subject to review under the Executive Order. In this action, EPA is simply staying the effectiveness of requirements for air emission testing bodies that were previously issued and would have become effective on January 1, 2009.

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.* Burden is defined at 5 CFR 1320.3(b). This action does not impose any new information collection burden because it is simply staying the effectiveness of requirements for AETBs.

C. Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute, because although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirement.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector [The term ''enforceable duty'' does not include duties and conditions in voluntary Federal contracts for goods and services.] Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule simply stays the effectiveness of requirements for air emission testing bodies and therefore does not result in any additional expenditures to State, local, and tribal governments or to the private sector. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

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

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule simply stays the effectiveness of requirements for air emission testing bodies that would have become effective on January 1, 2009. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule simply stays the effectiveness of requirements for air emission testing bodies that would have become effective on January 1, 2009. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not subject to Executive Order 13211, entitled ''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 Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 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 rule simply stays the effectiveness of requirements for air emission testing bodies that would have become effective on January 1, 2009. Moreover, when first promulgated, the AETB provision required the use of ASTM D 7036–04, an applicable voluntary consensus standard.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of protection provided to human health or the environment, but simply stays the effectiveness of requirements for air emission testing bodies that would have become effective on January 1, 2009. Moreover, when first promulgated, the AETB provision did not change the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established that the effective date shall be upon publication in the **Federal Register**. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 75

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Carbon dioxide, Continuous emission monitoring, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur oxides, Reference test methods.

Dated: October 29, 2008.

Stephen L. Johnson,

Administrator.

■ 40 CFR part 75 is amended as follows:

PART 75—CONTINUOUS EMISSION MONITORING

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Appendix A to Part 75—[Amended]

■ 2. In Appendix A to Part 75, the effectiveness of Section 6.1.2(a) through (c) is stayed indefinitely.

[FR Doc. E8–26264 Filed 11–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[EPA–R09–OW–2007–0248; FRL–8734–5]

Navajo Nation; Underground Injection Control (UIC) Program; Primacy Approval

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving 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 lands and trust allotments 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.'')

DATES: This approval is effective December 4, 2008. The incorporation by

reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 4, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R09–OW–2007–0248. All documents in the docket, including the Decision Document, the Navajo Nation's Primacy Application and EPA's supporting documentation, are listed on the *http://www.regulations.gov* Web site. 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 *http://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 a.m. and 4 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. Telephone 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.

II. Background

A. The Navajo Nation's Class II UIC Primacy Application

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 provided various supplemental application materials to EPA. 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 Decision Document: The Navajo Nation—Approval of Tribal Application for Primacy, Class II Underground Injection Control Program, Safe Drinking Water Act.

B. Proposed Rule

On April 24, 2008, EPA issued a proposed rule in which the Agency announced its proposal to approve the Tribe's primacy for the Class II UIC program in the areas covered by the Tribe's Primacy Application under section 1425 of the SDWA, 42 U.S.C. 300h–4. EPA requested public review of the proposed rule; the Navajo Nation's Primacy Application; a proposed Decision Document, which included 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, as well as all applicable requirements for approval under SDWA section 1425, and EPA's supporting documentation (see 73 FR 22111–22120, April 24, 2008). EPA received two comments on the proposal: one supporting the action, and the other challenging EPA's proposed approval of the Tribe's Application based on concerns about the Tribe's jurisdictional authority in certain areas covered by the Tribe's Primacy Application. EPA's response to the submitted comments is provided in section V. Response to Comments.

III. Legal Authorities

These regulations are being promulgated 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 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. Explanation of This Action

EPA is approving the Navajo Nation's application for primacy for the SDWA Class II UIC program in the areas covered by the Tribe's Primacy Application. EPA's final rulemaking decision is based on a careful and extensive legal and technical review of the Tribe's Primacy Application, the two public comments received, the Navajo Nation's response to those comments, and other relevant information.

EPA's Decision Document in support of EPA's approval is part of the public record and is available for public review. The Decision Document includes findings that the Navajo Nation 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, and that the Tribe's program meets all applicable requirements for approval under section 1425 of the SDWA.

As a result of this final action, the Navajo Nation will assume primary enforcement authority for regulating all Class II injection activities in the areas covered by the Tribe's Primacy Application. Because Indian Tribes are precluded under Federal Indian law from pursuing certain criminal enforcement matters under 25 U.S.C. 1302, EPA has entered into a Criminal Enforcement Memorandum of Agreement with the Navajo Nation (signed by EPA on October 30, 2006), per 40 CFR 145.13(e), whereby the Tribe will notify EPA of potential criminal violations of its SDWA Class II UIC program. EPA will 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). EPA will 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 will include requiring quarterly reports of non-compliance and annual UIC program performance reports pursuant to 40 CFR 144.8. The UIC 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.

EPA is amending 40 CFR part 147 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. The provisions of the Navajo Nation Underground Injection Control (NNUIC) Regulations that contain standards, requirements, and procedures applicable to owners or operators of Class II wells in the areas covered by the Tribe's Primacy Application are being incorporated by reference into 40 CFR part 147. Any provisions incorporated by reference, as well as all Tribal permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA and 40 CFR 147.1(e).

Class II UIC Permitting Matrix

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 summary of the impact of this final rulemaking action on each category of wells.

Wells with both Navajo Nation- and EPA-issued permits: The Navajo Nation-issued UIC permits will remain in effect as the Federally enforceable UIC permits under the SDWA and the EPA-issued permits for wells in this category will expire.

EPA-issued permits only: The Navajo Nation will administer the EPA-issued Class II UIC permits until Navajo Nation UIC permits are issued.

Navajo Nation-issued permits only: The Navajo-Nation-issued Class II UIC permits will remain in effect as Federally enforceable UIC permits under the SDWA.

Wells not currently permitted by EPA or the Tribe: 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.

Copies of the 18 Navajo Nation-issued permits are part of the public record and available for review in EPA's Docket No. EPA–R09–OW–2007–0248.

Proposed Rule Revisions Not Included

In its proposed rule for this action, EPA proposed minor revisions to specific introductory language at 40 CFR part 147 and updates to 40 CFR 147.1, which were not specific to the Navajo Nation's Primacy Application. The same regulatory revisions were previously proposed by EPA Region 8 (see 73 FR 5471, January 30, 2008; Fort Peck Assiniboine and Sioux Tribes in Montana; Underground Injection Control (UIC) Program; Proposed Primacy Approval and Minor Revisions) and subsequently promulgated (see Fort Peck final rule which published in the **Federal Register** on October 27, 2008 at 73 FR 63639: Fort Peck Assiniboine and Sioux Tribes in Montana; Underground Injection Control (UIC) Program; Primacy Approval and Minor Revisions). Thus, today's rule does not include this regulatory language because it has already been incorporated into 40 CFR part 147 and 40 CFR 147.1.

Cross Media Electronic Reporting Rule

The analysis of the Navajo Nation's program with respect to 40 CFR 145.11 in EPA's proposed Decision Document for this action did not include a discussion of the Tribal program's consistency with 40 CFR 145.11(a)(33). 40 CFR 145.11(a)(33) requires that State programs under that part that ''wish to

receive electronic documents'' have legal authority to implement 40 CFR part 3, the Cross Media Electronic Reporting Rule (CROMERR) (see 70 FR 59879, October 13, 2005). CROMERR includes requirements applicable to States, Tribes, and local governments administering or seeking to administer authorized programs under Title 40 of the CFR where such programs receive electronic documents in lieu of paper to satisfy requirements under such programs. EPA has consulted with the Navajo Nation and determined that the Navajo Nation UIC Program does not accept electronic copies of official documents or records, and therefore has concluded that the Tribe's program is consistent with 40 CFR 145.11(a)(33).

V. Response to Comments

Summary

EPA received two letters providing comments on the proposed rulemaking. One comment was from a private individual (''Commenter A''), who expressed support for the Tribe's application and EPA's proposed decision to approve it. The second comment was submitted by a private law firm on behalf of an industry client that is a member of the regulated community (''Commenter B''). It opposed on several legal grounds EPA's proposed decision, particularly regarding areas outside of the exterior boundaries of the formal Navajo Reservation, although it did not specifically contest the proposed decision for areas within the boundaries of the Reservation. As provided for by EPA policy, EPA provided the Navajo Nation with an opportunity to respond to these comments, and the response submitted by the Navajo Nation supplements the record for this action.

Comments Received

A. Commenter A: An individual, who previously lived on the Navajo Nation, commented that he approved of EPA's proposed primacy determination.

EPA appreciates the comment in support of the Tribe's application and EPA's proposed decision to approve the application.

B. Commenter B:

1. The United States Supreme Court Has Applied Federal Common Law Principles of Indian Sovereignty Over the Activities of Non-Indians in the Context of and Only to Conduct on Reservation Land

Commenter B first objects to EPA's proposed approval because he argues that Federal common law and Supreme Court precedent limit tribal authority over nonmember activities to conduct on reservation land and, therefore, EPA's approval may not extend to nonmember activities outside the formal Reservation. EPA disagrees. Section 1451 of the SDWA authorizes EPA to treat a Tribe in a manner similar to a State (TAS) to carry out functions authorized by the SDWA ''within the area of the Tribal Government's jurisdiction.'' 42 U.S.C. 300j–11(b)(1)(B). There is no language in the SDWA limiting the role of Tribes under the SDWA to lands within the boundaries of Indian reservations, and no evidence of Congressional intent to impose such limits. As noted by the Navajo Nation in its response, the SDWA is different from the Clean Water Act, which contains a TAS provision that limits the role of Tribes to reservation areas. See 33 U.S.C. 1377(e)(2) (specifying that the functions exercised by the Tribe must pertain to water resources within the borders of an Indian reservation). Cf. 42 U.S.C. 7601(d)(2)(B) (authorizing TAS for Tribes under the Clean Air Act for ''reservation[s] or other areas within the Tribe's jurisdiction,'' which includes non-reservation areas of Indian country).

The relevant legal term with respect to who has jurisdiction in a particular area is ''Indian country,'' as defined at 18 U.S.C. 1151. *Indian Country, U.S.A.* v. *Oklahoma Tax Comm'n*, 829 F.2d 967, 973 (10th Cir. 1987) (''[T]he Indian country classification is the benchmark for approaching the allocation of Federal, tribal, and State authority with respect to Indians and Indian lands.''). The ''Indian country'' statute makes it clear that Indian country extends beyond reservations and encompasses three types of land: All lands within reservation boundaries, all dependent Indian communities, and ''all Indian allotments, the Indian title to which have not been extinguished.'' *Alaska* v. *Native Village of Venetie*, 522 U.S. 520, 526–527, (1998), quoting 18 U.S.C. 1151 (a)–(c). In Venetie, the Supreme Court confirmed that the ''Indian country'' statute is a codification of Federal case law, and that, while the statute is found in the criminal code, it also generally applies to questions of tribal civil jurisdiction. *Id.* at 527 and n.1, citing with approval to *DeCoteau* v. *District Court*, 420 U.S. 425, 427 n. 2 (1975). As discussed further in this section, the case law codified by the statute, as described in *Venetie*, includes Supreme Court decisions establishing that Indian country includes both areas that are within reservations and areas that are not, and that the term reservation includes both formal reservations and informal reservations (*i.e.*, lands held by the government in trust for Tribes that have not been formally designated as reservations). The *Venetie* Court also recognized that the term ''Indian country'' delineates the areas over which primary jurisdiction rests with the Federal government and the Tribes rather than the States. *Id.* at 527 n. 1.

EPA has previously construed the language in SDWA section 1451 as covering the full extent of Indian country. In particular, EPA granted the Navajo Nation primacy under the SDWA Public Water Systems Supervision (PWSS) program for lands within the formal Reservation boundary as well as tribal trust lands (which EPA treated as informal reservation lands) and for allotments in the Eastern Agency, noting that, ''[t]he statutory language in section 1451 of the SDWA establishes a relatively broad standard for tribal jurisdiction.'' EPA DETERMINATION OF THE NAVAJO NATION'S ELIGIBILITY UNDER SECTION 1451 OF THE SDWA 8 (October 23, 2000) (''EPA PWSS DETERMINATION''). In EPA's approval of the Navajo Nation's SDWA PWSS primacy program, EPA found that Indian country was the relevant standard: ''EPA agrees that 'Indian country' is the appropriate standard for determining the territorial extent of jurisdiction of the Navajo Nation for the purposes of section 1451 of the SDWA.'' EPA PWSS DETERMINATION at 10. EPA found in the SDWA PWSS approval that the Navajo Nation had demonstrated its authority under the SDWA over lands within the formal Reservation boundary and tribal trust lands and allotments in the Eastern Agency.

EPA's interpretation of section 1451 in the primacy determination for the Navajo Nation SDWA PWSS program has not been challenged by Commenter B or any other party, but EPA's position that tribal authority in Indian country may extend beyond a formal reservation has been challenged and upheld in other contexts, including *Arizona Public Service Co.* v. *EPA*, 211 F.3d 1280, 1292–94 (D.C. Cir. 2000) (upholding EPA's regulations that interpret the Clean Air Act's TAS provisions as authorizing tribal programs for reservations (including informal reservations, i.e., tribal trust lands not formally designated as a reservation) and for other Indian country areas (including dependent Indian communities and allotments) within the Tribe's jurisdiction).

2. The Navajo Nation Asserts That It Has Inherent Authority and Jurisdiction Over Indian Country as Defined in 18 U.S.C. 1151 and 7 N.N.C. 254

Commenter B argues that 18 U.S.C. 1151 is neither a Congressional delegation of authority nor a source of inherent sovereign authority for the Navajo Nation. EPA recognizes that 18 U.S.C. 1151 does not provide the source of a Tribe's inherent sovereign authority, but rather generally defines the limit of the area over which a Tribe may demonstrate authority. As explained in EPA's Decision Document for this action, and supported by the Findings of Fact, Appendix A, EPA finds that the Navajo Nation has demonstrated its authority under the SDWA over the areas covered by its application, including tribal trust lands and trust allotments in the Eastern Agency.

3. The Montana Doctrine Indicates That ''Navajo Tribal Sovereignty'' and ''Inherent Sovereignty'' Over the Activities of Non-Indians Does Not Extend Beyond the Boundaries of the Navajo Reservation Regardless of How the Land Is Titled

Commenter B's third comment overlaps with his first comment in stating that ''to the extent that the Navajo Nation may have inherent sovereign authority over the activities of non-Indians, that authority applies only to lands within the Navajo reservation if *Montana* exceptions (described more fully below in section VI) apply, as determined on a case-by-case basis, and does not extend to lands or activities outside the exterior boundaries of the Navajo reservation.'' Commenter B cites several cases, but none of the cases cited support Commenter B's assertion that the Navajo Tribe may not exercise inherent authority over tribal ''lands or activities outside the exterior boundaries'' of a formal reservation; rather, the cited cases present the more common factual scenario involving fee lands within a formal reservation boundary.

The Tenth Circuit has previously considered the argument that the *Montana* test cannot apply outside a reservation boundary, and more specifically that it cannot apply in the Eastern Agency. *See Texaco, Inc.* v. *Zah, 5 F.3d 1374 (10th Cir. 1993)*. In *Zah*, the appellants contended that the tribal courts lacked jurisdiction because the Navajo Nation's authority over non-Indians terminated at the reservation boundary, citing specifically to *United States* v. *Montana*, (1981) and *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 141 (1982). The Tenth Circuit in *Zah* rejected this argument, however, finding, ''[s]uch cases * * * do not expressly stand for the proposition that a tribal court has no jurisdiction over non-Indian activity occurring outside the reservation, but within Indian Country.'' *Zah* at 1377.

Contrary to Commenter B's comments, neither the Tenth Circuit nor the Supreme Court have held that Tribes cannot exercise inherent authority in Indian country outside of reservation boundaries.[1] Indeed such a holding would effectively eliminate any significance to the broader scope of the term ''Indian country.'' Moreover, as already noted, the Supreme Court has expressly recognized that Indian country is the area of primary Federal and tribal, rather than State, jurisdiction, and that Indian country, and thus tribal jurisdiction, can exist outside reservations, consistent with both the text of the Indian country statute and the Federal common law that the statute codified. *Venetie*, 522 U.S. at 527–529. Moreover, the Supreme Court has found that lands owned by the Federal government in trust for Indian Tribes are Indian country, and that formal designation as a reservation is not a necessary requirement for status as Indian country. See, e.g., *Oklahoma Tax Comm'n* v. *Potawatomi Tribe*, 498 U.S. 505, 511 (1991), (''formally designated 'reservation' '' status not dispositive; trust lands can be Indian country); *Oklahoma Tax Comm'n* v. *Sac & Fox Nation*, 508 U.S. 114, 123 (1993) (''formal reservation'' is not a necessary precondition for Indian country status under 18 U.S.C. 1151(a); rejecting argument that a State has taxing jurisdiction over tribal members unless they live ''on a *reservation*'') (emphasis in original). The Court has also held, directly contrary to the commenter's assertion, that Indian allotments that are not located on a reservation can be Indian country and thus subject to tribal jurisdiction. *Venetie*, 522 U.S. at 529, citing *U.S.* v. *Pelican*, 232 U.S. 442, 449 (1914). As discussed earlier in this response to comments, EPA has also stated in regulations and in previous determinations that tribal authority to implement the SDWA can extend to the limits of Indian country.

Although the most recent Supreme Court case addressing tribal authority over nonmember activities was decided after Commenter B submitted its comments on this action, the Court in that case confirms that *Montana* continues to be the relevant test with respect to tribal authority over nonmember activities, and that in certain circumstances, ''tribes may exercise authority over the conduct of nonmembers[.]'' *Plains Commerce Bank* v. *Long Family Land & Cattle Co., Inc.*, 554 U.S. _____, 128 S.Ct. 2709, 2726 (2008). In its decision, the Court did not distinguish between whether lands are within or outside the boundaries of a formal reservation, as the primary issue was whether the sale of nonmember-owned fee land constituted a nonmember activity subject to regulation by the Tribe. *Id.* at 2723.

4. Even if There Is Inherent Authority Over the Activities of Non-Indians on Tribal Trust Lands Outside the Exterior Boundaries of the Reservation, the Navajo Nation Does Not Have Inherent Authority Over the Activities of Non-Indians on ''Split Estate'' and Allotted Lands Outside the Boundaries of the Reservation

Commenter B's fourth comment argues in the alternative that if the Navajo Nation has authority over the activities of nonmembers on tribal trust lands in the Eastern Agency, the Navajo Nation does not have authority over the activities of nonmembers on ''split estate'' and allotments in the Eastern Agency area. As discussed more extensively earlier in this response to comments and in the Decision Document, EPA has previously found that Tribes may exercise authority under the SDWA over areas within their jurisdiction, including tribal trust lands and allotments in the Eastern Agency. As EPA has noted in the Decision Document and earlier in this discussion, no Congressional intent to limit tribal authority to reservation lands can be read into the SDWA. With respect to split estate lands described in the Decision Document, the U.S. Court of Appeals for the Tenth Circuit has previously determined that split estate lands in the Eastern Agency are Indian country, as discussed in greater length in the Decision Document. *HRI Inc.* v. *EPA*, 198 F. 3d 1224, 1254 (''The split nature of surface and mineral estates does not alter the jurisdictional status of these lands for SDWA purposes.''). In finding that lands outside the formal Navajo Reservation were Indian country, the Court in *HRI* cited to a previous Tenth Circuit case finding that allotments outside the boundaries of a formal reservation qualify as Indian country under tribal civil jurisdiction.

[1] The most recent Tenth Circuit decision, *MacArthur* v. *San Juan County*, 497 F.3d 1057 (10th Cir. 2007) *cert. denied*, 128 S.Ct. 1229 (2008), involved tribal authority over employment-related claims against a non-tribal facility located on state-owned fee land within the Navajo reservation rather than a non-reservation area of Navajo Indian country.

HRI at 1250. (''*See Mustang Prod. Co.* v. *Harrison, 94 F.3d 1382, 1384 (10th Cir. 1996)* (holding that 'disestablishment of the reservation is not dispositive of the question of tribal jurisdiction. In order to determine whether the Tribes have jurisdiction we must instead look to whether the land in question is Indian country' '' (internal citations omitted)). Commenter B also argues that the Navajo Nation waived the right to occupy lands outside the Reservation, as defined in the 1868 Treaty, and therefore waived its basis for inherent authority in any area outside the exterior boundaries of the formal Reservation. The Navajo Nation has provided a detailed response to this comment, and has described how in fact the formal Navajo Reservation was expanded 11 times by Executive Orders and Acts of Congress subsequent to the 1868 Treaty. Clearly, the Federal government has affirmatively set aside all the lands that are held in trust for the Navajo Nation or its members, and there is no indication that the Navajo Nation ever intended to waive authority over the lands in the Eastern Navajo Agency. Moreover, apart from the power to exclude, ''tribes retain authority to govern 'both their members and their territory.' '' *Plains Commerce*, 128 S.Ct. at 2718, quoting *U.S.* v. *Mazurie*, 419 U.S. 544 (1975).

5. Jurisdiction Based on the Montana Exceptions Must Be Determined on a Case-by-Case Basis

Finally, Commenter B's fifth comment states that jurisdiction based on the Montana test must be determined on a case-by-case basis. EPA does evaluate tribal TAS applications on a case-by-case basis, examining the facts presented in each application, as EPA did in this case. The Decision Document, including the Findings of Fact, shows clearly that EPA has conducted a thorough analysis of the Navajo Nation's authority to regulate nonmember activities and found that, for purposes of primacy of the SDWA Class II underground injection control program, the Navajo Nation has demonstrated that it has the necessary inherent authority over such activities in the areas covered by its application, including individual and tribal trust lands outside the boundaries of the formal Reservation.

VI. Generalized Findings

As described earlier, EPA's 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 finds 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*]''); *Plains Commerce Bank* v. *Long Family Land & Cattle Co., Inc.,* 128 S.Ct. 2709.

As part of the public record available for review, EPA's Decision Document, and Appendix A thereto, set 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 that are serious and substantial. In addition, EPA is publishing the general findings set forth below regarding the effects of underground injection activities. These general findings provide a backdrop for EPA's analysis of the Tribe's assertion of authority under the *Montana* test and 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 Human Health and Welfare, and Economic and Political Impacts

In enacting part C of the SDWA, Congress generally recognized that if left unregulated or improperly managed, underground injection can endanger drinking water sources and thus has the potential to cause serious and substantial, harmful impacts on human health and welfare, and economic and political interests. As stated in the 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 USDWs.[2]

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.'' [3]

In enacting the SDWA, Congress also generally found that waste disposal practices, including mismanaged underground injection activities, could have serious and substantial, harmful impacts on human health and welfare, and economic and political interests. 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.[4]

Congress specifically noted several economic and political consequences that can result from the degradation of good quality drinking water supplies,

[2] *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.

[3] *Id.*, page 560.

[4] *Id.*, page 540.

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.[5]

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 and welfare, and 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 economic and political 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.''[6] 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
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.[7]

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.[8] 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 economic and political interests. EPA also has determined that Congress reached a similar finding when it enacted part C of the SDWA, directing EPA to establish UIC programs to mitigate and prevent such harm through the proper regulation of underground injection activities.

B. General Finding on the Protection of Safe Drinking Water Sources as Necessary To Protect 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 that are serious and substantial, EPA has determined that proper management of such activities serves the purpose of protecting these human health and welfare, and economic and political interests. Protection of these interests is a core governmental function, the exercise of which is integral to, and is 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 the SDWA to be a necessary act of self-government, serving to protect essential and vital public interests by ensuring that the public's essential drinking water sources are safe from contamination, including contamination caused by underground injection activities.

The above findings regarding the effects on human 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 are generally true for any Federal, State and/or Tribal government having responsibility for protecting human 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 Decision Document and Appendix A thereto, and the Tribe's similar conclusions, contained in its Application, pertaining specifically to

[5] *Id.*, page 540.

[6] ''Underground Injection Control Regulations: Statement of Basis and Purpose,'' EPA (May 1980) page 7.

[7] *Id.*, pp. 7–17.

[8] *See* Federal Water Quality Administration's Order COM 5040.10 (1970), *as referred to* in H.R. Report No. 93–1185, 561.

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 any new information collection burden. Reporting or recordkeeping requirements will 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 parts 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 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 this 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 this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small 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 incur significant new costs as a result of this final rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. EPA's approval of the Navajo Nation's program will not constitute a ''Federal mandate'' because there is no requirement that the Tribe establish UIC regulatory programs and because the program is a Tribal, rather than a Federal program. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. In developing this rule, EPA consulted with small governments under a plan developed consistent with section 203 of UMRA concerning the regulatory requirements in the rule that might significantly or uniquely affect small governments. The only small government that might be significantly or uniquely affected by this rule is the Navajo Nation Tribal government. Accordingly, EPA has made the Tribe fully aware of the Federal requirements for approval to administer its own Class II UIC program; enabled the Tribe to have meaningful and timely input in the development of this rule; and informed, educated, and advised the Tribe on compliance with these requirements. However, the Tribal government is implementing and complying with these regulatory requirements because it has: (1) Voluntarily requested EPA approval to administer its Class II UIC program; and (2) voluntarily assumed the Tribal share of the costs for doing so.

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.''

This rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This 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 IV and in the 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.

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

Subject to Executive Order 13175 (65 FR 67249, November 6, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this 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 approving the Navajo Nation's application for Class II UIC primacy and thus replacing 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 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.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it approves a tribal primary enforcement (primacy) program. This rule simply provides 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 Decision Document.

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

This 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. 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 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 rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not decrease the level of protection provided to human health or the environment or lessen current environmental standards. This rule will simply provide that the Tribe has primary enforcement responsibility under the SDWA for the Class II UIC program, pursuant to which the Tribe will be implementing and enforcing a tribal regulatory program that is generally equivalent to the existing Federal program, as explained in more detail in the Decision Document.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 4, 2008.

List of Subjects in 40 CFR Part 147

Environmental protection, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Incorporation by reference.

Dated: October 21, 2008.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE, TRIBAL, AND EPA-ADMINISTERED UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart D—[Amended]

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h *et seq.*; and 42 U.S.C. 6901 *et seq.*

■ 2. 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]

■ 3. 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]

■ 4. 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]

■ 5. 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.

■ 6. Subpart KKK is added and reserved to read as follows:

Subpart KKK—[Reserved]

■ 7. Subpart LLL consisting of § 147.3400 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; and on Navajo Nation tribal trust lands and trust allotments 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 November 4, 2008; the effective date of this program is December 4, 2008. 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 Statutes, Regulations and Resolution notebook, dated October 2008, 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 UIC Office, Old NAPA Auto Parts Building (Tribal Bldg. #S009–080), Highway 64, Shiprock, New Mexico 87420 (505–368–1040), at the Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105–3920 (415–972–3533), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(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. E8–26023 Filed 11–3–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 395

[Docket No. FMCSA–2004–19608]

RIN 2126–AB14

Hours of Service of Drivers; Availability of Supplemental Document

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of availability of supplemental document.

SUMMARY: This notice advises the public that FMCSA is placing in the public docket an additional document concerning hours of service (HOS) for commercial motor vehicle drivers. FMCSA published an interim final rule (IFR) on this issue on December 17, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations. Telephone (202) 366–4325 or E-mail *MCPSD@dot.gov.* Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On August, 25, 2005, FMCSA published a final HOS rule (''2005 rule'') (70 FR 49978). On July 24, 2007, the DC Circuit Court vacated the 11-hour driving time and 34-hour restart provisions of the 2005 rule (*Owner-Operator Independent Drivers Association, Inc.* v. *Federal Motor Carrier Safety Administration,* 494 F.3d 188 (DC Cir. 2007)). In response to the DC Circuit Court decision, FMCSA published an interim final rule (IFR) on December 17, 2007 (72 FR 71247) that reinstated the two provisions vacated by the Court and sought further comments on those provisions.

For a full background on this rulemaking, please see the preamble to the December 2007 HOS IFR. The docket for this rulemaking (FMCSA–2004–19608) contains all of the background information for this rulemaking, including comments.

This notice calls attention to an additional supplemental document that FMCSA has placed in the docket at FMCSA–2004–19608:

Belenky, G., and Wu, L.J., ''Literature Review on Fatigue and Health Issues Associated with Commercial Motor Vehicle Driver Hours of Service: Update from 2004,'' Washington State University, 2008.

This report summarizes the scientific and technical literature in two topical areas related to HOS: (1) Driver fatigue and (2) driver health. This review is limited to research that was published between 2004 and 2007.

Issued on: October 29, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–26198 Filed 11–3–08; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 73, No. 214
Tuesday, November 4, 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.

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

RIN 3052–AC42 and 3052–AC39

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Mission-Related Investments, Rural Community Investments; Regulatory Burden

AGENCY: Farm Credit Administration.

ACTION: Proposed rule and notice of intent; public comment notification.

SUMMARY: In June of 2008, the Farm Credit Administration (FCA, we, or us) published in the **Federal Register** a proposed rule pertaining to investments in rural communities as well as a notice of intent pertaining to regulatory burden, both requesting comments from the public. For both, a total of five comments sent via the *http://www.regulations.gov* eRulemaking portal were not transmitted to the FCA. We are asking any member of the public who used this method to send comments to FCA and believes their comment may have been lost to contact the staff members listed below.

DATES: Please contact us on or before November 21, 2008.

ADDRESSES: You may review copies of comments we received on these two documents at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.''

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Mary Alice Donner, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On June 16, 2008, we published (73 FR 33931) a proposed rule that would authorize each Farm Credit System bank, association, and service corporation to invest in rural communities across America under certain conditions. The comment period for this proposed rule ended on August 15. On June 23, 2008, we published (73 FR 35361) a notice of regulatory review and request for comment pertaining to regulatory burden. That comment period ended on August 22, 2008. However, due to a technical software error that is now corrected, a total of five public comments submitted via the *http://www.regulations.gov* eRulemaking portal were not transmitted to FCA. Four comments pertained to the proposed rule on rural community investments and one comment pertained to the regulatory burden notice.

The FCA supports public involvement and participation in its regulatory process. Therefore, we would like any member of the public who submitted a comment, via the eRulemaking portal, and believes their comment may have been lost to contact us so we may personally ensure that your comment is included. You may contact us by calling one of the two individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: October 30, 2008.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E8–26273 Filed 11–3–08; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA75

Financial Crimes Enforcement Network; Withdrawal of the Notice of Proposed Rulemaking; Anti-Money Laundering Programs for Commodity Trading Advisors

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is withdrawing the notice of proposed rulemaking, dated May 5, 2003, in which FinCEN proposed requiring commodity trading advisors to establish and implement anti-money laundering programs.

DATES: The withdrawal is effective November 4, 2008.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the ''USA PATRIOT Act''), Public Law 107–56. Title III of the USA PATRIOT Act amended the anti-money laundering provisions of the BSA, which is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332. The amendments were designed to promote the prevention, detection, and prosecution of international money laundering and terrorist financing.

Regulations implementing the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary of the Treasury (''the Secretary'') to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.[1]

Section 352 of the USA PATRIOT Act amended section 5318(h) of the BSA. Section 352 requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (1) The development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. Section 352 authorizes the Secretary, after consulting with the appropriate Federal functional regulator,[2] to prescribe minimum standards for anti-money laundering programs, and to exempt from the application of those standards any financial institution that is not subject to rules implementing the BSA.

[1] Accordingly, references herein to the Secretary's authority apply equally to the Director of FinCEN.

[2] In the case of commodity trading advisors, the appropriate Federal functional regulator is the Commodity Futures Trading Commission (''CFTC'').

Commodity trading advisors are defined as financial institutions under the BSA.[3] In November 2002, FinCEN temporarily exempted certain financial institutions, including commodity trading advisors, from the requirement to establish and implement an anti-money laundering program.[4]

II. The 2003 Notice of Proposed Rulemaking and Subsequent Developments

A. The 2003 Notice of Proposed Rulemaking

On May 5, 2003, FinCEN issued a notice of proposed rulemaking, in which it proposed requiring commodity trading advisors to establish and implement anti-money laundering programs.[5] FinCEN proposed to apply the rule to commodity trading advisors that are registered or required to be registered with the Commodity Futures Trading Commission and that direct client commodity futures or options accounts.

The comment period closed on July 7, 2003. FinCEN received three comment letters in response to the notice of proposed rulemaking. One of the comment letters was submitted by a registered futures association, another was submitted by a futures industry trade association, and the third was submitted by a commodity trading advisor. Comments focused on four matters: (1) Relief from AML obligations for certain commodity trading advisors; (2) allocation of certain money laundering obligations between commodity trading advisors and futures commission merchants; (3) liability issues for commodity trading advisors when outsourcing the performance of AML functions; and (4) access by federal examiners to the BSA records of a commodity trading advisor.

B. Subsequent Developments

In June 2007, FinCEN announced that it would be taking a fresh look at BSA regulation to ensure that it is being applied efficiently and effectively across the industries that FinCEN regulates and the industries FinCEN has proposed to regulate. As part of that initiative, FinCEN is considering whether and to what extent it should impose requirements under the BSA on commodity trading advisors and similar entities.

As it considers its approach to commodity trading advisors, FinCEN has determined that it will withdraw the notice of proposed rulemaking that was published in May 2003. Given the passage of time, FinCEN has determined that it will not proceed with an anti-money laundering program requirement for commodity trading advisors without publishing a new proposal. This will give industry and other interested parties an opportunity to provide comment on the contents of any such proposal, as it may be affected by any developments since 2003 in industry operations as well as functional and BSA regulation.

Finally, since the time that the notice of proposed rulemaking was published, FinCEN has concluded the major rulemakings required by the USA PATRIOT Act for banks, broker-dealers, and futures commission merchants. Each of these institutions is subject to a comprehensive set of requirements under the BSA including, among other things, the obligation to establish and implement an anti-money laundering program,[6] the obligation to establish and implement a customer identification program,[7] the obligation to establish and implement a special due diligence program for foreign correspondent accounts and foreign private banking accounts,[8] the obligation to detect and report suspicious activity,[9] and the obligation to file currency transaction reports.[10]

Commodity trading advisors must conduct financial transactions for their clients through other financial institutions that are subject to BSA regulations. A client's commodity interests in particular must be carried with a futures commission merchant. Thus, as FinCEN continues to consider the extent to which BSA requirements should be imposed on commodity trading advisors, their activity is not entirely outside the current BSA regulatory regime.

III. Withdrawal of the Notice of Proposed Rulemaking

For the foregoing reasons, the notice of proposed rulemaking, in which FinCEN proposed requiring certain commodity trading advisors to establish and implement anti-money laundering programs, as published in the **Federal Register** on May 5, 2003 (68 FR 23640), is hereby withdrawn.

Dated: October 29, 2008.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E8–26204 Filed 11–3–08; 8:45 am]

BILLING CODE 4810–02–P

[3] 31 U.S.C. 5312(c).

[4] 31 CFR 103.170. *See also Anti-Money Laundering Programs for Financial Institutions*, 67 FR 67547 (Nov. 6, 2002).

[5] *Anti-Money Laundering Programs for Commodity Trading Advisors,* 68 FR 23640 (May 5, 2003).

[6] 31 CFR 103.120.

[7] 31 CFR 103.121–103.123.

[8] 31 CFR 103.176 and 103.178.

[9] 31 CFR 103.17–103.19.

[10] 31 CFR 103.22.

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA71

Financial Crimes Enforcement Network; Withdrawal of the Notice of Proposed Rulemaking; Anti-Money Laundering Programs for Investment Advisers

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is withdrawing the notice of proposed rulemaking, dated May 5, 2003, in which FinCEN proposed imposing on certain investment advisers a requirement to establish and implement an anti-money laundering program.

DATES: The withdrawal is effective November 4, 2008.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the ''USA PATRIOT Act''), Public Law 107–56. Title III of the USA PATRIOT Act amended the anti-money laundering provisions of the BSA, which is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332. The amendments were designed to promote the prevention, detection, and prosecution of international money laundering and terrorist financing.

Regulations implementing the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary of the Treasury (''the Secretary'') to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.[1]

[1] Accordingly, references herein to the Secretary's authority apply equally to the Director of FinCEN.

II. The 2003 Notice of Proposed Rulemaking and Subsequent Developments

A. The 2003 Notice of Proposed Rulemaking

Section 352 of the USA PATRIOT Act amended section 5318(h) of the BSA. Section 352 requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (1) The development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. Section 352 authorizes the Secretary, after consulting with the appropriate Federal functional regulator,[2] to prescribe minimum standards for anti-money laundering programs, and to exempt from the application of those standards any financial institution that is not subject to rules implementing the BSA.

Although the BSA does not expressly enumerate investment advisers among the entities defined as financial institutions under sections 5312(a)(2) and (c)(1), section 5312(a)(2)(Y) of the BSA authorizes the Secretary to include additional types of entities within the definition if he determines that they engage in an activity ''similar to, related to, or a substitute for'' an activity of an enumerated entity. On May 5, 2003, FinCEN observed that certain investment advisers may offer services to investors that are similar to, related to, or a substitute for those of broker-dealers in securities and other enumerated entities.[3] FinCEN proposed requiring these investment advisers to establish and implement anti-money laundering programs under section 5318(h)(1) of the BSA.[4]

The comment period closed on July 7, 2003. FinCEN received 26 comment letters in response to the notice of proposed rulemaking. Of the 26 comment letters received, six were submitted by investment advisers, nine were submitted by trade groups, five were submitted by law firms, one was submitted by a personal investment entity, one by a depository institution, and one by a federal agency.

Comments were received on all aspects of the notice of proposed rulemaking. Comments focused most notably on the proposed definition of ''investment adviser,'' the proposed requirement to develop and implement an anti-money laundering program reasonably designed to prevent the investment adviser from being used by its clients for money laundering or terrorist financing purposes, the ability of an investment adviser to outsource BSA compliance to a third party, and the proposed notice requirement for unregistered investment advisers.[5]

B. Subsequent Developments

In June 2007, FinCEN announced that it would be taking a fresh look at BSA regulation to ensure that it is being applied efficiently and effectively across the industries that FinCEN regulates and the industries FinCEN has proposed to regulate. As part of that initiative, FinCEN is considering whether and to what extent it should impose requirements under the BSA on investment advisers and similar entities.

As it considers its approach to investment advisers, FinCEN has determined that it will withdraw the notice of proposed rulemaking that was published in May 2003. Given the passage of time, FinCEN has determined that it will not proceed with an anti-money laundering program requirement for investment advisers without publishing a new proposal. This will give industry and other interested parties an opportunity to provide comment on the contents of any such proposal, as it may be affected by any developments since 2003 in industry operations as well as functional and BSA regulation.

Finally, in the time since the notice of proposed rulemaking was published, FinCEN has concluded major rulemakings required by the USA PATRIOT Act for banks, broker-dealers, and futures commission merchants. Each of these institutions is subject to a comprehensive set of requirements under the BSA including, among other things, the obligation to establish and implement an anti-money laundering program,[6] the obligation to establish and implement a customer identification program,[7] the obligation to establish and implement a special due diligence program for foreign correspondent accounts and foreign private banking accounts,[8] the obligation to detect and report suspicious activity,[9] and the obligation to file currency transaction reports.[10]

Investment advisers must conduct financial transactions for their clients through other financial institutions that are subject to BSA requirements, and their clients' assets must be carried at these other financial institutions. Thus, as FinCEN continues to consider the extent to which BSA requirements should be imposed on investment advisors, their activity is not entirely outside the current BSA regulatory regime.

III. Withdrawal of the Notice of Proposed Rulemaking

For the foregoing reasons, the notice of proposed rulemaking, in which FinCEN proposed requiring certain investment advisers to establish and implement anti-money laundering programs, as published in the **Federal Register** on May 5, 2003 (68 FR 23646), is hereby withdrawn.

Dated: October 29, 2008.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E8–26205 Filed 11–3–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA77

Financial Crimes Enforcement Network; Withdrawal of the Notice of Proposed Rulemaking; Anti-Money Laundering Programs for Unregistered Investment Companies

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

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[2] In the case of investment advisers, the appropriate Federal functional regulator is the Securities and Exchange Commission (''SEC'').

[3] *Anti-Money Laundering Programs for Investment Advisers,* 68 FR 23646, 23647 (May 5, 2003). FinCEN noted that investment advisers that manage clients' assets work closely with other institutions, for example by directing broker-dealers to purchase or sell client securities or by directing banks to transfer client funds, and found that advisers' services frequently are a substitute for products offered by investment companies or insurance companies, such as when advisers manage client assets in pooled investment vehicles or in separate accounts. Some investment advisers offer asset management services that are similar to, and that may even compete directly with, asset management services provided by certain banks through their trust departments. The interrelationship between investment advisers and other institutions (such as securities broker-dealers, mutual funds, commodity trading advisors, and commodity pool operators) is demonstrated in part by dual registration.

[4] The proposal would have applied generally to SEC-registered investment advisers with assets under management and to advisers with $30 million or more of assets under management and that are exempt from registration under section 203(b)(3) of the Investment Advisers Act (15 U.S.C. 80b–3(b)(3)). Id. at 23648.

[5] Comments are available at *http://www.fincen.gov/statutes_regs/frn/reg_proposal_comments.html.*

[6] 31 CFR 103.120.

[7] 31 CFR 103.121–103.123.

[8] 31 CFR 103.176 and 103.178.

[9] 31 CFR 103.17–103.19.

[10] 31 CFR 103.22.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is withdrawing the notice of proposed rulemaking, dated September 26, 2002, in which FinCEN proposed requiring unregistered investment companies—such as hedge funds, commodity pools, and similar investment vehicles—to establish and implement anti-money laundering programs.

DATES: The withdrawal is effective November 4, 2008.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the ''USA PATRIOT Act''), Public Law 107–56. Title III of the USA PATRIOT Act amended the anti-money laundering provisions of the BSA, which is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332. The amendments were designed to promote the prevention, detection, and prosecution of international money laundering and terrorist financing.

Regulations implementing the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary of the Treasury (''the Secretary'') to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.[1]

Section 352 of the USA PATRIOT Act amended section 5318(h) of the BSA. Section 352 requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (1) The development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. Section 352 authorizes the Secretary, after consulting with the appropriate Federal functional regulator,[2] to prescribe minimum standards for anti-money laundering programs, and to exempt from the application of those standards any financial institution that is not subject to rules implementing the BSA.

Investment companies are defined as financial institutions in the BSA.[3] On April 29, 2002, FinCEN published an interim final rule requiring mutual funds—a category of investment company—to establish and implement anti-money laundering programs.[4] On September 26, 2002, FinCEN issued a notice of proposed rulemaking, proposing to require ''unregistered investment companies'' to establish and implement anti-money laundering programs.[5] In November 2002, FinCEN temporarily exempted certain financial institutions, including investment companies that were not mutual funds as that term is defined in the anti-money laundering program rule for mutual funds,[6] from the requirement to establish and implement an anti-money laundering program.[7]

II. The 2002 Notice of Proposed Rulemaking and Subsequent Developments

A. The 2002 Notice of Proposed Rulemaking

In its September 2002 notice of proposed rulemaking, FinCEN proposed to define the term ''unregistered investment company'' as (1) An issuer that, but for certain exclusions, would be an investment company as that term is defined in the Investment Company Act of 1940, (2) a commodity pool, and (3) a company that invests primarily in real estate and/or interests in real estate. FinCEN proposed to capture within the definition so-called hedge funds, private equity funds, venture capital funds, commodity pools, and real estate investment trusts with total assets or subscriptions of $1,000,000 or more.

FinCEN proposed to exclude, among other things, any issuer that subjected its participants to a two-year lock-up period. Because unregistered investment companies are not subject to Federal functional regulation,[8] FinCEN proposed requiring these companies to file a notice so that FinCEN and agencies conducting BSA compliance examinations of unregistered investment companies could readily identify such companies.

The comment period closed on November 25, 2002. FinCEN received 34 comments in response to the notice of proposed rulemaking from law firms, unregistered investment companies, investment advisers, bank holding companies, trade groups, and a registered futures association. These comments addressed many aspects of FinCEN's proposal.

Significantly, comments were focused on the breadth of the proposed definition of ''unregistered investment company,'' including the proposed inclusion of commodity pools that are operated by CFTC-regulated commodity pool operators; the proposed inclusion of real estate investment companies; and the proposal to exclude from the definition any company that subjects its participants to a two-year lock-up period. Comments also were focused on the minimum contact provisions proposed by FinCEN, under which certain offshore funds would be obligated to comply with the rule; the ability of funds to outsource anti-money laundering program obligations to third-party administrators; and the proposed notice requirement.

B. Subsequent Developments

In June 2007, FinCEN announced that it would be taking a fresh look at BSA regulation to ensure that it is being applied efficiently and effectively across the industries that FinCEN regulates and the industries FinCEN has proposed to regulate. As part of that initiative, FinCEN is considering whether and to what extent it should impose requirements under the BSA on unregistered investment companies.

As it considers its approach to unregistered investment companies, FinCEN has determined that it will withdraw the notice of proposed rulemaking that was published in September 2002. Given the passage of time, FinCEN has determined that it will not proceed with an anti-money laundering program requirement for any entity within the proposed definition of unregistered investment company without publishing a new proposal. This will give industry and other interested parties an opportunity to provide comment on the contents of any

[1] Accordingly, references herein to the Secretary's authority apply equally to the Director of FinCEN.

[2] Unregistered investment companies—except commodity pools operated by a commodity pool operator that is registered or required to be registered with the Commodity Futures Trading Commission—are not functionally regulated.

[3] 31 U.S.C. 5312(a)(2)(I).

[4] *Anti-Money Laundering Programs for Mutual Funds*, 67 FR 21117 (Apr. 29, 2002).

[5] *Anti-Money Laundering Programs for Unregistered Investment Companies*, 67 FR 60617 (Sep. 26, 2002).

[6] *See* 31 CFR 103.130(a) (a ''mutual fund'' is an ''open-end company,'' as the term is defined in the Investment Company Act of 1940).

[7] 31 CFR 103.170. *See also Anti-Money Laundering Programs for Financial Institutions*, 67 FR 67547 (Nov. 6, 2002).

[8] Commodity pools, however, may be operated by a CFTC-regulated commodity pool operator. *See* 7 U.S.C. 1a(5) (defining a ''commodity pool operator'' as ''any person engaged in a business that is of the nature of an investment trust, syndicate, or similar form of enterprise, and who * * * solicits, accepts, or receives from others, funds, securities, or property * * * for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility * * *'').

such proposal, as it may be affected by any developments since 2002 in industry operations as well as functional and BSA regulation.

Finally, since the time that the notice of proposed rulemaking was published, FinCEN has concluded the major rulemakings required by the USA PATRIOT Act for banks, broker-dealers, and futures commission merchants. Each of these institutions is subject to a comprehensive set of regulations under the BSA including, among other things, the obligation to establish and implement an anti-money laundering program,[9] the obligation to establish and implement a customer identification program,[10] the obligation to establish and implement a special due diligence program for foreign correspondent accounts and foreign private banking accounts,[11] the obligation to detect and report suspicious activity,[12] and the obligation to file currency transaction reports.[13]

The financial transactions of unregistered investment companies and their participants must be conducted through other financial institutions that are subject to BSA requirements. Assets within any of these unregistered investment pools typically are carried with these financial institutions. Thus, as FinCEN continues to consider the extent to which BSA requirements should be imposed on unregistered investment companies, their activity is not entirely outside the current BSA regulatory regime.

[9] 31 CFR 103.120.

[10] 31 CFR 103.121–103.123.

[11] 31 CFR 103.176 and 103.178.

[12] 31 CFR 103.17–103.19.

[13] 31 CFR 103.22.

III. Withdrawal of the Notice of Proposed Rulemaking

For the foregoing reasons, the notice of proposed rulemaking, in which FinCEN proposed requiring unregistered investment companies to establish and implement anti-money laundering programs, as published in the **Federal Register** on September 26, 2002 (67 FR 60617), is hereby withdrawn.

Dated: October 29, 2008.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E8–26202 Filed 11–3–08; 8:45 am]

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Notices

Federal Register

Vol. 73, No. 214

Tuesday, November 4, 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 COMMERCE

Bureau of the Census

[Docket Number 070913515–81311–02]

Alaska Native Areas (ANAs) Program for the 2010 Census—Notice of Final Criteria and Guidelines

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of final criteria, guidelines, and program implementation.

SUMMARY: The Bureau of the Census (Census Bureau) is providing notification of final criteria and guidelines for Alaska Native Areas (ANAs) for the 2010 Census. Criteria are those rules and conditions that must be met when defining a geographic entity; guidelines are procedures and measures suggested by the Census Bureau to enhance the utility of statistical geographic areas for presentation and analysis of statistical data. ANAs are geographic entities within the state of Alaska defined for the collection, tabulation, and presentation of decennial census data and will be used for the 2010 Census. ANAs also will be used to tabulate and present period estimates from the American Community Survey (ACS) after 2010 and potentially other Census Bureau statistical data. ANAs consist of two types of unique geographic entities: Alaska Native Regional Corporations (ANRCs) and Alaska Native village statistical areas (ANVSAs)[1]. The Census Bureau has not changed the process for naming and delineating boundaries of ANRCs from that used in Census 2000. The Census Bureau announces revisions to the criteria and guidelines for eligibility, location, delineation, and naming of ANVSAs to ensure more consistent and comparable ANSVAs and more meaningful, relevant, and reliable statistical data for Alaska Natives and their ANAs.[2] This Notice also contains definitions of key terms used in the ANVSA criteria and guidelines for the 2010 Census.

The Census Bureau will publish a separate notice in the **Federal Register** with final criteria and guidelines for American Indian Areas (AIAs) for the 2010 Census. The Census Bureau will offer designated tribal governments or associations an opportunity through the Tribal Statistical Areas Program (TSAP) to review and, if necessary, suggest updates to the boundaries and names of their ANAs.

DATES: *Effective Date:* This Notice's final criteria and guidelines will be effective on November 4, 2008.

FOR FURTHER INFORMATION CONTACT: The Geographic Standards and Criteria Branch, Geography Division, U.S. Census Bureau, via e-mail at *geo.tsap.list@census.gov* or telephone at (301) 763–3056.

SUPPLEMENTARY INFORMATION: Pursuant to Title 13 of the United States Code (U.S.C.), Section 141(a) (2000), the Secretary of Commerce, as delegated to the Census Bureau, undertakes the decennial census every ten years ''in such form and content as he may determine.'' This language gives wide discretion to the Census Bureau in taking the census.

The Census Bureau portrays the boundaries of both legal and statistical geographic entities for the purpose of collecting, tabulating, and presenting meaningful, relevant, and reliable statistical data from the decennial census, the ACS, and potentially other censuses and surveys. The Census Bureau attempts to develop objective criteria and guidelines to establish geographic entities that meet this purpose.

The Census Bureau is committed to delineating geographic entity boundaries in partnership with tribal, state, and local officials using criteria and guidelines developed in an open process. It is the responsibility of the Census Bureau to ensure that geographic entity criteria and guidelines achieve the goal of providing meaningful, relevant, and reliable statistical data. While aware that there are non-Census Bureau uses of ANAs and the data tabulated for them, the Census Bureau will not modify ANA boundaries or attributes specifically to meet the requirements of any of these programmatic uses, including any attempt to meet the specific program requirements of other government agencies. Further, changes made to a geographic entity to meet the requirements of a specific non-Census Bureau program may have detrimental effects on uses of the same geographic entity for other programs. In addition, the Census Bureau makes no attempt to specifically link the establishment of statistical geographic entities to federal, tribal, or state laws.

The development of the ANAs has been an evolutionary process in which the Census Bureau has worked with various data users to develop geographic entities that both aid in census enumeration and tabulation activities and are meaningful for Alaska Natives, their governments, associations working with Alaska Natives, and the federal and state agencies administering tribal programs benefiting Alaska Natives.

ANRCs are corporate entities organized to conduct both for-profit and non-profit affairs of Alaska Natives pursuant to the Alaska Native Claims Settlement Act (ANCSA) (as amended) (43 U.S.C. 1601 *et seq.* (2000)). ANRCs are geographic entities with legally defined boundaries that subdivide all of Alaska into twelve regions, except for the area within the Annette Island Reserve (an AIR under the governmental authority of the Metlakatla Indian Community). A thirteenth non-geographic ANRC represents Alaska Natives who do not belong to one of the other twelve ANRCs; the Census Bureau does not tabulate or present data for this thirteenth ANRC. The twelve geographic ANRCs are what the Census Bureau terms ''legal geographic entities.'' There are no changes to the process by which the Census Bureau acquires updates to ANRC boundaries and names.

ANVSAs are statistical geographic entities representing the residences,

[1] For Census Bureau purposes, the Annette Island Reserve in Alaska is considered an American Indian area (AIA), more specifically an American Indian reservation (AIR), not an ANA.

[2] The term Alaska Native used throughout this document refers to anyone who (a) self-identifies as an American Indian and/or an Alaska Native alone or in combination with one or more other races, and (b) resides in Alaska. If using race data from Census 2000 rather than some other data source, use data for ''American Indian and Alaska Native alone or in combination with one or more races'' to determine if an ANVSA meets the final delineation criteria and guidelines.

permanent and/or seasonal, for Alaska Natives who are members of or receive governmental services from the defining Alaska Native village (ANV), and that are located within the region and vicinity of the ANV's historic and/or traditional location. ANVSAs are intended to represent the relatively densely settled portion of each ANV and should include only an area where Alaska Natives, especially members of the defining ANV, represent a substantial proportion of the population during at least one season of the year (at least three consecutive months). ANVSAs also should not contain large areas that are unpopulated or that do not include concentrations of Alaska Natives, especially members of the defining ANV. For the 2010 Census, the Census Bureau has adopted the ANVSA criteria and guidelines conveyed within this Notice. The final criteria and guidelines are discussed more fully below.

I. History of Alaska Native Areas in the Decennial Census

Prior to the 1980 Census, the Census Bureau had no program specifically designed to recognize or tabulate data for ANAs. Data were published for most of the ANVs as either incorporated places or ''unincorporated places'' (referred to as census designated places (CDPs) in later censuses). Congress used data tabulated from the 1970 Census for these places, in conjunction with other information, to determine if they qualified as a ''Native village'' or a ''Native group'' in accordance with the ANCSA.

Upon enactment of the ANCSA, the Census Bureau began to report data specifically for ANAs beginning with the 1980 Census. The types of ANAs included in the 1980 Census were based on recommendations of an ad hoc interagency committee established by Office of Management and Budget (OMB) to examine how the federal government could provide improved data for Alaska Natives. In addition to input from OMB, the Census Bureau also consulted directly with Alaska Native tribal governments and associations, as well as Alaska State officials.

The Census Bureau used approximate boundaries for the ANRCs to tabulate data from the 1980 Census. Data for ANRCs were not published as part of the standard decennial census tabulations, but were included in a supplementary report. In sparsely populated areas, the ANRC boundaries were generalized to follow visible features and the boundaries of other census geographic entities.

For the 1980 Census, the Census Bureau worked with Alaska State officials to identify the names and locations of ANVs recognized in accordance with the ANCSA, and to delineate their boundaries. The boundaries of most ANVs coincided with the boundaries of other census geographic entities, in particular incorporated places and CDPs. For the few remaining ANVs whose boundaries did not coincide with incorporated place or CDP boundaries, the Census Bureau delineated boundaries that corresponded to one or more enumeration districts (similar to the block groups of later censuses). For the 1980 Census, the Census Bureau identified 209 ANVs.

After reviewing these data from the 1980 Census, the Census Bureau discovered that the territory encompassing housing units and population associated with an ANV did not necessarily correspond with the territory of an incorporated place or CDP of the same name. In addition, ANV and ANRC officials commented that the ANV boundaries for the 1980 Census were not their historical or traditional boundaries. The ANV boundaries also did not represent the land withdrawals, selections, or conveyances for the Alaska Native Village Corporations (ANVCs) made pursuant to the ANCSA or the lands historically or traditionally used for subsistence activities, including hunting and fishing. In response to these concerns and to emphasize that these points were all valid, the Census Bureau changed the term for these statistical geographic entities from ANVs to ANVSAs to indicate that while they still were based on the historical or traditional *location* of the ANV, they did not necessarily represent the ANV's historical or traditional *boundary*.

To improve the accuracy of ANRC boundaries for the 1990 Census, the Census Bureau transferred the ANRC boundaries from a source map provided by the U.S. Bureau of Land Management (BLM) onto a series of U.S. Geological Survey (USGS) 1:250,000-scale topographic maps. The Census Bureau implemented a review process, which included the participation of each ANRC, to verify that the ANRC regional boundary was updated correctly. At the request of ANRCs, the Census Bureau worked directly with the ANRC's non-profit associations, whose purpose is to conduct the sociocultural outreach and support for members and other Alaska Natives within their region, in reviewing each regional boundary.

ANV government officials and ANRC non-profit association officials were encouraged to delineate ANVSA boundaries for the 1990 Census to facilitate enumeration of Alaska Natives, especially in remote Alaska. To meet the need for suitable boundaries for use in collecting, tabulating, and presenting data for ANV housing and population by aiding in the correct allocation of housing units and thus population, ANVSA boundaries were required to follow physical features that would likely be visible to census enumerators, such as roads, trails, shorelines, rivers, streams, and ridgelines, or locally known boundaries of other legal geographic entities, such as boroughs,[3] ANRCs, etc. For the 1990 Census, the Census Bureau identified 217 ANVSAs.

There were no changes to the types of ANAs identified for Census 2000. Similar to the 1990 Census, ANRC boundaries were reviewed by officials of the ANRC non-profit associations. A few small boundary corrections were made for some of the ANRCs. The new development seen in the Census 2000 was the introduction of tribal-designated statistical areas (TDSAs) in Alaska. TDSAs had existed in some of the forty-eight conterminous states for the 1990 Census, but they had purposely been excluded from Alaska because ANVSAs were thought to cover all the ANVs in Alaska. Some data users stated that there was a difference between those ANVs that participated in the ANCSA and those that did not, but were recognized by the U.S. Bureau of Indian Affairs (BIA) as tribes and eligible to receive services from the BIA. In an attempt to remedy this, the Census Bureau introduced TDSAs in Alaska. For Census 2000, the Census Bureau identified 205 ANVSAs and 2 TDSAs in Alaska. Fewer ANVSAs were delineated for Census 2000 primarily because some of the ANVs identified in previous censuses were not recognized in accordance with the ANCSA or recognized by the BIA.

II. Summary of Comments Received in Response to the ''Alaska Native Areas (ANAs) for the 2010 Census'' March 17, 2008 Federal Register (73 FR 14203)

The March 17, 2008, **Federal Register** Notice (73 FR 14203) requested

[3] For Census Bureau purposes, boroughs in Alaska are the equivalent of counties in other states. For purposes of this notice, the term borough includes the legal designation in Alaska of ''cities and boroughs'' and ''municipalities,'' as well as ''census areas.'' Census areas are comparable to and the equivalent to boroughs for collecting, tabulating, and presenting Census Bureau data. They were created cooperatively by the State of Alaska and the Census Bureau to subdivide the large portion of Alaska not within an organized borough into geographic entities more comparable with the organized boroughs.

comment on proposed criteria and guidelines for ANAs for the 2010 Census. The Census Bureau received no comments during the allotted 90-day comment period.

The proposed criteria and guidelines reflected input received during various meetings and discussions with ANV and ANRC non-profit association representatives, including a conference held in Anchorage, Alaska, in October 2007. The Census Bureau also consulted with its American Indian and Alaska Native Advisory Committee in November 2006 to obtain input on potential proposed criteria and guidelines. Although no comments were received in response to the published proposed criteria and guidelines, the Census Bureau, based on previous discussions and consultations, is confident that these criteria and guidelines are acceptable and, therefore, adopts the criteria and guidelines as published in the March 17, 2008, **Federal Register** (73 FR 14203). Comments and concerns expressed in these discussions and consultations were reflected in the published proposed criteria and guidelines.

III. Final Alaska Native Areas for the 2010 Census

A. Alaska Native Regional Corporations (ANRCs)

The Census Bureau is not changing the process for delineating the ANRC boundaries for the 2010 Census; the process will remain the same as in 2000. The boundaries used by the Census Bureau for the ANRCs represent their regional boundaries established pursuant to the ANCSA. These boundaries do not take into consideration land withdrawals, selections, or conveyances under the ANCSA, nor any form of land ownership. Each ANRC's boundary will be reviewed, especially in relation to the boundaries of the Public Land Survey System (PLSS) townships and sections, to confirm that it is the correct legal boundary for that region as developed under the ANCSA. Each ANRC will also be reviewed to determine if the correct ANVSAs are depicted within its regional boundary. At the request of the ANRCs, the Census Bureau will continue to work with representatives of the twelve ANRC non-profit associations to review their regional boundaries and to ensure that the name for each region continues to closely match the name of the for-profit ANRC for that region (*see Table 1*).

TABLE 1—ANRC FOR-PROFIT CORPORATIONS AND NON-PROFIT ASSOCIATIONS

	ANRC name	For-profit Alaska Native Regional Corporation	Non-profit Alaska Native Regional Association
1	Ahtna	Ahtna, Incorporated	Copper River Native Association.
2	Aleut	The Aleut Corporation	Aleutian-Pribilof Islands Association.
3	Arctic Slope	Arctic Slope Regional Corporation	Arctic Slope Native Association.
4	Bering Straits	Bering Straits Native Corporation	Kawerak, Incorporated.
5	Bristol Bay	Bristol Bay Native Corporation	Bristol Bay Native Association.
6	Calista	Calista Corporation	Association of Village Council Presidents.
7	Chugach	Chugach Alaska Corporation	Chugachmiut, Incorporated.
8	Cook Inlet	Cook Inlet Region, Incorporated	Cook Inlet Tribal Council.
9	Doyon	Doyon, Limited	Tanana Chiefs Conference.
10	Koniag	Koniag, Incorporated	Kodiak Area Native Association.
11	NANA	NANA Regional Corporation	Maniilaq Association.
12	Sealaska	Sealaska Corporation	Central Council of Tlingit and Haida Indian Tribes.

B. Alaska Native Village Statistical Areas (ANVSAs)

The goal for the 2010 Census is to improve the delineation of ANVSA boundaries to result in more consistent and comparable ANVSAs and more meaningful, relevant, and reliable statistical data for Alaska Natives and their ANVs. The majority of ANVSAs from Census 2000 meet this goal.

ANVSAs are statistical geographic entities representing the residences, permanent and/or seasonal, for Alaska Natives who are members of or receiving governmental services from the defining ANV located within the region and vicinity of the ANV's historic and/or traditional location. ANVSAs are intended to represent the relatively densely settled portion of each ANV and should include only areas where Alaska Natives, especially members of the defining ANV, represent a significant proportion of the population during at least one season of the year (at least three consecutive months). ANVSAs also should not contain large areas that are unpopulated or do not include concentrations of Alaska Natives, especially members of the defining ANV.

The delineation of ANVSAs is not meant to necessarily depict land ownership, including any land withdrawals, selections, or conveyances for the ANVCs, nor to represent all of the area over which an ANV has any form of governmental authority or jurisdiction, nor to represent all of the traditional or historical areas associated with the ANV, including areas used for subsistence activities. Representation of ANVSA boundaries in Census Bureau products is solely for the purpose of data collection, tabulation, and presentation and does not convey or confer any rights to land ownership, governmental authority, or jurisdictional status.

Although ANVSAs represent relatively densely settled concentrations of Alaska Natives and therefore are similar to places, there are some key differences. The two place-level geographic entities for which the Census Bureau publishes data are incorporated places (cities in Alaska) and census designated places (CDPs). Incorporated places are governmental entities sanctioned by the state of Alaska to perform general purpose functions and whose boundaries are defined without specifically considering ANV members or other Alaska Natives. CDPs are unincorporated places delineated by state and borough officials in Alaska and are intended to encompass all people at a given location, including ANV members. Incorporated places and CDPs are mutually exclusive of each other because, by definition, a CDP represents a named, unincorporated area. Because ANVSAs are defined specifically to represent concentrations of Alaska Natives, they are not constrained by other place-level geographic entities; that is, ANVSAs may overlap incorporated places and CDPs. An ANVSA may be delineated to encompass only a part of an incorporated place and/or a CDP; it may encompass multiple incorporated places or CDPs; or it may cover an area that has neither incorporated places nor CDPs. In addition, ANVSAs are used in census

data collection activities and are included in the specific American Indian/Alaska Native geographic hierarchy for tabulating and presenting data from the 2010 Census; incorporated places and CDPs do not appear in the American Indian/Alaska Native geographic hierarchy. Incorporated places and CDPs do not clearly identify geographic entities that are specific to Alaska Natives, and therefore, data for incorporated places and CDPs likely will reflect the characteristics of both Alaska Native and non-Native populations.

ANVSAs will be used to tabulate and present data from both the 2010 Census and the ACS. Defining officials should take into consideration that ACS period estimates of demographic characteristics for geographic entities that are small in population size will be subject to higher variances than comparable estimates for geographic entities with larger populations. Thus, if an ANVSA contains only a small number of housing units occupied by Alaska Natives during at least one season of the year (at least three consecutive months), then the quality, reliability, and availability of the sample data may vary significantly from year to year. In addition, the Census Bureau's disclosure avoidance and data quality assurance methodologies may have the effect of restricting the availability and amount of data for geographic entities with small populations. On the other hand, if an ANVSA encompasses too large of a total population and that population does not truly represent the ANV's membership and/or the Alaska Native population receiving governmental services from the ANV, then the data for the Alaska Native population may be subsumed, or ''masked,'' by the characteristics of the non-Alaska Native population. The more closely an ANVSA's boundary relates to the distribution of ANV members and Alaska Natives receiving governmental services from the ANV, and does not include large numbers of people and households not affiliated with the ANV, the more likely that data presented for the ANVSA will reflect the characteristics of the ANV population. Therefore, when delineating ANVSAs, it is important to strike an appropriate balance, avoiding a definition that is too small to obtain meaningful sample data and one that is so large that data for the Alaska Native population are masked by the presence of a high percentage of non-Native households. The Census Bureau took these concerns into consideration when developing the delineation criteria and guidelines below.

In addition, officials designated to delineate boundaries also should consider that tribal affiliation data, including ANV affiliation, as collected by the Census Bureau, generally are not released for geographic entities that are small in population size, including ANVSAs, due to data disclosure concerns. If an ANVSA is defined in accordance with the program criteria and guidelines, the ANVSA data may provide a surrogate for tribal affiliation data for a specific, small geographic area, while tribal affiliation data are available for larger geographic entities such as the whole state of Alaska.

Although eligible, ANV officials may elect not to delineate an ANVSA if it will not provide meaningful, relevant, or reliable statistical data. For example, these data may not be meaningful, relevant, or reliable because the member population now resides in other places or has been largely subsumed by non-member and/or non-Alaska Native populations. However, these ANVs may still be able to receive meaningful, relevant, and reliable statistical data for their ANV membership at higher levels of census geography, such as through the characteristic of tribal affiliation, but a geographic solution to their data issues, like an ANVSA, may not be possible.

1. Final ANVSA Criteria and Guidelines for the 2010 Census

The Census Bureau announces the following criteria and guidelines for the 2010 Census. Criteria are those rules and conditions that must be met when defining a geographic entity; guidelines are procedures and measures suggested by the Census Bureau to enhance the utility of statistical geographic areas for presentation and analysis of statistical data.

a. Final ANVSA Eligibility Criteria

An ANV is eligible to consider delineating an ANVSA for the 2010 Census if the ANV is:

i. Recognized by and eligible to receive services from the BIA, or

ii. Recognized pursuant to the ANCSA as either a Native village or Native group.

BIA recognition (criterion i. above) is determined by inclusion of an ANV on the BIA's list of recognized tribes or by addenda to the list as published by the BIA.[4] ANCSA recognition (criterion ii. above) is determined by inclusion of an ANV on the BLM's list of ANCSA-recognized Native villages and Native groups; the BLM's list of those ANVs recognized pursuant to the ANCSA is available from the BLM's Alaska State Office.

Table 2 provides a list of the 237 ANVs that meet these criteria and that are eligible to consider delineating an ANVSA for the 2010 Census. Table 2 also lists the BIA-recognized name for each ANV[5] and indicates whether each is a Native village or Native group under the ANCSA. Any new ANV recognized by the BIA or in accordance with the ANCSA as of January 1, 2010 (the reference date for geographic entity boundaries for the 2010 Census) also will be eligible to delineate an ANVSA.

The following three tribes in Alaska recognized by the BIA are not eligible to be represented by ANVSAs because they are not ANVs, are large regional tribal associations, and/or have a legally defined American Indian reservation (AIR):

- Central Council of the Tlingit and Haida Indian Tribes;
- Inupiat Community of the Arctic Slope;
- Metlakatla Indian Community, Annette Island Reserve.

All ANVs that were eligible to consider delineating TDSAs for Census 2000 are eligible to consider delineating ANVSAs for the 2010 Census if the resulting ANVSA meets all the program's criteria. TDSAs will not be delineated in Alaska for the 2010 Census.

The Census Bureau will continue to work with representatives of the BIA-recognized ANV to delineate their ANVSA for the 2010 Census. If the ANV is not recognized by the BIA, or if the BIA-recognized ANV government does not respond to the Census Bureau's invitation to participate in the ANVSA program, the Census Bureau will work with the ANVC or Alaska Native Group Corporation (ANGC), as applicable, to delineate their ANVSA. If neither replies to the Census Bureau, the Census Bureau will work with the ANRC non-profit associations in whose region the ANV is located to delineate the ANVSA. If none of the entities referenced above reply to the Census Bureau, the Census Bureau, time and resources permitting, may delineate an ANVSA for the ANV.

b. Final ANVSA Location Criteria

All eligible ANVs shall be located in areas of historical and traditional

[4] Published regularly in the **Federal Register** pursuant to the Federally Recognized Indian Tribe Act of 1994 (Pub. L. 103–454; 25 U.S.C. 479a–1). Last published in the **Federal Register** on Friday, April 4, 2008 (73 FR 18553–18557).

[5] From the **Federal Register** notice published Friday, April 4, 2008 (73 FR 18553–18557).

significance. These locations are referenced in:

- *The BIA-recognized name for an ANV—e.g.*, Native Village of Atka;
- *The former BIA-recognized name for an ANV—e.g.*, Iqurmuit Traditional Council (formerly the Native Village of Russian Mission); and/or
- *The BLM ANCSA-recognized name for a Native village or Native group—e.g.*, Buckland or Canyon Village.

The latitude and longitude coordinates listed in Table 2 represent the point location of each eligible ANV, as determined by the Census Bureau. Each point location has been verified using the ANRC boundaries, the USGS Geographic Names Information System (GNIS) point locations, USGS topographic maps, location information from previous censuses, BLM core townships, ANCSA 14(c) survey plats, location information from the state of Alaska, and Native allotment boundaries. The latitude and longitude coordinates listed for an ANVSA provide the starting point for delineation of that area. Each ANVSA must primarily include land immediately surrounding the corresponding point locations listed in Table 2 for each ANV, but may include additional territory according to the other final program criteria and guidelines. The point location information for each ANV included in Table 2 is used in the specific ANVSA delineation criteria and guidelines listed below.

c. Final ANVSA Delineation Criteria and Guidelines

The Census Bureau has received comments from data users, tribes, and ANV officials over the past 20 or more years regarding the purpose of American Indian/Alaska Native statistical geographic entities, including ANVSAs, and how they should be defined to facilitate tabulation and presentation of meaningful data. In response, the Census Bureau adopts the following criteria and guidelines to help ensure that ANVSAs delineated for the 2010 Census support their intended purpose, provide useful and meaningful data for the ANV they represent, and enhance the ability of data users to make more meaningful comparisons between ANVSAs. These final criteria must be followed by all officials delineating an ANVSA for the 2010 Census. The guidelines are provided to assist delineating officials in defining a more meaningful ANVSA.

Final ANVSA Delineation Criteria

i. ANVSAs delineated for the 2010 Census shall not overlap.

ii. An ANVSA shall not completely surround the location of another ANV as listed in Table 2.

iii. All portions of an ANVSA must be located within 50 miles of the ANV's point location listed in Table 2.

iv. An ANVSA shall not include more water area than land area.

v. Officials delineating ANVSAs shall create nonvisible lines for an ANVSA boundary only if other acceptable boundary features are not available.

vi. ANVSAs shall not include military installations or area within a Census 2000 urbanized area.

Final ANVSA Delineation Guidelines

i. An ANVSA should not extend beyond the regional boundary of the ANRC in which the ANV is located (see Table 2).

ii. An ANVSA should not exceed 325 square miles in area.

iii. Housing units occupied by Alaska Natives, even if seasonal, should constitute the majority of housing units within an ANVSA.[6]

iv. The population within an ANVSA should be majority Alaska Native, and, of that population, the majority should be members of the delineating ANV.

v. An ANVSA should not contain large areas without housing or population. Specifically, an ANVSA should have a housing unit density of at least three housing units per square mile.

vi. An ANVSA should be contiguous.

vii. Water area should be included only to maintain contiguity, to provide a generalized version of the shoreline, or if the water area is completely surrounded by land area included in the ANVSA.

viii. An ANVSA's boundary should follow visible, physical features, such as rivers, streams, shorelines, glaciers, roads, trails, and ridgelines.

ix. An ANVSA boundary may follow the nonvisible, legally defined boundaries of ANRCs, boroughs, or cities in Alaska.

d. Final ANVSA Naming Criteria

The name for an ANVSA must match the corresponding ANV name in Table 2. If an ANV wishes to use a name that deviates from the corresponding ANV name, the ANV must submit a brief statement describing the reason for the change. Changes to the name of an ANVSA will be considered only if submitted in writing and signed by the highest elected official (Chairperson, Chief, or President) of the ANV.

2. ANVSA Review Process

As with all of the Census Bureau's statistical geographic entities, the Census Bureau reserves the right to modify, create, or reject any boundary or attribute as needed to meet the final program criteria or to maintain geographic relationships before the tabulation geography is finalized for the 2010 Census.

The Census Bureau will accept an ANVSA only if it meets the final program criteria. Any decision to reject a particular ANVSA delineation will be conveyed to the delineating official in writing. The delineating official may redelineate the ANVSA and resubmit it to the Census Bureau for review.

Interested parties will be able to review and comment on delineated ANVSA boundaries and names. If a dispute between two or more parties occurs over the boundary delineated for a specific ANVSA, the Census Bureau encourages the respective parties to reach a mutually acceptable agreement that complies with the final program criteria and follows the final program guidelines. There may be instances in which a mutually acceptable boundary for an ANVSA cannot be delineated, or the mutually acceptable boundary does not follow the final program criteria and guidelines. In such instances when only one of the parties is an ANV, the Census Bureau shall give priority to the boundary submitted by the ANV delineating official, in recognition of the government-to-government relationship with the ANV, provided that the delineated ANVSA meets the final program criteria. If a mutually acceptable ANVSA is not delineated in accordance with final program criteria by the program's deadline, the Census Bureau may independently delineate an ANVSA.

IV. Definitions of Key Terms and Acronyms

Alaska Native—For purposes of this Notice, Alaska Native refers to anyone who self-identifies as an American Indian and/or an Alaska Native (AIAN) alone or in combination with one or more other races and resides in Alaska.

Alaska Native area (ANA)—A geographic entity within the state of Alaska that is defined for the collection and tabulation of decennial census data for Alaska Natives. For the 2010 Census, ANAs include Alaska Native Regional Corporations (ANRCs) and Alaska Native Village statistical areas (ANVSAs).

[6] If using race data from Census 2000 rather than some other data source, use data for ''American Indian and Alaska Native alone or in combination with one or more races'' to determine whether an ANVSA meets the final delineation criteria and guidelines.

Alaska Native Claims Settlement Act (ANCSA)—Federal legislation (Pub. L. 92–203, 85 Stat. 688 (1971); 43 U.S.C. 1602 *et seq.* (2000)) enacted in 1971 that recognized Native villages and Native groups, and established ANRCs and their regional boundaries.

Alaska Native Group Corporation (ANGC)—A corporation created pursuant to the ANCSA and organized under the laws of the state of Alaska as a for-profit or non-profit business to hold, invest, manage, and/or distribute lands, property, funds, and other rights and assets for and on behalf of a Native group.

Alaska Native Regional Corporation (ANRC)—A corporation created pursuant to the ANCSA as a ''Regional Corporation'' and organized under the laws of the State of Alaska to conduct both the for-profit and non-profit affairs of Alaska Natives within a defined region of Alaska. For the Census Bureau, ANRCs are considered legal geographic entities. Twelve ANRCs cover the entire state of Alaska except for the area within the Annette Island Reserve (an AIR under the governmental authority of the Metlakatla Indian Community).

Alaska Native Urban Corporation (ANUC)—A corporation created pursuant to the ANCSA and organized under the laws of the state of Alaska as a for-profit or non-profit business to hold, invest, manage, and/or distribute lands, property, funds, and other rights and assets for and on behalf of one of the four Alaska Native urban communities recognized under the ANCSA: Juneau, Kenai, Kodiak, and Sitka.

Alaska Native village (ANV)—A local governmental unit in Alaska that constitutes an association, band, clan, community, group, tribe, or village recognized by and eligible to receive services from the BIA and/or in accordance with the ANCSA as a Native village or Native group.

Alaska Native Village Corporation (ANVC)—A corporation created pursuant to the ANCSA and organized under the laws of the state of Alaska as a for-profit or non-profit business to hold, invest, manage, and/or distribute lands, property, funds, and assets for or on behalf of a Native village.

Alaska Native village statistical area (ANVSA)—A statistical geographic entity that represents the residences, permanent and/or seasonal, for Alaska Natives who are members of or receiving governmental services from the defining ANV that are located within the region and vicinity of the ANV's historic and/or traditional location. ANVSAs are intended to represent the relatively densely settled portion of each ANV and should include only an area where Alaska Natives, especially members of the defining ANV, represent a significant proportion of the population during at least one season of the year (at least three consecutive months). ANVSAs also should not contain large areas that are primarily unpopulated or do not include concentrations of Alaska Natives, especially members of the defining ANV.

American Indian reservation (AIR)—A type of legal geographic entity that is a recognized American Indian land area with a boundary established by final treaty, statute, executive order, and/or court order and over which the tribal government of a federally recognized American Indian tribe (federal AIR) or a state recognized American Indian tribe (state AIR) has governmental authority. Along with reservation, designations such as colony, pueblo, rancheria, and reserve may apply to AIRs.

ANCSA 14(c) Survey Plat—A map issued by the BLM that depicts the surveyed boundaries for each Native village and its ANVC in accordance with the process set out in Section 14(c) of the ANCSA (See 43 U.S.C. 1613(c) (2000)). Digital versions of the completed plats are available online at *ftp://ftp.dcbd.dced.state.ak.us/14cPlats/14c-Plats.htm.*

BLM Core Township—A PLSS township or townships designated pursuant to the ANCSA, 43 U.S.C. 1641(b) (2000), in which all or part of a Native village was determined to be located.

Borough—A legal geographic entity within the state of Alaska. For purposes of this program, the Census Bureau treats boroughs as equivalent to a county in other states for data collection, tabulation, and presentation purposes. In addition, when used generically, this term also includes ''cities and boroughs,'' ''municipalities,'' and ''census areas'' in Alaska.

Bureau of Indian Affairs (BIA)—The primary agency of the federal government, located within the U.S. Department of the Interior (DOI), charged with the trust responsibility between the federal government and federally recognized AIAN tribal governments and communities, including BIA-recognized ANVs.

Bureau of Land Management (BLM)—The primary agency of the federal government, located within the DOI, charged with carrying out the ANCSA.

Census area—A statistical geographic entity that serves as the equivalent of a borough in Alaska and that is delineated cooperatively by the state of Alaska and the Census Bureau solely for the purposes of subdividing that portion of Alaska that is not within an organized borough to allow more efficient census data collection and more useful census data tabulations.

Census designated place (CDP)—A statistical geographic entity encompassing a concentration of population, housing, and commercial structures that is clearly identifiable by a single name, but is not within an incorporated place. CDPs are the statistical counterparts of incorporated places for distinct unincorporated communities.

City—A legal designation for incorporated places in most states, including Alaska.

Contiguous—A description of a geographic entity having an uninterrupted outer boundary such that it forms a single, connected piece of territory. Noncontiguous areas form separate, disconnected pieces.

Geographic Names Information System (GNIS)—The GNIS is the federal standard for geographic nomenclature. The USGS developed the GNIS for the U.S. Board on Geographic Names as the official repository of domestic geographic names data; the official vehicle for geographic names used by all departments of the federal government; and the source for applying geographic names to federal electronic and printed products. The GNIS is available online at *http://geonames.usgs.gov/domestic/index.html.*

Incorporated place—A legal geographic entity that is a governmental unit, incorporated under state law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), or village, to provide governmental services for a concentration of people within a legally defined boundary.

Legal geographic entity—A geographically defined governmental, administrative, or corporate entity whose origin, boundary, name, and description result from charters, laws, treaties, or other governmental action. Examples are the United States, states and statistically equivalent entities, counties and statistically equivalent entities, minor civil divisions, incorporated places, congressional districts, AIRs and off reservation trust lands (ORTLs), school districts, and ANRCs. The legal geographic entities that will be recognized for the 2010 Census are those in existence on January 1, 2010.

Native allotment—Land in Alaska allotted to Alaska Native adults primarily pursuant to the Native Allotment Act of 1906 (Pub. L. 171, Chap. 2469; 34 Stat. 197, Chap. 2469

(1906)). A Native allotment can be up to 160 acres in area (.25 of a square mile), and its title is held in restricted fee status (*see ''Restricted fee land''*). Native allotments were provided from the public lands at large in Alaska and required each Alaska Native applicant to demonstrate use and occupancy of the allotment for at least a five-year period. Although many Native allotments are still used for subsistent activities, most do not include housing units.

Native group (NG)—Any tribe, band, clan, group, community, village, or village association of Alaska Natives designated by the Secretary of the Interior composed of less than twenty-five, but more than three, Alaska Natives, who also comprised a majority of the residents of a locality at the time of the 1970 Census.

Native village (NV)—Any tribe, band, clan, group, community, village, or village association of Alaska Natives listed in Sections 11 and 16 of the ANCSA (See 43 U.S.C. 1610 and 1615 (2000)) or which the Secretary of the Interior determines was composed of twenty-five or more Alaska Natives, who also comprised a majority of the residents of a locality at the time of the 1970 Census.

Nonvisible feature—A map feature that is not visible from the ground such as a city, borough, or ANRC boundary through space, a property line, or line-of-sight extension of a road.

Off-Reservation Trust Land (ORTL)—A type of legal geographic entity that is a recognized American Indian land area for which the United States federal government holds fee title in trust for the benefit of a tribe (tribal trust land) or for an individual American Indian (individual trust land). Trust lands can be alienated or encumbered only by the owner with the approval of the Secretary of the Interior or his/her authorized representative. Trust lands may be located on (on-reservation trust land) or off an AIR. The Census Bureau recognizes and tabulates data for AIRs and ORTLs because the tribe has governmental authority over these lands. Primary tribal governmental authority generally is not attached to tribal lands located off the AIR until the lands are placed in trust. In Census Bureau data tabulations, ORTLs are always associated with a specific federal AIR and/or tribal government.

Public Land Survey System (PLSS)—A rectangular system of surveys used to subdivide and describe land in the United States. The PLSS typically divides land into six-mile-square townships. These townships are subdivided into 36 one-mile-square sections. Sections can be further subdivided into quarter sections, quarter-quarter sections, or irregular government lots. The PLSS consists of a series of separate surveys. Most PLSS surveys begin at an initial point, and townships are surveyed north, south, east, and west from that point. The north-south line that runs through the initial point is a true meridian and is called the Principal Meridian. There are five Principal Meridians in Alaska—Copper River, Fairbanks, Kateel, Seward, and Umiat—that should be used when describing a particular township or section. For more information on the PLSS see *http://nationalatlas.gov/articles/boundaries/a_plss.html*.

Regional Corporation—see Alaska Native Regional Corporation (ANRC).

Restricted fee land—A land area for which an individual American Indian/Alaska Native or a tribe holds fee simple title subject to limitations or restrictions against alienation or encumbrances as set forth in the title and/or by operation of law. Restricted fee lands may be located on or off a federally recognized AIR. Native allotments in Alaska are one type of restricted fee land. The Census Bureau does not identify restricted fee lands as a specific geographic category.

Section—A PLSS region approximately one mile square that is a division of a PLSS township.

Statistical geographic entity or statistical area—A geographic entity specifically defined for the collection and/or tabulation of statistical data from the Census Bureau. Statistical entities are not generally established by law and their designation by the Census Bureau neither conveys nor confers legal ownership, entitlement, jurisdiction, or governmental authority. Tribal statistical geographic entities, also called statistical areas, include ANVSAs and TDSAs, among others.

Township—A PLSS region approximately six miles square that contains thirty-six approximately one mile square PLSS sections.

Tribal designated statistical area (TDSA)—A statistical geographic entity identified and delineated for the Census Bureau by a federally recognized American Indian tribe that does not currently have an AIR and/or ORTL. A TDSA is intended to be comparable to the AIRs within the same state or region, especially those for tribes that are of similar size. A TDSA encompasses a compact and contiguous area that contains a concentration of individuals who identify with the delineating federally recognized American Indian tribe and within which there is structured and organized tribal activity. Although two TDSAs were delineated within Alaska for Census 2000, TDSAs will not be delineated within Alaska for the 2010 Census. All ANVs eligible to delineate TDSAs within Alaska for Census 2000 are eligible consider delineating an ANVSA within Alaska for the 2010 Census.

Tribal Statistical Areas Program (TSAP)—New for the 2010 Census, the TSAP is intended to consolidate the various AIAN statistical geographic entities into one program. New delineations, updates, and re-delineations of the various tribal statistical geographic entities, including ANVSAs, will be processed through the TSAP.

Visible feature—A map feature that can be seen on the ground, such as a road, railroad track, major above-ground transmission line or pipeline, river, stream, shoreline, fence, sharply defined mountain ridge, or cliff. Nonstandard visible features are a subset of visible features that may not be clearly defined on the ground (such as a ridge), may be seasonal (such as an intermittent stream), or may be relatively impermanent (such as a fence). The Census Bureau generally requests verification that a nonstandard visible feature used as a boundary for a statistical geographic entity poses no problem for census enumerators in locating it during field work.

Executive Order 12866

This Notice has been determined to be not significant under Executive Order 12866.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 35, the Census Bureau requested, and the OMB granted its clearance for the information collection requirements for geographic partnership programs on September 24, 2008, (OMB Control Number 0607–0795, expires on March 31, 2009). The Census Bureau's request for an extension of this clearance until March 31, 2009, was sent to the OMB on September 9, 2008.

Dated: October 29, 2008.

Steve H. Murdock,

Director, Bureau of the Census.

TABLE 2—ELIGIBLE ANVS

	ANV name	ANRC	ANCSA type [7]	BIA recognized name [8]	Longitude	Latitude
1	Afognak	Koniag	NV	Native Village of Afognak	−152.7652	58.0221
2	Akhiok	Koniag	NV	Native Village of Akhiok	−154.1703	56.9456
3	Akiachak	Calista	NV	Akiachak Native Community	−161.4276	60.9026
4	Akiak	Calista	NV	Akiak Native Community	−161.2222	60.9119
5	Akutan	Aleut	NV	Native Village of Akutan	−165.7809	54.1384
6	Alakanuk	Calista	NV	Village of Alakanuk	−164.6612	62.6797
7	Alatna	Doyon	NV	Alatna Village	−152.7563	66.5636
8	Aleknagik	Bristol Bay	NV	Native Village of Aleknagik	−158.6189	59.2789
9	Alexander Creek	Cook Inlet	NG	*n/a*	−150.5999	61.4218
10	Algaaciq	Calista	NV	Algaaciq Native Village	−163.1769	62.0534
11	Allakaket	Doyon	NV	Allakaket Village	−152.6506	66.5597
12	Ambler	NANA	NV	Native Village of Ambler	−157.8671	67.0874
13	Anaktuvuk Pass	Arctic Slope	NV	Village of Anaktuvuk Pass	−151.7286	68.1480
14	Andreafsky	Calista	NV	Yupiit of Andreafski	−163.1934	62.0476
15	Angoon	Sealaska	NV	Angoon Community Association	−134.5824	57.4975
16	Aniak	Calista	NV	Village of Aniak	−159.5487	61.5750
17	Anvik	Doyon	NV	Anvik Village	−160.1965	62.6515
18	Arctic Village	Doyon	NV	Native Village of Venetie Tribal Government (Arctic Village).	−145.5283	68.1243
19	Asa'carsarmiut	Calista	NV	Asa'carsarmiut Tribe	−163.7279	62.0906
20	Atka	Aleut	NV	Native Village of Atka	−174.2095	52.2106
21	Atmautluak	Calista	NV	Village of Atmautluak	−162.2795	60.8591
22	Atqasuk	Arctic Slope	NV	Atqasuk Village	−157.4135	70.4736
23	Ayakulik	Koniag	NV	*n/a*	−154.5072	57.1949
24	Barrow	Arctic Slope	NV	Native Village of Barrow Inupiat Traditional Government.	−156.7811	71.2909
25	Beaver	Doyon	NV	Beaver Village	−147.4026	66.3628
26	Belkofski	Aleut	NV	Native Village of Belkofski	−162.0423	55.0865
27	Bill Moore's	Calista	NV	Village of Bill Moore's Slough	−163.7767	62.9449
28	Birch Creek	Doyon	NV	Birch Creek Tribe	−145.8190	66.2590
29	Brevig Mission	Bering Straits	NV	Native Village of Brevig Mission	−166.4885	65.3350
30	Buckland	NANA	NV	Native Village of Buckland	−161.1246	65.9767
31	Cantwell	Ahtna	NV	Native Village of Cantwell	−148.9105	63.3921
32	Canyon Village	Doyon	NG	*n/a*	−142.0878	67.1548
33	Caswell	Cook Inlet	NG	*n/a*	−149.9479	62.0047
34	Chalkyitsik	Doyon	NV	Chalkyitsik Village	−143.7286	66.6534
35	Cheesh-Na	Ahtna	NV	Cheesh-Na Tribe	−144.6542	62.5718
36	Chefornak	Calista	NV	Village of Chefornak	−164.2723	60.1538
37	Chenega	Chugach	NV	Native Village of Chanega	−148.0124	60.0664
38	Chevak	Calista	NV	Chevak Native Village	−165.5807	61.5285
39	Chickaloon	Cook Inlet	NV	Chickaloon Native Village	−148.4916	61.8002
40	Chignik Bay	Bristol Bay	NV	Chignik Bay Tribal Council	−158.4129	56.3037
41	Chignik Lagoon	Bristol Bay	NV	Native Village of Chignik Lagoon	−158.5302	56.3084
42	Chignik Lake	Bristol Bay	NV	Chignik Lake Village	−158.7522	56.2496
43	Chilkat	Sealaska	NV	Chilkat Indian Village	−135.8964	59.3997
44	Chilkoot	Sealaska	*n/a*	Chilkoot Indian Association	−135.4460	59.2240
45	Chinik	Bering Straits	NV	Chinik Eskimo Community	−163.0287	64.5443
46	Chitina	Ahtna	NV	Native Village of Chitina	−144.4412	61.5240
47	Chuathbaluk	Calista	NV	Native Village of Chuathbaluk	−159.2481	61.5774
48	Chulloonawick	Calista	NV	Chuloonawick Native Village	−164.1628	62.9504
49	Circle	Doyon	NV	Circle Native Community	−144.0723	65.8261
50	Clark's Point	Bristol Bay	NV	Village of Clarks Point	−158.5471	58.8330
51	Council	Bering Straits	NV	Native Village of Council	−163.6764	64.8950
52	Craig	Sealaska	NV	Craig Community Association	−133.1253	55.4870
53	Crooked Creek	Calista	NV	Village of Crooked Creek	−158.1124	61.8720
54	Curyung [9]	Bristol Bay	NV	Curyung Tribal Council	−158.4670	59.0487
55	Deering	NANA	NV	Native Village of Deering	−162.7283	66.0780
56	Dot Lake	Doyon	NV	Village of Dot Lake	−144.0354	63.6503
57	Douglas	Sealaska	UC	Douglas Indian Association	−134.3992	58.2781
58	Eagle	Doyon	NV	Native Village of Eagle	−141.1113	64.7808
59	Eek	Calista	NV	Native Village of Eek	−162.0247	60.2170
60	Egegik	Bristol Bay	NV	Egegik Village	−157.3536	58.2173
61	Eklutna	Cook Inlet	NV	Eklutna Native Village	−149.3613	61.4606
62	Ekuk [9]	Bristol Bay	NV	Native Village of Ekuk	−158.5534	58.8035
63	Ekwok	Bristol Bay	NV	Ekwok Village	−157.4866	59.3519
64	Elim	Bering Straits	NV	Native Village of Elim	−162.2576	64.6165
65	Emmonak	Calista	NV	Emmonak Village	−164.5454	62.7787
66	Evansville	Doyon	NV	Evansville Village	−151.5100	66.9272
67	Eyak	Chugach	NV	Native Village of Eyak	−145.6351	60.5263
68	False Pass	Aleut	NV	Native Village of False Pass	−163.4121	54.8520
69	Fort Yukon	Doyon	NV	Native Village of Fort Yukon	−145.2497	66.5627

TABLE 2—ELIGIBLE ANVS—Continued

	ANV name	ANRC	ANCSA type [7]	BIA recognized name [8]	Longitude	Latitude
70	Gakona	Ahtna	NV	Native Village of Gakona	−145.3119	62.3004
71	Galena	Doyon	NV	Galena Village	−156.8852	64.7427
72	Gambell	Bering Straits	NV	Native Village of Gambell	−171.7022	63.7621
73	Georgetown	Calista	NV	Native Village of Georgetown	−157.6727	61.8979
74	Gold Creek	Cook Inlet	NG	*n/a*	−149.6939	62.7567
75	Goodnews Bay	Calista	NV	Native Village of Goodnews Bay	−161.5864	59.1234
76	Grayling	Doyon	NV	Organized Village of Grayling	−160.0689	62.9061
77	Gulkana	Ahtna	NV	Gulkana Village	−145.3656	62.2634
78	Hamilton	Calista	NV	Native Village of Hamilton	−163.8598	62.8896
79	Healy Lake	Doyon	NV	Healy Lake Village	−144.6998	63.9872
80	Holy Cross	Doyon	NV	Holy Cross Village	−159.7738	62.1985
81	Hoonah	Sealaska	NV	Hoonah Indian Association	−135.4346	58.1100
82	Hooper Bay	Calista	NV	Native Village of Hooper Bay	−166.0978	61.5294
83	Hughes	Doyon	NV	Hughes Village	−154.2557	66.0455
84	Huslia	Doyon	NV	Huslia Village	−156.3892	65.7026
85	Hydaburg	Sealaska	NV	Hydaburg Cooperative Association	−132.8201	55.2067
86	Igiugig	Bristol Bay	NV	Igiugig Village	−155.8927	59.3266
87	Iliamna	Bristol Bay	NV	Village of Iliamna	−154.9111	59.7568
88	Inalik	Bering Straits	NV	Native Village of Diomede	−168.9370	65.7547
89	Iqurmuit	Calista	NV	Iqurmuit Traditional Council	−161.3287	61.7854
90	Ivanof Bay	Bristol Bay	NV	Ivanoff Bay Village	−159.4836	55.9033
91	Kaguyak	Koniag	NV	Kaguyak Village	−153.7955	56.8689
92	Kake	Sealaska	NV	Organized Village of Kake	−133.9451	56.9775
93	Kaktovik	Arctic Slope	NV	Kaktovik Village	−143.6113	70.1324
94	Kalskag	Calista	NV	Village of Kalskag	−160.3215	61.5400
95	Kaltag	Doyon	NV	Village of Kaltag	−158.7302	64.3259
96	Kanatak	Koniag [10]	*n/a*	Native Village of Kanatak	−156.0432	57.5728
97	Karluk	Koniag	NV	Native Village of Karluk	−154.4393	57.5572
98	Kasaan	Sealaska	NV	Organized Village of Kasaan	−132.4017	55.5419
99	Kasigluk	Calista	NV	Kasigluk Traditional Elders Council	−162.5139	60.8873
100	Kenai	Cook Inlet	UC	Kenaitze Indian Tribe	−151.2614	60.5521
101	Ketchikan	Sealaska	*n/a*	Ketchikan Indian Corporation	−131.6445	55.3421
102	Kiana	NANA	NV	Native Village of Kiana	−160.4309	66.9717
103	King Cove	Aleut	NV	Agdaagux Tribe of King Cove	−162.3029	55.0629
104	King Salmon	Bristol Bay	*n/a*	King Salmon Tribe	−156.7312	58.7090
105	Kipnuk	Calista	NV	Native Village of Kipnuk	−164.0376	59.9343
106	Kivalina	NANA	NV	Native Village of Kivalina	−164.5386	67.7295
107	Klawock	Sealaska	NV	Klawock Cooperative Association	−133.0948	55.5526
108	Kluti Kaah	Ahtna	NV	Native Village of Kluti Kaah	−145.3297	61.9770
109	Knik	Cook Inlet	NV	Knik Tribe	−149.6822	61.4947
110	Knugank	Bristol Bay	NG	*n/a*	−158.7991	58.4225
111	Kobuk	NANA	NV	Native Village of Kobuk	−156.8888	66.9252
112	Kodiak	Koniag	UC	Sun'aq Tribe of Kodiak	−152.3885	57.8009
113	Kokhanok	Bristol Bay	NV	Kokhanok Village	−154.7682	59.4374
114	Kongiganak	Calista	NV	Native Village of Kongiganak	−162.8951	59.9533
115	Kotlik	Calista	NV	Village of Kotlik	−163.5500	63.0325
116	Kotzebue	NANA	NV	Native Village of Kotzebue	−162.5874	66.8988
117	Koyuk	Bering Straits	NV	Native Village of Koyuk	−161.1628	64.9312
118	Koyukuk	Doyon	NV	Koyukuk Native Village	−157.7031	64.8818
119	Kwethluk	Calista	NV	Organized Village of Kwethluk	−161.4381	60.8101
120	Kwigillingok	Calista	NV	Native Village of Kwigillingok	−163.1647	59.8694
121	Kwinhagak	Calista	NV	Native Village of Kwinhagak	−161.9055	59.7525
122	Lake Minchumina	Doyon	NG	*n/a*	−152.3122	63.8830
123	Larsen Bay	Koniag	NV	Native Village of Larsen Bay	−153.9874	57.5351
124	Lesnoi	Koniag	NV	Lesnoi Village	−152.3351	57.7779
125	Levelock	Bristol Bay	NV	Levelock Village	−156.8613	59.1117
126	Lime Village	Calista	NV	Lime Village	−155.4378	61.3540
127	Lower Kalskag	Calista	NV	Village of Lower Kalskag	−160.3642	61.5125
128	Manley Hot Springs	Doyon	NV	Manley Hot Springs Village	−150.6107	65.0088
129	Manokotak	Bristol Bay	NV	Manokotak Village	−158.9981	58.9724
130	Marshall	Calista	NV	Native Village of Marshall	−162.0878	61.8794
131	Mary's Igloo	Bering Straits	NV	Native Village of Mary's Igloo	−165.0678	65.1489
132	McGrath	Doyon	NV	McGrath Native Village	−155.5759	62.9488
133	Mekoryuk	Calista	NV	Native Village of Mekoryuk	−166.1943	60.3892
134	Mentasta	Ahtna	NV	Mentasta Traditional Council	−143.7700	62.9330
135	Minto	Doyon	NV	Native Village of Minto	−149.3497	65.1504
136	Montana Creek	Cook Inlet	NG	*n/a*	−150.0650	62.0686
137	Nagamut	Calista	NG	*n/a*	−157.6744	61.0194
138	Naknek	Bristol Bay	NV	Naknek Native Village	−156.9869	58.7330
139	Nanwalek	Chugach	NV	Native Village of Nanwalek	−151.9119	59.3521
140	Napaimute	Calista	NV	Native Village of Napaimute	−158.6739	61.5414

TABLE 2—ELIGIBLE ANVS—Continued

	ANV name	ANRC	ANCSA type [7]	BIA recognized name [8]	Longitude	Latitude
141	Napakiak	Calista	NV	Native Village of Napakiak	−161.9790	60.6906
142	Napaskiak	Calista	NV	Native Village of Napaskiak	−161.7634	60.7060
143	Nelson Lagoon	Aleut	NV	Native Village of Nelson Lagoon	−161.2070	56.0006
144	Nenana	Doyon	NV	Nenana Native Association	−149.0875	64.5610
145	New Koliganek	Bristol Bay	NV	New Koliganek Village Council	−157.2844	59.7286
146	New Stuyahok	Bristol Bay	NV	New Stuyahok Village	−157.3208	59.4518
147	Newhalen	Bristol Bay	NV	Newhalen Village	−154.8924	59.7238
148	Newtok	Calista	NV	Newtok Village	−164.6307	60.9377
149	Nightmute	Calista	NV	Native Village of Nightmute	−164.7216	60.4788
150	Nikolai	Doyon	NV	Nikolai Village	−154.3814	63.0128
151	Nikolski	Aleut	NV	Native Village of Nikolski	−168.8615	52.9401
152	Ninilchik	Cook Inlet	NV	Ninilchik Village	−151.6936	60.0300
153	Noatak	NANA	NV	Native Village of Noatak	−162.9676	67.5716
154	Nome	Bering Straits	NV	Nome Eskimo Community	−165.3940	64.4999
155	Nondalton	Bristol Bay	NV	Nondalton Village	−154.8564	59.9634
156	Noorvik	NANA	NV	Noorvik Native Community	−161.0440	66.8345
157	Northway	Doyon	NV	Northway Village	−141.9517	62.9822
158	Nuiqsut	Arctic Slope	NV	Native Village of Nuiqsut	−151.0000	70.2166
159	Nulato	Doyon	NV	Nulato Village	−158.1066	64.7246
160	Nunakauyarmiut	Calista	NV	Nunakauyarmiut Tribe	−165.1037	60.5338
161	Nunam Iqua	Calista	NV	Native Village of Nunam Iqua	−164.8525	62.5299
162	Nunapitchuk	Calista	NV	Native Village of Nunapitchuk	−162.4522	60.8968
163	Ohogamiut	Calista	NV	Village of Ohogamiut	−161.8648	61.5704
164	Old Harbor	Koniag	NV	Village of Old Harbor	−153.3031	57.2104
165	Orutsararmuit	Calista	NV	Orutsararmuit Native Village	−161.7730	60.7968
166	Oscarville	Calista	NV	Oscarville Traditional Village	−161.7758	60.7236
167	Ouzinkie	Koniag	NV	Native Village of Ouzinkie	−152.5002	57.9237
168	Paimiut	Calista	NV	Native Village of Paimiut	−165.8201	61.7030
169	Pauloff Harbor	Aleut	NV	Pauloff Harbor Village	−162.7071	54.4577
170	Pedro Bay	Bristol Bay	NV	Pedro Bay Village	−154.1484	59.7768
171	Perryville	Bristol Bay	NV	Native Village of Perryville	−159.1633	55.9140
172	Petersburg	Sealaska	*n/a*	Petersburg Indian Association	−132.9512	56.8113
173	Pilot Point	Bristol Bay	NV	Native Village of Pilot Point	−157.5753	57.5545
174	Pilot Station	Calista	NV	Pilot Station Traditional Village	−162.8825	61.9375
175	Pitkas Point	Calista	NV	Native Village of Pitkas Point	−163.2826	62.0345
176	Platinum	Calista	NV	Platinum Traditional Village	−161.8237	59.0095
177	Point Hope	Arctic Slope	NV	Native Village of Point Hope	−166.7693	68.3486
178	Point Lay	Arctic Slope	NV	Native Village of Point Lay	−163.0082	69.7427
179	Point Possession	Cook Inlet	NG	*n/a*	−150.4110	61.0308
180	Port Alsworth	Cook Inlet [11]	NG	*n/a*	−154.3223	60.2016
181	Port Graham	Chugach	NV	Native Village of Port Graham	−151.8353	59.3481
182	Port Heiden	Bristol Bay	NV	Native Village of Port Heiden	−158.6250	56.9326
183	Port Lions	Koniag	NV	Native Village of Port Lions	−152.8894	57.8659
184	Portage Creek [9]	Bristol Bay	NV	Portage Creek Village	−157.7174	58.9073
185	Rampart	Doyon	NV	Rampart Village	−150.1453	65.5094
186	Red Devil	Calista	NV	Village of Red Devil	−157.3387	61.7834
187	Ruby	Doyon	NV	Native Village of Ruby	−155.4729	64.7371
188	Saint George	Aleut	NV	Pribilof Islands Aleut Communities of St. Paul and St. George Islands (Saint George Island).	−169.5519	56.6044
189	Saint Michael	Bering Straits	NV	Native Village of Saint Michael	−162.0384	63.4784
190	Saint Paul	Aleut	NV	Pribilof Islands Aleut Communities of St. Paul and St. George Islands (Saint Paul Island).	−170.2727	57.1274
191	Salamatof	Cook Inlet	NV	Village of Salamatoff	−151.3194	60.6154
192	Sand Point	Aleut	NV	Qagun Tayagungin Tribe of Sand Point Village.	−160.4905	55.3458
193	Savoonga	Bering Straits	NV	Native Village of Savoonga	−170.4640	63.6959
194	Saxman	Sealaska	NV	Organized Village of Saxman	−131.6003	55.3221
195	Scammon Bay	Calista	NV	Native Village of Scammon Bay	−165.5818	61.8417
196	Selawik	NANA	NV	Native Village of Selawik	−160.0162	66.5984
197	Seldovia	Cook Inlet	NV	Seldovia Village Tribe	−151.7123	59.4390
198	Shageluk	Doyon	NV	Shageluk Native Village	−159.5227	62.6556
199	Shaktoolik	Bering Straits	NV	Native Village of Shaktoolik	−161.1845	64.3495
200	Shishmaref	Bering Straits	NV	Native Village of Shishmaref	−166.0666	66.2564
201	Shungnak	NANA	NV	Native Village of Shungnak	−157.1426	66.8873
202	Sitka	Sealaska	UC	Sitka Tribe of Alaska	−135.3426	57.0543
203	Skagway	Sealaska	*n/a*	Skagway Village	−135.3119	59.4583
204	Sleetmute	Calista	NV	Village of Sleetmute	−157.1689	61.6962
205	Solomon	Bering Straits	NV	Village of Solomon	−164.4488	64.5597
206	South Naknek	Bristol Bay	NV	South Naknek Village	−157.0026	58.7123

TABLE 2—ELIGIBLE ANVS—Continued

	ANV name	ANRC	ANCSA type [7]	BIA recognized name [8]	Longitude	Latitude
207	Stebbins	Bering Straits	NV	Stebbins Community Association	−162.2820	63.5208
208	Stevens Village	Doyon	NV	Native Village of Stevens	−149.1039	66.0055
209	Stony River	Calista	NV	Village of Stony River	−156.5898	61.7891
210	Takotna	Doyon	NV	Takotna Village	−156.0870	62.9723
211	Tanacross	Doyon	NV	Native Village of Tanacross	−143.3565	63.3762
212	Tanana	Doyon	NV	Native Village of Tanana	−152.0763	65.1716
213	Tatitlek	Chugach	NV	Native Village of Tatitlek	−146.6779	60.8664
214	Tazlina	Ahtna	NV	Native Village of Tazlina	−145.4284	62.0589
215	Telida	Doyon	NV	Telida Village	−153.2785	63.3840
216	Teller	Bering Straits	NV	Native Village of Teller	−166.3628	65.2613
217	Tetlin	Doyon	NV	Native Village of Tetlin	−142.5239	63.1351
218	Togiak	Bristol Bay	NV	Traditional Village of Togiak	−160.3764	59.0619
219	Tuluksak	Calista	NV	Tuluksak Native Community	−160.9630	61.1020
220	Tuntutuliak	Calista	NV	Native Village of Tuntutuliak	−162.6696	60.3424
221	Tununak	Calista	NV	Native Village of Tununak	−165.2588	60.5827
222	Twin Hills	Bristol Bay	NV	Twin Hills Village	−160.2836	59.0774
223	Tyonek	Cook Inlet	NV	Native Village of Tyonek	−151.1494	61.0716
224	Uganik	Koniag	NV	*n/a*	−153.4046	57.7565
225	Ugashik	Bristol Bay	NV	Ugashik Village	−157.3887	57.5027
226	Ukivok	Bering Straits	NV	King Island Native Community	−168.0718	64.9643
227	Umkumiute	Calista	NV	Umkumiute Native Village	−165.1989	60.4997
228	Unalakleet	Bering Straits	NV	Native Village of Unalakleet	−160.7914	63.8777
229	Unalaska	Aleut	NV	Qawalangin Tribe of Unalaska	−166.5337	53.8746
230	Unga	Aleut	NV	Native Village of Unga	−160.5050	55.1841
231	Uyak	Koniag	NV	*n/a*	−154.0078	57.6336
232	Venetie	Doyon	NV	Native Village of Venetie Tribal Government (Village of Venetie).	−146.4149	67.0178
233	Wainwright	Arctic Slope	NV	Village of Wainwright	−160.0202	70.6448
234	Wales	Bering Straits	NV	Native Village of Wales	−168.0960	65.6082
235	White Mountain	Bering Straits	NV	Native Village of White Mountain	−163.4042	64.6805
236	Wrangell	Sealaska	*n/a*	Wrangell Cooperative Association	−132.3791	56.4752
237	Yakutat	Sealaska	NV	Yakutat Tlingit Tribe	−139.7435	59.5543

[FR Doc. E8–26234 Filed 11–3–08; 8:45 am]

BILLING CODE 3510–07–P

[7] In this column, ''NV'' means a ''Native village'', ''NG'' means a ''Native group'', ''UC'' means an ''Urban Corporation'', and ''*n/a*'' means that the ANV is not recognized pursuant to the ANCSA.

[8] The BIA recognized name for each ANV is taken from the **Federal Register** notice published Friday, April 4, 2008 (73 FR 18553). ''*n/a*'' in this column means that the ANV is not recognized by the BIA and is not listed in the BIA's **Federal Register** notice.

[9] The ANVs Curyung, Ekuk, and Portage Creek are all represented by the same ANVC, Choggiung, Limited. Choggiung, Limited also represents the ANCSA 14(c) sites of Igushik and Lewis Point that should be considered when these three ANVs are delineating their ANVSAs.

[10] The Kanatak ANV is currently located within the boundary of the Koniag ANRC in the Census Bureau's records, but they receive services from the Bristol Bay Native Association. If the ANRC boundaries are correct in the Census Bureau's records, the ANV is eligible to consider delineating an ANVSA within the boundary of the Koniag ANRC for the 2010 Census.

[11] The Port Alsworth ANV is currently located within the boundary of the Cook Inlet ANRC in the Census Bureau's records, but they receive services from the Bristol Bay Native Association. If the ANRC boundaries are correct in the Census Bureau's records, the ANV is eligible to consider delineating an ANVSA within the boundary of the Cook Inlet ANRC for the 2010 Census.

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 61–2008]

Foreign–Trade Zone 119 – Minneapolis, MN, Application for Expansion/Reorganization and Expansion of Manufacturing Authority, Subzone 119B – Uponor, Inc., (Polyethylene Tubing)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Greater Metropolitan Area Foreign Trade Zone Commission (Minneapolis, Minnesota), grantee of FTZ 119, on behalf of Uponor, Inc. (formerly, the Wirsbo Company), operator of Subzone 119B at the Uponor polyethylene tubing manufacturing and distribution facilities in Apple Valley and Burnsville, Minnesota, requesting authority to expand and reorganize the subzone and to expand the scope of FTZ manufacturing authority to include new manufacturing capacity. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and section 400.28(a)(2) of the Board's regulations (15 CFR Part 400). It was formally filed on October 28, 2008.

Subzone 119B was approved by the Board in 1993 with authority granted for the manufacture of polyethylene tubing at Uponor's manufacturing plant (Site 1)(135,000 sq.ft./6 acres) in Apple Valley, Minnesota (Board Order 640, 58 FR 30143, 5–26–93). Activity at the facility (427 employees) includes product development, manufacturing, testing, warehousing, and distribution of cross–linked polyethylene (PEX) tubing for residential and commercial indoor/outdoor hydronic radiant heating systems. In 2005, the Board authorized an expansion of the subzone to include an additional site in Burnsville, Minnesota (Site 2)(Board Order 1398, 70 FR 36116, 6–22–2005).

The applicant is now requesting authority to reorganize and expand the subzone to include a new warehouse facility (285,000 sq.ft./18.2 acres), currently under construction, located at 21900 Dodd Boulevard in Lakeville (Dakota County), Minnesota, that will replace existing Site 2 in Burnsville. Under the current expansion plan, the boundaries of Site 1 (manufacturing plant) will be expanded to include 13 additional acres and 196,000 square feet of production area that would double the facility's capacity. The applicant

also requests that the scope of FTZ manufacturing authority be expanded to include the additional production capacity (new total would be 610 million feet per year). Uponor uses foreign–origin polyethylene (HDPE) resin (HTSUS 3901.10, 6.5%) to manufacture the PEX tubing, which represents about 21 percent of the finished tubing's value. The company distributes certain foreign parts and materials used to construct the radiant heating systems, including thermostats, fittings, aluminum pipe, polyethylene pipe, polymers and resins, plastic foil, insulation, packaging materials, polyester tape, fasteners, mounting tracks, valves, transformers, fuses, relays, junction boxes, flow meters, and regulators.

Expanded FTZ procedures could continue to exempt Uponor from customs duty payments on the foreign–origin resin used in production for export (about 1% of shipments). On its domestic shipments, the company would be able to elect the duty rate that applies to finished PEX tubing (3.1%) for the foreign resin used in the manufacturing process. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is January 5, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period to January 20, 2009.

A copy of the application will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, Suite 210–C, 100 North 6th Street, Minneapolis, MN 55403; and, at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above. For further information, contact Pierre Duy, examiner, at: Pierre__Duy@ita.doc.gov, or (202) 482–1378.

Dated: October 28, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–26284 Filed 11–3–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 58–2008]

Foreign–Trade Zone 163 – Ponce, Puerto Rico, Application for Expansion

Correction

The **Federal Register** notice published on October 17, 2008 (73 FR 61780) describing the application by CODEZOL, C.D., grantee of FTZ 163, requesting authority to expand the zone to include an additional site in Ponce is corrected as follows:

In paragraph 4, line 3, the correct address for proposed Site 10 is Road 506 and Road 14, Coto Laurel Ward, Ponce, Puerto Rico.

Dated: October 28, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–26285 Filed 11–3–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 62–2008]

Foreign–Trade Zone 57 – Charlotte, North Carolina, Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the North Carolina Department of Commerce, grantee of FTZ 57, requesting authority to expand its zone in the Charlotte, North Carolina, area, adjacent to the Charlotte CBP port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on October 28, 2008.

FTZ 57 was approved on April 28, 1980 (Board Order 156, 45 FR 30466, 05/08/80). The zone was expanded on September 23, 1982 (Board Order 199, 47 FR 43103, 09/30/82), on July 29, 2002 (Board Order 1240, 67 FR 51535, 08/08/02), and on February 9, 2005 (Board Order 1369, 70 FR 9613, 02/28/05).

The general–purpose zone currently consists of the following sites in the Charlotte, North Carolina, area: *Site 1* (100,000 sq. ft.)--at 11425 Granite Street, Mecklenburg County; *Site 1A* (23 acres)--located at 1411 and 1701 Continental Boulevard, Mecklenburg County; *Site 2* (137,368 sq. ft.)--located at 14620 Carowinds Boulevard, Mecklenburg County; *Site 3* (26 acres)--located at International Airport Center, 3401 International Airport Drive, Charlotte; *Site 4* (542 acres)--proposed industrial park (Great Meadows), located between US Highway 70 and Interstate 40, Burke County; *Site 5* (78 acres, 2 parcels): *Parcel 1* (40 acres)--Lenoir Business Park and *Parcel 2* (38 acres)--J&M Industrial Park, located on NC Highway 18 in Lenoir (Caldwell County); *Site 6* (160 acres)--Alexander County Rail Park, located on NC Highway 90, one mile east of Taylorsville, Alexander County; *Site 7* (619 acres, 2 parcels) *Parcel 1* (576 acres)--Hickory Regional Airport/Lakepark, located on Clement Boulevard, City of Hickory (Catawba/Burke Counties) and *Parcel 2* (43 acres)--Consolidation Services distribution facility, 543 12th Street Drive, NW in Hickory, Catawba County; *Site 8* (1 acre)--Conwareco Logistics, Inc., warehouse facility, 1070 Main Avenue NW, Hickory, Catawba County; *Site 9* (4 acres)--Diamante Group LLC warehouse/industrial facility at 406 20th Street SE, Hickory, Catawba County; *Site 10* (330 acres)--within the 700–acre Conover West Business Park in Hickory, Catawba County; *Site 11* (311 acres, 11 parcels)--City of Newton industrial park, Newton, Catawba County; *Site 12* (85 acres)-- Lakemont West Business Park located on Carowinds Boulevard, Charlotte; *Site 13* (12 acres)-- West Logistics facility located at 2301 Nevada Boulevard, Charlotte; *Site 14* (69 acres)--West Pointe Business Park located on West Pointe Drive, Charlotte; and, *Site 15* (70 acres)--Ridge Creek Distribution Center, located at the intersection of General Drive and Ridge Creek Drive, Charlotte (includes 14 acres located at 10230 Ridge Creek Drive).

The applicant is now requesting authority to expand the general–purpose zone to include an additional site in the Charlotte, North Carolina, area: *Proposed Site 16* (351 acres)--Monroe Corporate Center, Airport Road and Goldmine Road, Monroe. The site is owned by multiple owners. The site will provide public warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to

investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is January 5, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15–day period (to January 20, 2009).

A copy of the application and accompanying exhibits will be available for public inspection at the U.S. Department of Commerce Export Assistance Center, 521 E. Morehead St., Suite 435, Charlotte, North Carolina 28202; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

For further information, contact Kathleen Boyce at Kathleen__Boyce@ita.doc.gov or (202) 482–1346.

Dated: Dated: October 29, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–26286 Filed 11–3–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 4, 2008.

SUMMARY: The Department of Commerce (the Department) has determined that a request for a new shipper review (NSR) of the antidumping duty order on glycine from the People's Republic of China (PRC), received on September 24, 2008, meets the statutory and regulatory requirements for initiation. The period of review (POR) of this new shipper review is March 1, 2008, through August 31, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0193 and (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on glycine from the PRC was published on March 29, 1995.[1] *See Antidumping Duty Order: Glycine From the People's Republic of China,* 60 FR 16116 (March 29, 1995). On September 24, 2008, we received a timely request for a new shipper review from Jiangxi Ansun Chemical Technology Co., Ltd. (Jiangxi Ansun) in accordance with 19 CFR 351.214(c). Jiangxi Ansun made its request during the semiannual anniversary month. *See* 19 CFR 351.214(d)(2). Jiangxi Ansun certified that it produced and sold the glycine it exported to an unaffiliated U.S. purchaser, which is the basis for its request for a NSR.

The Department conducted queries of the U.S. Customs and Border Protection (CBP) database in order to confirm that Jiangxi Ansun's reported shipment of subject merchandise entered the United States for consumption and that liquidation of such shipment had been properly suspended for antidumping duties. *See* Memorandum to the File from Stephen Bailey, Customs and Border Protection Data for Entries of Glycine from the People's Republic of China, dated October 28, 2008. In reviewing the CBP data, we identified the Jiangxi Ansun's August 2008 sale to the United States and matched it with the documentation submitted by Jiangxi Ansun. We also solicited further information from CBP on U.S. entries of glycine produced by Jiangxi Ansun.

Initiation of New Shipper Review

Pursuant to section 751(a)(2)(B)(i)(I) of the Act, and 19 CFR 351.214(b)(2)(i), Jiangxi Ansun certified that it did not export glycine to the United States during the original POI. Pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Jiangxi Ansun certified that, since the initiation of the investigation, it has never been affiliated with any exporter or producer who exported glycine to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Jiangxi Ansun also certified that its export activities were not controlled by the central government of the PRC.

In addition to the certifications described above, Jiangxi Ansun submitted documentation establishing the following: (1) The date on which it first shipped glycine for export to the United States and the date on which the glycine was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.

On September 29, 2008, the Department received comments from GEO Specialty Chemicals, Inc. (GEO), a domestic glycine producer and the successor company to one of the original petitioners, Hampshire Chemical Corporation, regarding Jiangxi Ansun's NSR request. In its comments, GEO argues that Jiangxi Ansun had two shipments of glycine that entered the United States in February 2008, prior to the single shipment of glycine that is the basis for this NSR request. GEO also notes that Jiangxi Ansun, by its own admission, is the successor company to Jiangxi Electrochemical Co., Ltd.

On October 3, 2008, Jiangxi Ansun submitted comments in rebuttal to GEO's September 29, 2008, comments. Jiangxi Ansun contends that since the February 2008 transactions occurred in Canada, they are not United States transactions and do not constitute Jiangxi Ansun's first shipment to the United States. It also maintains that neither the Tariff Act of 1930, as amended (the Act), nor the Department's regulations contain a requirement that the shipment made by the new exporter, upon which the NSR request is based, be the first shipment made by that exporter to the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we find that the request submitted by Jiangxi Ansun meets the threshold requirements for initiation of a NSR of its shipment of glycine from the PRC produced and exported by Jiangxi Ansun. *See* Memorandum to the File through Richard O. Weible, Director, AD/CVD Operations, Office 7, from Stephen Bailey, entitled ''Initiation Checklist of AD New Shipper Review: Glycine from the People's Republic of China,'' dated concurrently with this notice. Therefore, we are initiating a NSR for the shipment of glycine produced and exported by Jiangxi Ansun to the United States. With respect to the issues raised by the parties, we intend to evaluate them further in the context of this NSR. We intend to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 270

[1] Therefore, a request for a new shipper review based on the semiannual anniversary month, in this case September, was due to the Department by the final day of September. *See* 19 CFR 351.214(d)(1) and (2).

days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

Period of Review

The POR is March 1, 2008, through August 31, 2008. *See* 19 CFR 351.214(g)(1)(i)(B).

Separate Rate

In cases involving non-market economies, the Department requires that a company seeking to establish eligibility for an antidumping duty rate separate from the PRC-wide entity rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to Jiangxi Ansun, including a separate-rate section. The review will proceed if the responses provide sufficient indication that Jiangxi Ansun is not subject to either *de jure* or *de facto* government control with respect to its exports of glycine. However, if Jiangxi Ansun does not demonstrate its eligibility for a separate rate, the company will be deemed not separate from other companies that exported during the POI, and the NSR for Jiangxi Ansun will be rescinded.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews during the period April 1, 2006, through June 30, 2009. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of glycine produced and exported by Jiangxi Ansun must continue to post a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current PRC-wide rate of 155.89 percent.

Interested parties requiring access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: October 28, 2008.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–26283 Filed 11–3–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film Sheet and Strip from India: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 4, 2008.

FOR FURTHER INFORMATION CONTACT: Martha Douthit, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Telephone: (202) 482–5050.

Background

On July 1, 2002, the Department of Commerce (the Department), published the antidumping duty order on polyethylene terephthalate film sheet and strip (PET Film) from India. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 67 FR 44175 (July 1, 2002).

On July 11, 2008, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on PET Film from India. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 39948 (July 11, 2008). On July 15, 2008, Jindal Poly Films Limited (Jindal), an Indian producer and exporter to the United States of PET Film, timely requested that the Department conduct an administrative review of Jindal. Jindal was the only party to request this administrative review. On August 26, 2008, the Department published a notice of initiation of the antidumping duty administrative review of PET Film from India for the period of review, July 1, 2007, through June 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008). On September 25, 2008, Jindal withdrew its request for an administrative review.

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Jindal withdrew its request before the 90–day deadline and no other party requested an administrative review of the antidumping duty order on PET Film from India. Therefore, in response to Jindal's withdrawal of their request for an administrative review pursuant to 19 CFR 351.213(d)(1), the Department hereby rescinds the administrative review of the antidumping duty order on PET Film from India.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the company for which this review is rescinded, the antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawn from warehouse, for consumption, in accordance with 19 CFR 351.212 (c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this rescission of administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protection orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 27, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–26287 Filed 11–3–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Foothill/Eastern Transportation Corridor Agency and Its Board of Directors

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides notice that the decision record has been closed for an administrative appeal filed with the Department of Commerce by Foothill/Eastern Transportation Corridor Agency and its Board of Directors (collectively, TCA).

DATES: The decision record for TCA's administrative appeal was closed on October 24, 2008.

ADDRESSES: Materials from the appeal record will be available at the NOAA Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 and on the following Web site: *http://www.ogc.doc.gov/czma.htm.*

FOR FURTHER INFORMATION CONTACT: Thomas Street, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, *gcos.inquiries@noaa.gov* or Stephanie Campbell, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, *gcos.inquiries@noaa.gov.*

SUPPLEMENTARY INFORMATION: On February 15, 2008, TCA filed notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR part 930, Subpart H. TCA appealed an objection to its construction of an extension to California State Route 241 in northern San Diego and southern Orange Counties, California.

Decisions for CZMA administrative appeals are based on information contained in a decision record. Under the CZMA, the decision record must close no later than 220 days after notice of the appeal was first published in the **Federal Register**. *See* 16 U.S.C. 1465. Consistent with this deadline, the TCA appeal decision record was closed on October 24, 2008. No further information, briefs or comments will be considered in deciding this appeal.

Additional information about the TCA appeal and the CZMA appeals process is available from the Department of Commerce CZMA appeals Web site *http://www.ogc.doc.gov/czma.htm.*

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: October 29, 2008.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services.

[FR Doc. E8–26280 Filed 11–3–08; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

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 Eclipse Composites Engineering, LLC, a corporation of Utah, having a place of business at 5715 West Frolic Court, Herriman, UT 84096–1730, an exclusive license in any right, title and interest the United States Air Force has in: U.S. Patent Application No. 12/231,420, filed on August 26, 2008, entitled ''Antenna for Compact Satellite Terminal'' by David J. Legare and David M. Hummel, both as co-inventors.

FOR FURTHER INFORMATION CONTACT: 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. Written objections 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. E8–26232 Filed 11–3–08; 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

ACTION: Meeting notice.

SUMMARY: This Notice is to extend the comment submission period regarding the earlier published version on October 7, 2008 Vol. 73, No. 195 Interface Control Working Group (ICWG) Meeting. The comment period has been extended to November 6, 2008 from October 28, 2008. This notice informs the public that the Global Positioning Systems Wing will be hosting an Interface Control Working Group (ICWG) meeting for document/s IS–GPS–200 (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 and contractor redlines to the documents.

The ICWG is open to the general public. For those who would like to attend and participate in this ICWG meeting, you are requested to register to attend the meeting no later than 4 November 08. Please send the registration to *thomas.davis.ctr@losangeles.af.mil* and provide your name, organization, telephone number, address, and country of citizenship. More information, including Comments Resolution Matrixes (CRMs) and track changed documents, will be posted at: *http://www.losangeles.af.mil/library/factsheets/factsheet.asp?id=9364.*

Please send all CRM comments to Thomas Davis, the deadline for comment submission has been extended to 6 November 2008.

DATES: November 18 2008: IS–GPS–800, from 8 a.m. to 4 p.m., and November 19 2008: IS–GPS–200, IS–GPS–705, from 8 a.m. to 4 p.m.

Location: The Hacienda Hotel, 525 N. Sepulveda Blvd., El Segundo, CA 90245, (310) 615–0015.

FOR FURTHER INFORMATION CONTACT: Thomas Davis, 1–310–416–8440, *thomas.davis.ctr@losangeles.af.mil,* or Captain Neal Roach 1–310–653–3771, *neal.roach@losangeles.af.mil.*

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–26233 Filed 11–3–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

ACTION: Meeting notice.

SUMMARY: Pursuant to 10 U.S.C. 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will meet in the Russell Senate Office Building, Room 236, Washington, DC, on 20 November 2008. The meeting session will begin at 9 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that a portion of this meeting shall be closed to the public. The Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires that one portion of this meeting be closed to the public because it will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act (FACA) and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force Pentagon address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Any oral presentations before the BoV shall be in accordance with 41 CFR 102–3.140(c), section 10(a)(3) of the FACA, and this paragraph. The DFO and BoV Chairperson may, if desired, allot a specific amount of time for members of the public to present their issues for BoV review and discussion. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

FOR FURTHER INFORMATION CONTACT: To attend this BoV meeting, contact Captain Adam Avnet, USAFA Programs Manager, Directorate of Force Development, Deputy Chief of Staff, Manpower and Personnel, AF/A1DOA, 1040 Air Force Pentagon, Washington, DC 20330–1040, (703) 695–4456.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–26237 Filed 11–3–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice Is Given of the Names of Members of a Performance Review Board for the Department of the Air Force

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Air Force.

DATES: *Effective Date:* November 18, 2008.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The board(s) shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the 2008 Performance Review Board for the U.S. Air Force are:

1. Board President—Gen Stephen R. Lorenz, Commander, Air Education and Training Command.

2. Lt Gen Philip M. Breedlove, Commander, 3rd Air Force.

3. Mr. Robert E. Corsi, Jr., Deputy Administrative Assistant to the Secretary of the Air Force.

4. Mr. Timothy A. Beyland, Assistant Deputy Chief of Staff for Manpower and Personnel.

5. Mr. Michael A. Aimone, Assistant Deputy Chief of Staff for Logistics, Installations and Mission Support.

6. Mr. Kenneth K. Dumm, Director of Intelligence, Surveillance and Reconnaissance Plans and Resources, Deputy Chief of Staff for Intelligence, Surveillance and Reconnaissance.

7. Ms. Tawanda R. Rooney, Director, Intelligence Systems Support Office.

8. Ms. Kathleen I. Ferguson, Deputy Assistant Secretary of the Air Force for Installations, Office of the Assistant Secretary of the Air Force for Installations, Environment and Logistics.

9. Mr. John T. Manclark, Director of Test and Evaluation.

10. Mr. Michael L. Rhodes, Director, Acting Director of Administration and Management (OSD).

11. Mr. Charlie E. Williams, Jr., Director, Defense Contract Management Agency.

12. Mr. Jeffrey S. White, Director, Human Capital Strategy/Deputy to Deputy Under Secretary of the Army.

Additionally, all career status Air Force Tier 3 SES members not included in the above list are eligible to serve on the 2008 Performance Review Board and are hereby nominated for inclusion on an ad hoc basis in the event of absence(s).

FOR FURTHER INFORMATION: Please direct any written comments or requests for information to Ms. Pereuna Johnson, Chief, Sustainment Division, Senior Executive Management, AF/DPSS, 1040 Air Force Pentagon, Washington, DC 20330–1040 (PH: 703–695–7677; or via e-mail at *pereuna.johnson@pentagon.af.mil.*

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. E8–26231 Filed 11–3–08; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 5, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 29, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Client Assistance Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 56

Burden Hours: 896.

Abstract: Form RSA–227 is used to meet specific data collection requirements contained in section 112 of the Rehabilitation Act of 1973, as amended, and its implementing Federal Regulations at 34 CFR part 370. Data from the form have been used to evaluate within individual programs. These data also have been used to indicate trends in the provision of services from year to year. In addition, Form RSA–227 will be used to analyze and evaluate the effectiveness of eligible Client Assistance Program (CAP) administered by designated CAP agencies. These agencies provide services to individuals seeking or receiving services from programs and projects authorized by the Rehabilitation Act of 1973, as amended. Form RSA–227 has enabled RSA to furnish the President and Congress with data on the provision of advocacy services and has helped to establish a sound basis for future funding requests.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3900. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–26267 Filed 11–3–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 5, 2009.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 29, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Student Assistance General Provisions—Subpart K—Cash Management.

Frequency: On occasion.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,075,198

Burden Hours: 976,924

Abstract: These regulations comprise the existing provisions of the Student Assistance General Provisions guidance regarding cash management. Information collection under these regulations relates to cash management requirements and practices for institutions participating in the Title IV, Higher Education Act (HEA) programs. This request is for approval of reporting and recordkeeping requirements contained in the final regulations related to the administrative requirements of the Regulations Governing the Student Assistance General Provisions as revised by the TEACH Grant final regulations. The information collection requirements in these regulations are necessary to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3899. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–26268 Filed 11–3–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Technical Advisory Council

AGENCY: Department of Education, Office of Elementary and Secondary Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice announces an open meeting of the National Technical Advisory Council. Notice of the 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 participate.

DATE AND TIME: Thursday, November 20, 2008, 9:00 a.m.–4:30 p.m.

ADDRESSES: Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Patrick Rooney, Designated Federal Officer, National Technical Advisory Council, 400 Maryland Ave., SW., Room 3W246, Washington, DC 20202; telephone: (202) 401–0113; fax: (202) 260–7764; e-mail: *Patrick.Rooney@ed.gov.*

SUPPLEMENTARY INFORMATION: The National Technical Advisory Council is authorized by Secretary Margaret Spellings. Established within the Department of Education (Department) to advise the Secretary of Education and the Assistant Secretary of Elementary and Secondary Education (Assistant Secretary) on the design and implementation of standards, assessments, and accountability systems consistent with Federal statutes and regulations.

At the November 20, 2008, meeting, the Committee will discuss high school end-of-course assessments, components of State accountability plans included in the 2008 Title I regulations, including minimum group sizes for proficiency calculations, and alternate assessments for students with disabilities.

Individuals who will need accommodations for a disability in order to attend the meeting should notify Courtney Merritt at (202) 401–0113 no later than 5 days before the scheduled date of the meeting. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. There will not be an opportunity for public comment during this meeting; however, members of the public may submit written comments to Patrick Rooney at *Patrick.Rooney@ed.gov.*

Records are kept of all Committee proceedings and are available for public inspection at 400 Maryland Ave., SW., Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., Eastern Standard Time 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/fedregister/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.*

Kerri L. Briggs,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. E8–26288 Filed 11–3–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, November 20, 2008, 1 p.m. to 5 p.m., and Friday, November 21, 2008, 8:30 a.m. to 5 p.m.

ADDRESSES: Hilton Washington DC North/Gaithersburg; 620 Perry Parkway, Gaithersburg, MD 20877; 301–977–8900.

FOR FURTHER INFORMATION CONTACT: Karen Talamini; Office of Basic Energy Sciences; U. S. Department of Energy; Germantown Building, Independence Avenue, Washington, DC 20585; Telephone: (301) 903–4563.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- News from Office of Science/DOE.
- News from the Office of Basic Energy Sciences.
- Report from the New Era Subcommittee's Photon Workshop.

• Report from the New Era Subcommittee.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Karen Talamini at 301–903–6594 (fax) or *karen.talamini@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on October 29, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–26251 Filed 11–3–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: December 2, 2008 at 12:45 p.m. to 5 p.m., December 3, 2008 at 8 a.m. to 12:30 p.m.

ADDRESSES: DoubleTree Hotel—Directors Room, 1515 Rhode Island Avenue, NW., Washington, DC 20005–5595.

FOR FURTHER INFORMATION CONTACT: Valri Lightner, Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–0937 or Carolyn Clark at (202) 586–8077; E-mail: *cclark@bcs-hq.com*.

SUPPLEMENTARY INFORMATION: *Purpose of Meeting:* To provide advice and guidance that promote research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

• Update on USDA Biofuels Activities.

• Update on DOE Biofuels Activities.

• Meeting with the Biomass R&D Board to discuss FY2008 Recommendations.

• Subcommittee/Interagency Working Group Report-Outs.

• Presentation on Office of Basic Energy Science Biofuels Activities and Budget.

• Presentation on National Science Foundation Biofuels Activities and Budget.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Valri Lightner at 202–586–0937; E-mail: *valri.lightner@ee.doe.gov* or Carolyn Clark at (202) 586–8077; E-mail: *cclark@bcs-hq.com*. You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at *http://www.brdisolutions.com/publications/default.aspx#meetings*.

Issued at Washington, DC on October 29, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–26249 Filed 11–3–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–417–004]

Texas Gas Transmission, LLC; Notice of Amendment to Certificate

October 28, 2008.

Take notice that on October 23, 2008, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an application requesting an amendment to the certificate of public convenience and necessity issued on May 2, 2008, in Docket No. CP07–417–000 pursuant to section 7(c) of the Natural Gas Act and Subpart A of Part 157 of the Commission's regulations. Specifically, Texas Gas requests authorization to: (i) Modify its horizontal directional drill and installation of the pipeline at the Little Red River in White County, Arkansas and permit it to construct, own, and operate an 18-inch diameter pipeline instead of a 36-inch diameter pipeline as originally approved, and (ii) provide service utilizing the reduced diameter facilities for an interim period, all as more fully set forth in the application which is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this Application should be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, 3800 Frederica Street, Owensboro, Kentucky 42301 or by telephone at 270–688–6825 or fax at 270–688–5871.

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 below listed 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.

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.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: November 6, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26195 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–11–000]

Northern Natural Gas Company; Notice of Application

October 28, 2008.

Take notice that on October 17, 2008, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP09–11–000, an application pursuant to section 7 of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations thereunder, requesting approval to abandon, by removal and in-place, certain pipeline facilities, and the issuance of a certificate of public convenience and necessity to construct, replace and operate certain compression, pipeline and TBS facilities located in various counties in Minnesota, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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) 420–5589.

Specifically, Northern asserts that the installation of the proposed facilities will allow Northern to serve approximately 135,042 Dth/day of incremental peak day entitlement by winter 2010, increasing to 136,042 Dth/day in 2011. Northern also states that the proposal herein is a result of an analysis conducted following an Open Season soliciting interest for firm transportation service for deliveries to Zone EF of Northern's Market Area system for service on or after November 1, 2009. The estimated capital cost for the facilities proposed herein is $120,496,894.

Any questions regarding this application should be directed to Michael T. Loeffler, Senior Director, Certificates and External Affairs for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103 or Donna Martens, Senior Regulatory Analyst, at (402) 398–7138.

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 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 commentors 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 commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors 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 at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically. 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.

Comment Date: November 18, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26189 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8377–028]

Isabella Partners; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 28, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No.:* 8377–028.

c. *Date Filed:* August 12, 2008.

d. *Applicant:* Isabella Partners.

e. *Name of Project:* Isabella Project.

f. *Location:* The project is located on the Kern River in Kern County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Roger Kirk, P.O. Box 1136, Bozeman, MT 59771 (406) 587–5086.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Steven Sachs at (202) 502–8666.

j. *Deadline for filing comments and/or motions:* November 28, 2008.

Please include the project number (P–8377) on any comments or motions filed. All documents (an original and eight copies) must be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Motions to intervene, protests, comments and recommendations may be filed electronically via the Internet in lieu of paper filings, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Isabella Partners propose to install an 850 kW crossflow turbine unit to be located on existing bypass piping and discharging through a new culvert into the main dam outlet channel. The new turbine and related switchgear and controls would be located in a new 25 by 35 foot reinforced concrete structure.

l. *Location of the Application:* A copy of the licensee's filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free at 1–866–208–3372 or e-mail *ferconlinesupport@ferc.gov*, or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address listed in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application (see item (j) above).

o. Any filing must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', ''MOTION TO INTERVENE'', or ''RECOMMENDATIONS'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for

filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26194 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13291–000]

NSC Smelter, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene and Competing Applications

October 28, 2008.

On September 19, 2008, NSC Smelter, LLC filed an application, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Cliffs Energy Pumped Storage Project to be located in Klickitat County, Washington partially on lands owned by the Department of the Army.

The proposed project would consist of: (1) An upper earthen dam with a length of 5,200 feet and height of 260 feet; (2) an upper reservoir with a surface area of 219 acres, a capacity of 14,000 acre-feet, and a maximum pool elevation of 2,436 feet msl; (3) a lower earthen dam with a length of 9,500 feet and a height of 120 feet; (4) a lower reservoir with a surface area of 209 acres, a capacity of 14,000 acre-feet, and a maximum pool elevation of 624 feet msl; (5) an 8,000 foot long, 25 foot diameter concrete penstock; (6) a powerhouse containing 4 pump/turbine units with a total installed capacity of 1,050 MW; (7) a 5 mile long, 500 kV transmission line and; (8) appurtenant facilities. The proposed project would have an annual production of 21 GWh which would be sold to a local utility.

Applicant Contact: Scott Tillman, 3313 West Second St., The Dalles, OR 97058, (541) 298–0819.

FERC Contact: Steven Sachs (202) 502–8666.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice.

Comments, motions to intervene, notices of intent and competing applications may be filed electronically via the internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13291) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26193 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12569–001]

Public Utility District No. 1 of Okanogan County; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

October 29, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 12569–001.

c. *Date filed:* August 22, 2008.

d. *Applicant:* Public Utility District No. 1 of Okanogan County.

e. *Name of Project:* Enloe Hydroelectric Project.

f. *Location:* On the Similkameen River, near the Town of Oroville, Okanogan County, Washington. The project would occupy about 35.47 acres of federal land under the jurisdiction of the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John R. Grubich, General Manager, Public Utility District No. 1 of Okanogan County, P.O. Box 912, Okanogan, WA 98840, (509) 422–8485.

i. *FERC Contact:* Dianne Rodman, 888 First Street, NE., Room 6B–02, Washington, DC 20426, (202) 502–6077, *dianne.rodman@ferc.gov.*

Kim A. Nguyen, 888 First Street, NE., Room 61–01, Washington, DC 20426, (202) 502–6105, *kim.nguyen@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The Enloe Project would consist of: (1) An existing 315-foot-long and 54-foot-high concrete gravity arch dam with an integrated 276-foot-long central overflow spillway with 5-foot-high flashboards; (2) an existing 76.6-acre reservoir (narrow channel of the Similkameen River) with a storage capacity of 775 acre-feet at 1049.3 feet mean sea level; (3) an 190-foot-long intake canal on the east abutment of the dam diverting flows into the penstock intake structure; (4) a 35-foot-long by 30-foot-wide penstock intake structure; (5) two above-ground 8.5-foot-diameter steel penstocks carrying flows from the intake to the powerhouse; (6) a powerhouse containing two vertical Kaplan turbine/generator units with a total installed capacity of 9.0 megawatts; (7) a 180-foot-long tailrace channel that would convey flows from the powerhouse to the Similkameen River, downstream of the Similkameen Falls; (8) a new substation adjacent to the powerhouse; (9) a new 100-foot-long, 13.2-kilovolt primary transmission line from the substation connecting to an existing distribution line; (10) new and upgraded access roads, and (11) appurtenant facilities. The project is estimated to generate an average of 54 gigawatthours annually.

m. A copy of the application is available for review at the Commission

in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26255 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–47–001 and CP05–396–001]

Sabine Pass LNG, L.P.; Notice of Application To Amend

October 29, 2008.

Take notice that on October 21, 2008, Sabine Pass LNG, L.P. (Sabine Pass), 700 Milam, Suite 800, Houston, TX 77002, filed an application in Docket Nos. CP04–47–001 and CP05–396–001, pursuant to Section 3(a) of the Natural Gas Act (NGA), 15 U.S.C. § 717b and Parts 153 and 380 of the regulations of the Federal Energy Regulatory Commission (Commission), (18 CFR Parts 153 and 380), for authorization to modify the operation of its existing liquefied natural gas (LNG) receiving terminal facility located in Cameron Parish, Louisiana for the additional purpose of exporting LNG which is expected to be imported into the United States.

This filing is available for review at the Commission's Washington, DC offices or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' 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 call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding the application should be directed to Patricia Outtrim, Cheniere Energy, Inc., 700 Milam, Suite 800, Houston, Texas 77002, (713) 265–0212 or Lisa M. Tonery, Fulbright & Jaworski L.L.P., 666 Fifth Avenue, New York, NY 10103, (212) 318–3009, *ltonery@fulbright.com*.

Sabine Pass now intends to operate its facility to export LNG on a short-term basis by holding cargos of imported LNG in their tanks for re-export as desired by their LNG shippers/customers. Sabine Pass seeks to modify up to four 24-inch check valves on Unloading Arms A and D on the West and East Jetty Platforms in the marine portion of the Sabine Pass facility. No other facility modifications are required.

On August 15, 2008, Sabine Pass's affiliate, Cheniere Marketing, Inc. filed an application with the DOE—Fossil Energy seeking DOE–FE authorization to export LNG from Sabine Pass's Cameron Parish facilities. Specifically, CMI has applied for blanket authorization to allow it to export up to 64 Bcf on a cumulative basis, of LNG that has been imported into the United States from foreign sources, for a two-year period.

There will be no additional ship transits to the Sabine Pass facility as a result of the proposed export operations beyond the number anticipated for full utilization of the Sabine Pass Project as contemplated and authorized in the Letter of Recommendation and Waterway Suitability Report issued for the Sabine Pass Project.

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 proceeding for this project should 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) by the comment date, below. 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 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 and/or associated pipeline. 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-filing'' link. The Commission strongly encourages electronic filings.

Comment Date : November 21, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26253 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI09–1-000]

St. Paul's School; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

October 28, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI09–1–000.

c. *Date Filed:* October 6, 2008.

d. *Applicant:* St. Paul's School.

e. *Name of Project:* St. Paul's School Hydroelectric Project.

f. *Location:* The proposed St. Paul's School Hydroelectric Project will be located on Turkey River, in Merrimack County, near the town of Concord, New Hampshire.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Steven V. Camerino, McLane Law Firm, 11 S. Main Street, Suite 500, Concord, NH 03301: (603) 226–0400; Fax: (603) 230–4448; e-mail: *www.steven.camerino@mclane.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or E-mail address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* November 28, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and/or interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Please include the docket number (DI09–1-000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed St. Paul's School Hydropower Project will include: (1) A 100-foot-long, 9-foot-high concrete gravity dam, a proposed 1,500-foot-long, 3-foot-diameter penstock, and a proposed powerhouse containing a 100-kW turbine generator; (2) a 30-foot-long, 9-foot-high dam with a proposed 12-inch-diameter, 100-foot-long penstock, and a 25–30 kW turbine generator, located in an existing school building adjacent to the dam; and (3) appurtenant facilities. The proposed project, connected to the school's distribution system, will not occupy any tribal or federal lands.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the eLibrary link, select Docket # and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3372, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26190 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 15, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–6–000.
Applicants: MidAmerican Energy Holdings Company, Constellation Energy Group, Inc., Constellation Energy Holdings LLC.
Description: MidAmerican Energy Holdings Company, et al. submits a Joint Application for Authorizations under Section 203, Request for Waiver, and Request for Confidential Treatment and Expedited Treatment.
Filed Date: 10/14/2008.
Accession Number: 20081014–5295.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 04, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–552–011; ER03–984–009.
Applicants: New York Independent System Operator, Inc.
Description: Status Report of the New York Independent System Operator, Inc.
Filed Date: 10/15/2008.
Accession Number: 20081015–5042.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 05, 2008.

Docket Numbers: ER06–1543–011.
Applicants: Brush Cogeneration Partners.
Description: Notification of Non-Material Change in Status of Brush Cogeneration Partners.
Filed Date: 10/14/2008.
Accession Number: 20081014–5296.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 04, 2008.

Docket Numbers: ER08–1252–001.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits an amendment to its 7/11/08 filing of proposed revisions to its tariff.
Filed Date: 10/10/2008.
Accession Number: 20081014–0281.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER08–1256–001.
Applicants: Midwest Independent Transmission System.
Description: Midwest Independent Transmission System Operator, Inc submits an amendment to its 7/11/08 filing of proposed revisions to its tariff.
Filed Date: 10/10/2008.
Accession Number: 20081014–0280.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER08–1509–001.
Applicants: Burgess Capital LLC.
Description: Burgess Capital, LLC submits an amended petition for acceptance of initial tariff (FERC Electric Tariff, Original Volume 1), waivers and blanket authority.
Filed Date: 10/10/2008.
Accession Number: 20081014–0285.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER08–1558–001.
Applicants: Constellation Energy Commodities Group.
Description: Constellation Energy Commodities Group Inc submits a cost-based tariff in compliance with the October 1 Order.
Filed Date: 10/10/2008.
Accession Number: 20081014–0038.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER08–1562–001.
Applicants: TC Ravenswood, LLC.
Description: TC Ravenswood, LLC submits a supplement to the Notice of Succession submitted 9/22/08.
Filed Date: 10/10/2008.
Accession Number: 20081014–0093.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER08–1574–001.
Applicants: ORNI 18, LLC.
Description: ORNI 118, LLC submits an amendment to it application filed on 9/29/08.
Filed Date: 10/10/2008.
Accession Number: 20081014–0092.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER09–63–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, LLC submits a request for limited tariff waiver under ER09–63.
Filed Date: 10/10/2008.
Accession Number: 20081014–0091.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER09–64–000.
Applicants: Dynegy Mohave, LLC.
Description: Dynegy, Inc submits a notice of cancellation under ER09–64.
Filed Date: 10/14/2008.
Accession Number: 20081014–0279.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 04, 2008.

Docket Numbers: ER09–65–000.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley Power Association, Inc submits a supplement to its Rate Schedule filings.
Filed Date: 10/14/2008.
Accession Number: 20081014–0278.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 04, 2008.

Docket Numbers: ER09–66–000.
Applicants: The Midwest Independent Transmission Sys.
Description: Midwest Independent Transmission System Operator, Inc submits a Small Generator Interconnection Agreement.
Filed Date: 10/14/2008.
Accession Number: 20081014–0277.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 04, 2008.

Docket Numbers: ER09–67–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits a Small Generator Interconnection Agreement etc.
Filed Date: 10/14/2008.
Accession Number: 20081014–0276.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 04, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–2–000.
Applicants: Oklahoma Gas and Electric Company.
Description: Oklahoma Gas and Electric Co submits an application for authority to issue short term debt securities in amounts not exceeding in the aggregate $800,000,000.
Filed Date: 10/10/2008.
Accession Number: 20081014–0284.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–25–001.
Applicants: Avista Corporation.
Description: Avista Corporation's Attachment K Compliance Filing. OA08–25–001.
Filed Date: 10/15/2008.
Accession Number: 20081015–5053.
Comment Date: 5 p.m. Eastern Time on Wednesday, November 05, 2008.

Docket Numbers: OA08–113–001; OA08–12–003.
Applicants: California Independent System Operator C.
Description: Compliance Filing with Order 890–B of the California Independent System Operator Corporation.
Filed Date: 10/03/2008.
Accession Number: 20081003–5073.
Comment Date: 5 p.m. Eastern Time on Friday, October 24, 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. E8–26186 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

October 14, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER91–569–044.
Applicants: Entergy Services, Inc.
Description: Entergy Operating Companies submits their report of a non-material change in status pursuant to the requirements of Order 652.
Filed Date: 10/10/2008.
Accession Number: 20081014–0037.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER98–4400–011
Applicants: Pittsfield Generating Company, L.P.
Description: Pittsfield Generating Company, L.P. Filing of Revised Table of Affiliated Generation.
Filed Date: 10/10/2008.
Accession Number: 20081010–5083.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER02–1398–005; ER98–564–011; ER07–1274–002; ER05–111–005; ER08–25–004; ER08–26–004; ER08–685–003.
Applicants: KeySpan-Ravenswood, LLC; TransCanada Power Marketing Ltd; TransCanada Energy Marketing ULC; TransCanada Hydro Northeast Inc.; Ocean State Power; Ocean State Power II; TransCanada Maine Wind Development Inc.
Description: KeySpan-Ravenswood, LLC, *et al.* submits its Supplement to Notification of Non-Material Change in Status.
Filed Date: 10/10/2008.
Accession Number: 20081010–5151.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER02–579–008.
Applicants: TORYS LLP.
Description: Capitol District Energy Center Cogeneration Associates files its Revised Table of Affiliated Generation.
Filed Date: 10/10/2008.
Accession Number: 20081010–5149.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER02–580–009.
Applicants: Pawtucket Power Associates Limited Partn.
Description: Pawtucket Power Associates Limited Partnership, Filing of Revised Table of Affiliated Generation under ER02–580.
Filed Date: 10/10/2008.
Accession Number: 20081010–5092.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER05–968–003.
Applicants: TORYS LLP.
Description: Basin Creek Equity Partners L.L.C., Filing of Revised Table of Affiliated Generation.
Filed Date: 10/10/2008.
Accession Number: 20081010–5152.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER07–1212–002.
Applicants: TORYS LLP.
Description: Forked River Power LLC files its Revised Table of Affiliated Generation.
Filed Date: 10/10/2008.
Accession Number: 20081010–5150.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER09–32–000.
Applicants: Barton Windpower LLC.
Description: Application of Barton Windpower LLC for order accepting initial tariff, waiving regulations, and granting blanket approval etc. under ER09–32.
Filed Date: 10/06/2008.
Accession Number: 20081008–0139.
Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Docket Numbers: ER09–34–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits their compliance filing proposing three rate changes to their Transmission Owner Tariff, FERC Electric Tariff, Sixth Revised Volume 5 under ER09–34.
Filed Date: 10/06/2008.
Accession Number: 20081010–0052.
Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Docket Numbers: ER09–43–000.
Applicants: Tenaska Washington Partners, L.P.
Description: Application for market based rate authorization under Section 205 of the Federal Power Act and requests for waivers and blanket approvals re Tenaska Washington Partners, LP under ER09–43.
Filed Date: 10/10/2008.
Accession Number: 20081014–0035.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER09–47–000.
Applicants: Alberta Power, LLC.
Description: Albert Power, LLC submits a Petition for acceptance of initial tariff, waivers and blanket authority, FERC Electric Tariff, Original Volume 1 under ER09–47.
Filed Date: 10/10/2008.
Accession Number: 20081014–0041.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER09–57–000.
Applicants: Entergy Services, Inc.
Description: Entergy Louisiana LLC *et al.* submits an amended Interconnection and Operating Agreement with Chevron Oronite Company et al under ER05–1065 *et al.*
Filed Date: 10/09/2008.
Accession Number: 20081010–0158.
Comment Date: 5 p.m. Eastern Time on Thursday, October 30, 2008.

Docket Numbers: ER09–58–000.
Applicants: Entergy Services, Inc.
Description: Entergy Louisiana LLC submits an amended Interconnection and Operating Agreement with Shell Chemical LP *et al.* under ER09–58.
Filed Date: 10/09/2008.
Accession Number: 20081010–0159.
Comment Date: 5 p.m. Eastern Time on Thursday, October 30, 2008.

Docket Numbers: ER09–59–000.
Applicants: Midwest Independent Transmission System, American Transmission Company LLC.
Description: Midwest Independent Transmission System Operator, Inc. *et al.* submits revisions to Attachment GG of their Open Access Transmission and Energy Markets Tariff under ER09–59.
Filed Date: 10/10/2008.
Accession Number: 20081014–0040.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER09–60–000.
Applicants: Public Service Company of New Mexico
Description: Public Service Co. of New Mexico submits a Contract TS–08–0084 with Tri-State Generation and Transmission Association, Inc. under ER09–60.
Filed Date: 10/10/2008.
Accession Number: 20081014–0039.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 2008.

Docket Numbers: ER09–61–000.
Applicants: Sierra Pacific Power Company.
Description: Sierra Pacific Power Co. submits Exhibit F of the General Transfer Agreement with Bonneville Power Administration designated as Rate Schedule 27 under ER09–61.
Filed Date: 10/10/2008.
Accession Number: 20081014–0036.
Comment Date: 5 p.m. Eastern Time on Friday, October 31, 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 CFR385.211 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. E8–26187 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–6–000]

Frankfort Electric and Water Plant Board; City of Barbourville, Kentucky; City of Bardstown, Kentucky; City of Bardwell, Kentucky; City of Benham, Kentucky; City of Berea, Kentucky; City of Corbin, Kentucky; City of Falmouth, Kentucky; City of Madisonville, Kentucky; City of Nicholasville, Kentucky; City of Paris, Kentucky; City of Providence, Kentucky, Complainants, v. Kentucky Utilities Co., Respondent; Notice of Complaint

October 28, 2008.

Take notice that on October 27, 2008, Frankfort Electric and Water Plant Board, and cities of Barbourville, Bardstown, Bardwell, Benham, Berea, Corbin, Falmouth, Madisonville, Nicholasville, Paris, and Providence, Kentucky (Complainants) filed, pursuant to section 206 of the Federal Power Act and 18 CFR 385.206 of the Commission regulations, a formal complaint against Kentucky Utilities Company (Respondent) alleging that Respondent's filing in Docket No. ER08–1588 is unreasonable and anticompetitive, and contrary to statute and contract. For purposes of decision and investigation, Complainants seek to consolidate the instant complaint with the proceeding in Docket No. ER08–1588. Complainants also request a refund effective date of October 27, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 November 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26192 Filed 11–03–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Effectiveness of Regulations

October 28, 2008.

In Order No. 714, the Commission revised its filing regulations to, among other things, accommodate electronic filing of tariffs and tariff related materials. While Order No. 714 becomes effective November 3, 2008, the Commission delayed required implementation of the electronic filing requirements until at least April 1, 2010 to provide sufficient time for filers to develop tariff filing software based on the standards adopted in Order No. 714. Tariff filings, therefore, must continue to be made on paper using pre-existing procedures and designation requirements until the Commission has a further opportunity to examine its filing systems and processes in light of the eTariff requirements.

However, many of the changes to the Commission's regulations are not dependent on the electronic filing of tariffs and tariff related materials. In order to permit gas and oil pipelines and electric utilities to take advantage of those revisions not directly related to electronic filing, these revisions will become effective on November 3, 2008.

To assist in identifying the tariff revisions that become effective on November 3, 2008, the following describes the status of specific provisions that would appear to be of the most concern to filers and the public.

A. Electronic Service (§§ 35.2(e), 154.2, 154.208, 341.2)

The regulations permitting electronic service for initial rate filings will take effect November 3, 2008.

B. Joint Tariff Filings

Order No. 714 (P 61–63) permits public utilities filing the identical tariff filings on behalf of two or more companies to designate a single company to file revisions to the tariff, along with the required certificate of concurrence. As of November 3, 2008, public utilities can make joint filings in this manner by designating the filer and making a paper filing including only a single copy of the tariff using the designated filer's tariff designation requirements. The first time filings are made using this procedure, the filings must include a single tariff page for each of the non-designated companies providing the name of the tariff and the utility designated to file the tariff on behalf of the other companies.

C. Revisions Related to Tariff Withdrawals and Amendments (§ 35.17 and 154.205)

These provisions will take effect on November 3, 2008.

D. Miscellaneous Provisions

1. Notices of Cancellation (§ 35.15)

Part 131's ''Notice of Cancellation'' is eliminated as of November 3, 2008. Instead of filing a notice, revised Section 35.15(a) requires that a tariff filing be made to cancel a rate schedule, tariff or service agreement. Until the implementation of electronic filing, the tariff filing must follow the paper filing requirements using pre-existing procedures and designation requirements.

2. Notices of Succession (§ 35.16 and 154.603)

''Notices of Succession'' are eliminated as of November 3, 2008. Instead of filing a notice, revised sections 35.16 and 154.603 provide the new tariff must be refiled within 30 days of the date of succession. Until the implementation of electronic filing, the tariff filing must follow the paper filing requirements using pre-existing procedures and designation requirements.

3. Section 311 Pipeline's Statement of Conditions (§ 284.123)

An NGPA section 311 pipeline's statement of conditions must include a rate summary, as of November 3, 2008.

4. Oil Pipeline Tariff Symbols (§ 341.2(b)(10)(i))

The revised list of tariff identification symbols must be used as of November 3, 2008.

E. Additional Information

For questions relating to other provisions, please use the Commission's Virtual Help Desk (*http://www.ferc.gov/contact-us/compliance-help-desk.asp*) or call Andre Goodson, Office of the General Counsel, (202) 502–8560 or H. Keith Pierce, Office of Energy Market Regulation, (202) 502–8525.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26188 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD09–1–000]

North American Electric Reliability Corporation; Notice of Filing

October 29, 2008.

Take notice that on July 28, 2008, North American Electric Reliability Corporation (NERC), tendered for filing in accordance with section 215(d) of the Federal Power Act and Part 39.5 of the Commission's regulations the instant errata filing to correct the text of two NERC reliability standards, IRO–005–2 and TOP–004–1, there were approved by the NERC Board of Trustees in November 2006 and previously submitted to the Commission.

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 online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 19, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26252 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR08–21–003]

Regency Intrastate Gas LLC; Notice of Compliance Filing

October 29, 2008.

Take notice that on October 23, 2008, Regency Intrastate Gas LLC filed a Statement of Operating Conditions, including a Statement of Rates page, pursuant to section 284.123(e) of the Commission's regulations and to comply with the Commission's letter order issued on September 23, 2008, in Docket Nos. PR08–21–000, PR08–21–001, and PR08–21–002.

Any person desiring to participate in this proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible 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 Wednesday, November 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26256 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL08–88–000; ER08–1178–000]

California Independent System Operator Corporation; Supplemental Notice of Technical Conference

October 28, 2008.

On October 21, 2008, the Commission issued a notice of a staff technical conference in the above-captioned proceedings to further explore the justness and reasonableness of the California Independent System Operator Corporation's (CAISO) Exceptional Dispatch mechanism and proposed mitigation plan. The technical conference will be held on November 6, 2008, from 9 a.m. to 5 p.m., and November 7, 2008 from 9 a.m. to 12 p.m. (Eastern Time) at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The room location has been changed from the Commission Meeting Room to Hearing Room 1. The Commission hereby provides the following additional information and instruction regarding the conference.

The technical conference will focus on the compensation provided to non-Resource Adequacy resources that receive Exceptional Dispatch instructions and the constraints, which are not fully modeled, that may result in a more frequent than originally expected use of the Exceptional Dispatch mechanism. This conference is not intended to address broader issues concerning the overall Market Redesign and Technology Upgrade (MRTU) implementation. Specifically, Commission staff is interested in obtaining information related to the following questions and concerns:

1. Compensation for non-Resource Adequacy resources under Exceptional Dispatch in light of the October 16, 2008 order in this docket including consideration of:

- How such compensation compares to compensation for non-Resource Adequacy resources committed under other backstop capacity mechanisms, *e.g.*, ICPM, TCPM and RCST;
- The Commission's proposed pricing remedy including its proposed means to avoid the potential for ''double payment'' of certain resources;
- Whether mitigation is appropriate and, if so, under what circumstances and at what level; and
- How should partial non-resource adequacy resources and self-scheduled resources that are exceptionally dispatched be compensated.

2. Reliability requirements that the CAISO describes as ''transitory'' in nature.[1]

3. Why the full network cannot be modeled, as well as issues related to known constraints (*e.g.*, Path 26, San Francisco Bay Area/Delta Dispatch), and the costs, benefits, and practicality of addressing these reliability requirements with Exceptional Dispatch.

4. The anticipated frequency and trend of Exceptional Dispatch instructions, especially for non-Resource Adequacy resources, as well as all additional scenarios that may require Exceptional Dispatch instructions that were not specifically referenced in the CAISO's original proposal in ER08–1178–000, including Forbidden Operating Regions.

Staff expects the CAISO to prepare a brief presentation (approximately 15 minutes) to address each question. Following the presentation, staff will have the opportunity to ask follow-up questions and participants will then

[1] CAISO's June 27, 2008 Amendment to Revise Exceptional Dispatch Provisions of the MRTU Tariff, Docket No. ER08–1178–000, Transmittal Letter at 21–22.

have the opportunity to ask questions and offer brief comments. Staff asks that if a coalition of participants has common questions or perspectives to present, a single spokesperson be designated to speak for the group in order to efficiently address the relevant issues and minimize repetition of issues already discussed.

The technical conference will be open for the public to attend and advance registration is not required. Although staff encourages all interested parties to attend in person, the conference will be accessible via telephone on a listen-only basis. For information regarding telephone access to the conference, please e-mail *sarah.crawford@ferc.gov* no later than 5 p.m. (Eastern Time) on Monday, November 3, 2008 and specify whether you will be dialing into to the conference on one or both days. You will then receive a confirmation e-mail containing the dial-in number and password. Staff requests that, to the extent possible, individuals calling from the same location share a single telephone line.

All interested persons may file written comments following the technical conference on or before November 24, 2008. Reply comments will be due on or before December 2, 2008.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, 202.502.8368, *sarah.mckinley@ferc.gov*, for logistical issues, and Sarah Crawford, 202.502.8241, *sarah.crawford@ferc.gov*, or Saeed Farrokhpay, 916.294.0322, *saeed.farrokhpay@ferc.gov*, for other concerns.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26191 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD08–11–000]

Ensuring Dam Safety in the United States; Notice of Technical Conference

October 29, 2008.

Take notice that the Federal Energy Regulatory Commission will hold a technical conference on December 5, 2008, from 9 a.m. to 1 p.m. (EST) in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. Members of the Commission will attend and participate in the conference.

The purpose of this conference is to explore issues related to dam safety with federal, state and industry dam safety representatives. Specifically, the participants will discuss the major components of the FERC Dam Safety Program as well as current state and industry assistance efforts. They will also explore the challenges facing state dam safety offices to identify needed technical and resource assistance. The agenda for this conference will published at a later time.

A free Webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to the Calendar of Events at *http://www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the Washington, DC area and via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at (703) 993–3100.

Transcripts of the conference will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system and on the Calendar of Events approximately one week after the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact: Natalie Leech, (202) 502–6396, *natalie.leech@ferc.gov* or Sarah McKinley, (202) 502–8368, *sarah.mckinley@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26257 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER08–637–000; ER08–637–001; ER08–637–004; ER08–637–005]

Midwest Independent Transmission System Operator, Inc.; Notice of Technical Conference

October 29, 2008.

As announced in the Notice of Technical Conference issued on September 9, 2008, and discussed further in the Commission's October 10 Order in the above-captioned proceedings,[1] the Commission will hold a technical conference on November 12, 2008 in the Commission Meeting Room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, regarding the proposed Market Coordination Service (Market Service) provisions set forth in Midwest Independent Transmission System Operator Inc.'s (Midwest ISO) Western Markets Proposal. The technical conference will be held from 9 a.m. to 4 p.m. (ET).

This supplemental notice provides additional information including an agenda for the conference and the speakers at the conference.[2] The conference is open to the public to attend, and registration is not required.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 800–336–6646) for a fee. The transcripts will also be available for the public on the Commission's eLibrary system ten calendar days after the Commission receives the transcript.

A free webcast of the Policy Session during the morning of the technical conference will be available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its

[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,029 (2008).

[2] *See* Attachment to this Notice.

webcast. The Capitol Connection provides technical support for the free webcasts. The Capitol Connection also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call 703–993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

FOR MORE INFORMATION ABOUT THIS CONFERENCE, PLEASE CONTACT: Fernando Rodriguez at 202–502–8231 or at *fernando.rodriguez@ferc.gov*.

Kimberly D. Bose,

Secretary.

Technical Conference Agenda [3]

November 12, 2008

I. Welcome and Opening Remarks—9 a.m.–9:30 a.m.

II. Policy Session—9:30 a.m.–11:30 a.m.

During this session, panelists will be asked to address broad policy issues associated with Market Service, such as Midwest ISO's reasons for making the proposal, the associated benefits, the concerns such as whether the proposal would destabilize Midwest ISO and the extent to which the proposal is consistent with Order No. 2000. Panelists—9:30 a.m.–10:10 a.m.[4]

• Graham Edwards, CEO, and Clair Moeller, Vice President of Transmission Asset Management, appearing on behalf of Midwest ISO.

• Paul Jett, Director of RTO Activities, Duke Energy Corporation, Chair of Midwest ISO Transmission Owners Committee, on behalf of Midwest ISO Transmission Owners.

• William Fehrman, President & CEO, MidAmerican Energy Company.

• Lloyd Linke, Manager of Power System Operations, Western Area Power Administration and Mike Risan, Senior Vice President of Transmission, Basin Electric Power Cooperative.

• Honorable John Norris, Chairman Iowa Utilities Board and President of Organization of Midwest ISO States (OMS) and Bill Smith, Director, OMS.

• Ray Wahle, Director of Power Supply and Operations, Missouri River Energy Services on behalf of Midwest TDUs.

• Steven Naumann, Vice President of Wholesale Market Development, Exelon Corporation.

• Doug Collins, Executive Director, ITC Midwest.

• Donald Furman, Senior Vice President for Development, Transmission and Policy, Iberdrola Renewables, Incoming President American Wind Energy Association.

Discussion and Questions—10:10 a.m.–10:30 a.m.

Break—10:30 a.m.–10:40 a.m.

Further Discussion and Questions—10:40 a.m.–11:30 a.m.

Lunch—11:30 p.m.–1 p.m.

III. Technical Session—1 p.m.–4 p.m.

Staff Introduction—1 p.m.–1:05 p.m.

Presentations on MITS and MITS-Comparable Service—1:05 p.m.–1:25 p.m.

• Clair Moeller, Vice President of Transmission Asset Management, Midwest ISO.

• Dennis Kramer, Regulatory Specialist, Ameren Services Company, on behalf of Midwest ISO Transmission Owners.

• Darrel R. Gunst, Manager Transmission Services, MidAmerican Energy Company.

• OMS Representative.

Staff-led Discussion and Questions—1:25 p.m.–2 p.m.

Questions from Other Parties—2 p.m.–2:30 p.m.

Break—2:30 p.m.–2:45 p.m.

Transmission Planning and Other Issues—2:45 p.m.–3:45 p.m.

Staff-led Discussion and Questions—2:45 p.m.–3:15 p.m.

Questions from Other Parties—3:15 p.m.–3:45 p.m.

Next Steps—3:45 p.m.–4 p.m.

[FR Doc. E8–26254 Filed 11–3–08; 8:45 am]

BILLING CODE 6717–01–P

[3] This agenda may change. The Commission will issue a further notice of such changes if time permits.

[4] Time assumes approximately 5 minutes per panelist.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8737–7]

Clean Water Act Section 303(d): Final Agency Action on 29 Total Maximum Daily Loads (TMDLs) in Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces final agency action on 29 TMDLs prepared by EPA Region 6 for waters listed in Louisiana's Pearl River basin, under section 303(d) of the Clean Water Act (CWA). Documents from the administrative record file for the 29 TMDLs, including TMDL calculations and responses to comments, may be viewed at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm*. The administrative record file may be examined by calling or writing Ms. Diane Smith at the address below. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith, Environmental Protection Specialist, Water Quality Protection Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–2145.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (plaintiffs), filed a lawsuit in Federal Court against the EPA, styled *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527, (E.D. La.). Among other claims, plaintiffs alleged that EPA failed to establish Louisiana TMDLs in a timely manner. EPA established 18 of these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Takes Final Agency Action on 29 TMDLs

By this notice EPA is taking final agency action on the following 29 TMDLs for waters located within the Louisiana Pearl River basin:

Subsegment	Waterbody name	Pollutant
090101	Pearl River—MS State Line to Pearl River Navigation Canal	Mercury and Fecal coliform.
090102	East Pearl River—Holmes Bayou to I–10	Mercury.
090103	East Pearl River—From I–10 to Lake Borgne (estuarine)	Mercury.
090104	Peters Creek	Fecal coliform.
090105	Pearl River Navigation Canal—From Pools Bluff to Lock No. 3	Mercury and Dissolved oxygen.

Subsegment	Waterbody name	Pollutant
090106	Holmes Bayou—From the Pearl River to the West Pearl River (scenic)	Mercury and Turbidity.
090107	Pearl River—From Pearl River Navigation Canal to Holmes Bayou	Mercury.
090201	West Pearl River—From Headwaters to confluence with Holmes Bayou (scenic)	Mercury and Turbidity.
090202	West Pearl River	Turbidity.
090202–5126	Morgan River—From Porters River to its confluence with Pearl River (scenic)	Mercury.
090203	Lower Bogue Chitto—From River Navigation Canal to Wilsons Slough	Mercury.
090204	Pearl River Navigation Canal—Below Lock No. 3	Mercury and Dissolved oxygen.
090205	Wilson Slough—Bogue Chitto to West Pearl River	Mercury.
090206	Bradley Slough—Bogue Chitto to West Pearl River	Mercury.
090207	Middle Pearl River and West Middle Pearl River—From West Pearl River to Little Lake.	Mercury and Dissolved oxygen.
090207–5112	Morgan Bayou—Headwaters near I–10 to confluence with Middle River	Mercury.
090301	Pushepatapa Creek	Fecal coliform.
090401	Bogue Lusa Creek	Fecal coliform.
090501	Bogue Chitto River—From MS State Line to Pearl River Navigation Canal (scenic)	Mercury and Turbidity.
090502	Big Silver Creek	Fecal coliform.
090505	Bonner Creek	Fecal coliform.
090506	Thigpen Creek	Fecal coliform.

EPA requested the public to provide EPA with any significant data or information that might impact the 29 TMDLs in the **Federal Register** Notices: Volume 72, number 137, page 39420 (July 18, 2007) and volume 73, number 22, pages 6178 and 6179 (February 1, 2008). The comments which were received, the EPA's response to comments, and the TMDLs may be found at *http://www.epa.gov/region6/water/npdes/tmdl/index.htm*.

Dated: October 28, 2008.

Larry D. Wright,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E8–26262 Filed 11–3–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8737–6]

EPA-Venture Capital Community Summit: Exploring Programs to Commercialize Environmental Technology

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) will hold an EPA-Venture Capital Community Summit: Exploring Programs to Commercialize Environmental Technology to follow up the National Advisory Council for Environmental Policy and Technology (NACEPT) report on ''EPA and the Venture Capital Community: Building Bridges to Commercialize Technology'' (April 2008). The report recommends that EPA create programs, similar to those of the U.S. Department of Energy, to provide financial support (e.g., loan guarantees, grants, revolving loan funds) to encourage venture capital investment in environmental technology commercialization. The Summit will bring together senior career EPA managers (Deputy Assistant Administrators and Deputy Regional Administrators) with senior venture capitalists who were part of the NACEPT Venture Capital Study. A report will be produced from the Summit that will be a companion to the NACEPT Venture Capital Report; both will be given to the next Administration, the venture capital community, technology developers, state and local governments, Congressional members and staff, academia, and members of the public. The Summit will be open to the public.

DATES: The Summit will be held on November 12, 2008, beginning at 10 a.m. and adjourning at 4:30 p.m. Registration is at 9:30 a.m. Times noted are Eastern Time.

ADDRESSES: The meeting will be held at the Ronald Reagan Building and International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC, in the International Gateway Room on the Mezzanine.

SUPPLEMENTARY INFORMATION: The Venture Capital Report is available electronically through *http://www.epa.gov/etop*. A hard copy of the report can be ordered from the National Service Center for Environmental Publications by requesting document number EPA/600/R–08/043 through the Web site ordering system at *http://www.epa.gov/nscep* or by calling 1–800–490–9198. The agenda for the Summit can be found electronically through the EPA Web site at *http://www.epa.gov/ncer/venturecapital*.

The Summit is open to the public. Registration before the Summit is requested. Any member of the public wishing to make a presentation at the Summit should request to do so beforehand. Presentations should be limited to 3 minutes or less. Time allotted will be shortened if several people request to speak.

The results of the Summit will be discussed the following day (November 13) in a NACEPT forum on future directions for EPA to be chaired by the EPA Administrator. This forum will be part of the NACEPT Council 20-Year Meeting on November 13 and 14, for which there will be a separate **Federal Register** notice.

Special Accommodations: EPA welcomes the attendance of the public at this Summit and will make every effort to accommodate persons with disabilities. If you require special accommodations due to a disability, please contact Linda Parham at *parham.linda@epa.gov* at least seven days before the meeting.

FOR FURTHER INFORMATION CONTACT: To register for the Summit, request time to make an oral public comment at the Summit, and for details on how to provide written public comments, please see the National Center for Environmental Research's Web site at *http://www.epa.gov/ncer/venturecapital*. Questions about the Summit and written comments should be submitted to Paul Shapiro at *shapiro.paul@epa.gov*.

Dated: October 28, 2008.

William H. Sanders III,

Director, National Center for Environmental Research.

[FR Doc. E8–26263 Filed 11–3–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 27, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 4, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B. Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0742.

Title: Sections 53.21 through 52.33, Telephone Number Portability (47 CFR part 52, Subpart C), and CC Docket No. 95–116.

Report No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,990 respondents; 1,990 responses.

Estimated Time per Response: 2–50 hours (average).

Frequency of Response: On occasion and one-time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 1, 2, 4, 251 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 5,850 hours.

Total Annual Cost: $91,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: This collection does not address information of a confidential nature. Respondents may request confidential treatment of materials submitted to the Commission which they believe should be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as an extension during this comment period to obtain the full three-year clearance from them. The Commission is reporting a −8,483 hourly burden reduction and a −$7,000 cost adjustment. This adjustment is due to a decrease in the estimated number of respondents/responses (from 2,027 to 1,990) that was submitted to the OMB in 2005. The annual cost estimate has also decreased due to an adjustment of the tariff and cost support estimates. In the 2005 submission to the OMB, the Commission estimated that it would take approximately 149 hours for the estimate time per response. We have reduced that estimate to 50 hours per response. Thus, the total annual burden hours have been reduced. The annual cost estimate has increased +$7,000 due to an increase in the filing fee ($720 in 2005) to $775 per tariff.

Part 52, Subpart C implements the statutory requirements that local exchange carriers (LECs) and Commercial Mobile Radio Service (CMRS) providers provide local number portability (LNP) as set forth in Sections 1, 2, 4, 251 and 332 of the Telecommunications Act of 1996 (''1996 Act''). The Commission requires the following information to be collected from various entities: (1) Requests for long-term number portability; (2) petitions to extend implementation deadline; (3) tariffs and cost support materials; and (4) recordkeeping requirement.

(1) Long-term number portability must be provided by LECs and CMRS providers in switches for which another carrier has made a specific request for number portability, according to the Commission's deployment schedule. Wireline carriers began providing LNP in 1998. In a Memorandum Opinion and Order, FCC 02–215, CC Docket No. 95–116, the Commission extended the deadline for CMRS providers to offer LNP. CMRS providers began offering LNP in 2003.

(2) Carriers that are unable to meet the deadlines for implementing a long-term number portability solution are required to file with the Commission at least 60 days in advance of the deadline a petition to extend the time by which implementation in its network will be completed.

(3) Incumbent LECs may recover their carrier-specific costs directly related to providing long-term number portability by establishing in tariffs filed with the Commission certain number portability charges. See 47 CFR 52.33. Incumbent LECs are required to include many details in their cost support that are unique to the number portability proceeding pursuant to the Cost Classification Order. For instance, incumbent LECs must demonstrate that any incremental overhead costs claimed in their cost support are actually new cost incremental to and resulting from the provision of long-term number portability. See the Cost Classification Order.

(4) Incumbent LECs are required to maintain records that detail both the nature and specific amount of these carrier-specific costs that are directly related to number portability, and those

carrier-specific costs that are not directly related to number portability.

The information collected and required by the Commission will be used to comply with Section 251 of the Telecommunications Act of 1996.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–26250 Filed 11–3–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 19, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Cummins Inc., Columbus, Indiana, to acquire voting shares of Irwin Financial Corporation, and thereby indirectly acquire voting shares of Irwin Union Bank & Trust Company, both of Columbus, Indiana, and Irwin Union Bank, F.S.B., Louisville, Kentucky.

Board of Governors of the Federal Reserve System, October 30, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–26228 Filed 11–3–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 28, 2008.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. S &T Bancorp, Inc., Indiana, Pennsylvania, to acquire up to 24.99 percent of the voting shares of Allegheny Valley Bancorp, Inc., Pittsburgh, Pennsylvania, and thereby acquire Allegheny Bank of Pittsburgh, Pittsburgh, Pennsylvania.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Hebbronville Regional Bancshares, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Hebbronville, both of Hebbronville, Texas.

2. Marion Bancshares, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Marion State Bank, both of Marion, Texas.

Board of Governors of the Federal Reserve System, October 29, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–26182 Filed 11–3–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 28, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Peoples Bancorp, Inc., Prairie du Chien, Wisconsin, to acquire 100 percent of the voting shares of Security State Bank, Guttenberg, Iowa.

2. White River Capital, Inc., Indianapolis, Indiana, to become a bank holding company by acquiring 100 percent of the voting shares of First Chicago Bancorp, and thereby indirectly acquire First Chicago Bank & Trust, both of Itasca, Illinois.

Board of Governors of the Federal Reserve System, October 30, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–26229 Filed 11–3–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) and the Assistant Secretary for Health have taken final action in the following case:

Jusan Yang, M.S., M.D., University of Iowa: Based on the report of an investigation conducted by the University of Iowa (UI) and additional analysis conducted by the Office of Research Integrity (ORI) in its oversight review, this settlement resolves proposed U.S. Public Health Service (PHS) findings that Dr. Jusan Yang, former Assistant Research Scientist, UI, engaged in scientific misconduct in research supported by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grant R01 HL48058.

PHS finds the Respondent engaged in scientific misconduct by falsifying and fabricating data that were reported in a scientific manuscript intended for publication entitled ''Increased renin transcription after inhibition of NF–YA with RNAi reveals through regulation of Ea element and Ear2'' and at two professional scientific meetings.

Specifically, PHS found that:

1. Respondent falsified Figure 1 in the manuscript that purports to show the effectiveness of four plasmids targeting different parts of the NF–Y coding sequence in inhibiting NF–Y expression by (1) Claiming in Figure 1A that the loading control bands were obtained by reprobing a Western blot with antibody to GAPDH when he used a prominent background (nonspecific) band from the blot probed with antibody to NF–YA, (2) inappropriately enhancing and manipulating the NF–YA band in Figure 1A claiming decreased expression of NF–YA in cultures transfected with 2 of the 4 constructs, and (3) falsely claiming in Figure 1B that the quantitative data for NF–YA expression obtained by scanning Western blot films were based on an n of 4 and that the expression of NF–YA in cultures treated with two constructs was statistically significantly lower than the control. Versions of the same falsified blot and histogram also were reported in several of the Respondent's public presentations.

2. Respondent falsified Figures 4, 5, 6, and 8 in the manuscript by claiming in the figure legends that 4 independent repetitions contributed to each figure's results when the actual numbers of repetitions were n=3 for Figure 4, n=1 for Figure 5, n=3 for Figure 6, and n=2 for Figure 8; in Figure 5, error bars based on the Student's t test further falsely claim that n was >2. He further falsified Figures 6 and 8 by reporting smaller standard errors of the mean than were obtained from the actual data, thereby giving an enhanced impression of rigor for the reported experiments.

Respondent reported Figures 5, 6, and 8 (without legends) at the American Heart Association Council for High Blood Pressure meeting in September 2003, and he reported Figures 5 and 8 at the Experimental Biology meeting in April 2004.

Respondent stated that he does not intend to apply for or engage in PHS-supported research. However, if such a circumstance were to arise, Respondent agreed for a period of five (5) years, beginning on October 14, 2008:

(1) That any institution that submits an application for PHS support for a research project on which the Respondent's participation is proposed or which uses him in any capacity on PHS supported research, or that submits a report of PHS funded research in which he is involved, must concurrently submit a plan for supervision of the Respondent's duties to the funding agency for approval; the supervisory plan must be designed to ensure the scientific integrity of the Respondent's research contribution; Respondent agreed to ensure that a copy of the supervisory plan is also submitted to ORI by the institution; Respondent agreed that he will not participate in any PHS-supported research until such a supervision plan is approved by ORI;

(2) That any institution employing the Respondent submits, in conjunction with each application for PHS funds or report, manuscript, or abstract of PHS funded research in which he is involved, a certification that the data provided by the Respondent are based on actual experiments or are otherwise legitimately derived, and that the data, procedures, and methodology are accurately reported in the application or report; the Respondent must ensure that the institution also sends a copy of the certification to ORI; and

(3) To exclude himself from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. E8–26270 Filed 11–3–08; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers, Panel C, Funding Opportunity Announcement (FOA) DP09–001

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 9 a.m.–5 p.m., January 13, 2009 (Closed). 9 a.m.–5 p.m., January 14, 2009 (Closed).

Place: W Hotel, Atlanta Midtown, 188 14th Street, NE., Atlanta, GA 30361.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Health Promotion and Disease Prevention Research Centers, Panel C, FOA DP09–001.''

Contact Person for More Information: Maurine F. Goodman, M.A., M.P.H., Health Scientist, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, *Telephone:* (404) 639–4737.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 27, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–26239 Filed 11–3–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers, Panel A, Funding Opportunity Announcement (FOA) DP09–001

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 9 a.m.–5 p.m., January 13, 2009 (Closed). 9 a.m.–5 p.m., January 14, 2009 (Closed).

Place: W Hotel, Atlanta Midtown, 188 14th Street, NE., Atlanta, GA 30361.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of ''Health Promotion and Disease Prevention Research Centers, Panel A, FOA DP09–001.''

Contact Person for More Information: Christine J. Morrison, PhD, Health Scientist, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639–3098.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 27, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–26242 Filed 11–3–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 2, 2008, from 8 a.m. to 5 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Paul Tran, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *paul.tran@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512531. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 2, 2008, the committee will begin with a closed session from 8 a.m. to 10:30 a.m., to permit discussion and review of trade secret and/or confidential information. Following the closed session, from 10:30 a.m. to 5 p.m., the meeting will be open to the public. The committee will discuss the safety and efficacy of new drug application (NDA) 20–725, Creon (pancrelipase delayed-release capsules), Solvay Pharmaceuticals, Inc., for the treatment of exocrine pancreatic insufficiency.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: On December 2, 2008, from 10:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 17, 2008. Oral presentations from the public will be scheduled between approximately 1:45 p.m. and 2:45 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 6, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 7, 2008.

Closed Committee Deliberations: On December 2, 2008, the meeting will be closed from 8 a.m. to 10:30 a.m., to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). During this session, the committee will discuss relevant manufacturing issues and how they impact the clinical safety of the pancreatic enzyme product.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paul Tran at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 27, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–26244 Filed 11–3–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Immunology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Immunology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 3, 2008, from 8:30 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Dai J. Li, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240–276–0997, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512516. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss and make recommendations on the premarket notification application for the Fujirebio HE4 EIA kit and associated Risk of Malignancy algorithm (ROMA™) Test. The HE4 EIA is an enzyme immunometric assay for the quantitative determination of HE4 in human serum. The HE4 EIA, used in conjunction with the ARCHITECT CA 125 II assay, creates a predictive probability of epithelial ovarian cancer using a mathematical function referred to as the ROMA™, for use in premenopausal and postmenopausal women presenting with an adnexal mass who have already been referred to an oncologic specialist and are scheduled for surgery. Subjects categorized as low risk for epithelial ovarian cancer using the ROMA™ value may have surgical intervention performed by a non-oncology specialist. The results must be interpreted in conjunction with other clinical findings in accordance with standard clinical management guidelines. The assay is not indicated as an aid in a decision to proceed to surgery.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 19, 2008. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 11, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 12, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams at 240–276–8932 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 29, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–26243 Filed 11–3–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 14, 2008, from 8:30 a.m. to 5 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Ronald P. Jean, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD, 20850, 240–276–3676, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code

3014512521. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss and make recommendations on a premarket notification application for the ReGen Collagen Scaffold (CS), sponsored by ReGen Biologics, Inc. This device is intended for use in surgical procedures for the reinforcement and repair of chronic soft tissue injuries of the meniscus (one to three prior surgeries to the involved meniscus) where weakness exists. In repairing and reinforcing meniscal defects, the patient must have an intact meniscal rim and anterior and posterior horns for attachment of the mesh. In addition, the surgically prepared site for the CS must extend at least into the red/white zone of the meniscus to provide sufficient vascularization.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 7, 2008. Oral presentations from the public will be scheduled for 30 minutes at the beginning of the committee deliberations and for 30 minutes near the end of the deliberations. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 6, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 7, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Ann Marie Williams, Conference Management Staff, 240–276–8932, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

FDA regrets that it was unable to publish this notice 15 days prior to the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 29, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–26230 Filed 10–30–08; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (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 to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Enrollment and Re-Certification of Entities in the 340B Drug Pricing Program (NEW)

Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act) ''Limitation on Prices of Drugs Purchased by Covered Entities.'' Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

Covered entities which choose to participate in the section 340B Drug Pricing Program must comply with the requirements of 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

In response to the statutory mandate of section 340B(a)(9) to notify manufacturers of the identities of covered entities and the mandate of section 340B(a)(5)(A)(ii) to establish a mechanism to ensure against duplicate discounts and the ongoing

responsibility to administer the 340B Drug Pricing Program while maintaining efficiency, transparency and integrity, the HRSA Office of Pharmacy Affairs (OPA) developed a process of registration of covered entities to enable it to address those mandates.

Enrollment/Registration

To enroll and certify the eligible federally funded grantees and other safety net health care providers, OPA requires entities to submit administrative information (e.g., shipping and billing arrangements, Medicaid participation), certifying information and signatures from appropriate grantee level or entity level authorizing officials and state/local government representatives. The purpose of this registration information is to determine eligibility for the 340B program. This information is received and verified according to 340B requirements and entered into the 340B database. Accurate records are critical to implementation of the 340B legislation especially to prevent diversion and duplicate discounts. To maintain accurate records, the OPA requests entities to submit modifications to any administrative information that they submitted when initially enrolling into the program. The burden requirement for these processes is minimal.

Recertification

The purposes of recertification are to request that 340B covered entities annually certify program eligibility and confirm the accuracy of all information in the covered entity's 340B database record. Recertification is an electronic process that will require the covered entity to review the current database record and submit required edits (i.e., covered entity name and address changes, changes to 340B designated contact information, billing and shipping arrangements). The recertification process will pose a minimal burden to 340B covered entities.

Contract Pharmacy Self-Certification

In order to ensure that drug manufacturers and drug wholesalers recognize contract pharmacy arrangements, covered entities that elect to utilize a contract pharmacy are required to submit to OPA a self-certification form similar to the registration form that they have signed an agreement with the contract pharmacy.

The estimates of annualized burden are as follows:

Reporting requirement	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
DSH & CHILDREN'S HOSPITAL ENROLLMENT, ADDITIONS & RECERTIFICATIONS					
340B Program Registrations & Certifications for Disproportionate Share Hospitals	70	1	70	.25	17.5
340B Program Registrations & Certifications for Children's Hospitals	80	1	80	.25	20
Certifications to Enroll DSH & Children's Hospitals Outpatient facilities to 340B Program	180	1	180	.083	14.94
DSH & Children's Hospitals' Annual Recertification	937	1	937	.5	468.5
REGISTRATION FOR ENTITIES OTHER THAN HOSPITALS & RECERTIFICATIONS					
340B Registration Form (Family Planning, STD, TB, and others)	170	1	170	.083	14.11
Family Planning Annual Recertification	85	47	3995	.083	331.59
STD & TB Annual Recertification	111	11	1221	.083	101.34
Other Entity Annual Recertification for entities other than DSHs, FP, STD or TB entities	400	10	4000	.083	332
Submission of Administrative Changes for any entity	460	1	460	.083	38.18
CONTRACTED PHARMACY SERVICES REGISTRATION & RECERTIFICATIONS					
Contracted Pharmacy Services Registration	2000	1	2000	.083	166
TOTAL	* 4493		13,313		1504.16

* The total number of respondents may be overestimated since we are unable to avoid duplication of respondents who submit information to the OPA over the course of participation in the 340B Drug Pricing Program, via the initial registration process to any updates/modifications and enrolling contract pharmacies, if applicable, to the recertification process.

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 28, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–26271 Filed 11–3–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Meeting of the Advisory Council on Blood Stem Cell Transplantation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Meeting of the Advisory Council on Blood Stem Cell Transplantation.

SUMMARY: Pursuant to Public Law 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the third meeting of the Advisory Council on Blood Stem Cell Transplantation (ACBSCT), Department of Health and Human Services (HHS). The meeting will be held from approximately 8:30 a.m. to 5 p.m. on December 15, 2008,

and from 8:30 a.m. to 3:30 p.m. on December 16, 2008, at the Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (see below).

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 109–129, 42 U.S.C. 274k (section 379 of the Public Health Service Act, as amended) the ACBSCT was established to advise the Secretary of HHS and the Administrator, HRSA, on matters related to the activities of the C.W. Bill Young Cell Transplantation Program (Program) and the National Cord Blood Inventory (NCBI) Program. ACBSCT is composed of up to 25 members, including the Chair, serving as Special Government Employees. The current membership includes representatives of marrow donor centers and marrow transplant centers; representatives of cord blood banks and participating birthing hospitals; recipients of a bone marrow transplant; recipients of a cord blood transplant; persons who require such transplants; family members of such a recipient or family members of a patient who has requested the assistance of the Program in searching for an unrelated donor of bone marrow or cord blood; persons with expertise in bone marrow and cord blood transplantation; persons with expertise in typing, matching, and transplant outcome data analysis; persons with expertise in the social sciences; basic scientists with expertise in the biology of adult stem cells; ethicists; hematology and transfusion medicine researchers with expertise in adult blood stem cells; persons with expertise in cord blood processing; and members of the general public.

The Council will hear reports from four of the ACBSCT Work Groups: Cord Blood Accreditation Organization and Recognition Process, Need for Public Funding for Required Data Documentation, Scientific Factors Necessary to Define a Cord Blood Unit as High Quality, and Program Confidentiality/Policies for Cord Blood Donors. The Council also will hear presentations and discussions on Product Labeling; the Blood Stem Cell Transplant Physician Shortage; CMS Evaluation of Coverage for Myelodysplastic Syndromes; Models for Cord Blood Donor Recruitment; and the Center for International Blood and Marrow Transplant Research update on several research activities.

The draft meeting agenda and a registration form will be available on November 17, 2008, on the HRSA's Program Web site at *http://bloodcell.transplant.hrsa.gov/ABOUT/Advisory_Council/index.html*. The completed registration form should be submitted by facsimile to Professional and Scientific Associates (PSA), the logistical support contractor for the meeting, at fax number (703) 234–1701 ATTN: Lilly Cho. Registration can also be completed electronically at *https://www.team-psa.com/dot/fall2008/acbsct/*. Individuals without access to the Internet who wish to register may call Lilly Cho with PSA at (703) 234–1733.

Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACBSCT Executive Secretary, Remy Aronoff, in advance of the meeting. Mr. Aronoff may be reached by telephone at 301–443–3264, e-mail: *Remy.Aronoff@hrsa.hhs.gov* or in writing at the address provided below. Management and support services for ACBSCT functions are provided by the Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 12C–06, Rockville, Maryland 20857; telephone number 301–443–7577.

After the presentations and Council discussions, members of the public will have an opportunity to provide comments. Because of the Council's full agenda and the timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACBSCT meeting. Meeting summary notes will be made available on the HRSA's Program Web site at *http://bloodcell.transplant.hrsa.gov/ABOUT/Advisory_Council/index.html*.

Dated: October 28, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8–26272 Filed 11–3–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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 to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Notification of Intent to Use Schedule III, IV, or V Opioid Drugs for the Maintenance and Detoxification Treatment of Opiate Addiction Under 21 U.S.C. 823(g)(2) (OMB No. 0930–0234)—Revision

The Drug Addiction Treatment Act of 2000 (''DATA,'' Pub. L. 106–310) amended the Controlled Substances Act (21 U.S.C. 823(g)(2)) to permit practitioners (physicians) to seek and obtain waivers to prescribe certain approved narcotic treatment drugs for the treatment of opiate addiction. The legislation sets eligibility requirements and certification requirements as well as an interagency notification review process for physicians who seek waivers. The legislation was amended in 2005 to eliminate the patient limit for physicians in group practices, and in 2006, to permit certain physicians to treat up to 100 patients.

To implement these provisions, SAMHSA developed a notification form (SMA–167) that facilitates the submission and review of notifications. The form provides the information necessary to determine whether practitioners (*i.e.*, independent physicians) meet the qualifications for waivers set forth under the new law. Use of this form will enable physicians to know they have provided all information needed to determine whether practitioners are eligible for a waiver.

However, there is no prohibition on use of other means to provide requisite information. The Secretary will convey notification information and determinations to the Drug Enforcement Administration (DEA), which will assign an identification number to

qualifying practitioners; this number will be included in the practitioner's registration under 21 U.S.C. 823(f).

Practitioners may use the form for three types of notification: (a) New, (b) immediate, and (c) to notify of their intent to treat up to 100 patients. Under ''new'' notifications, practitioners may make their initial waiver requests to SAMHSA. ''Immediate'' notifications inform SAMHSA and the Attorney General of a practitioner's intent to prescribe immediately to facilitate the treatment of an individual (one) patient under 21 U.S.C. 823(g)(2)(E)(ii). Finally, the form may be used by physicians with waivers to certify their need and intent to treat up to 100 patients.

The form collects data on the following items: Practitioner name; state medical license number and DEA registration number; address of primary location, telephone and fax numbers; e-mail address; name and address of group practice; group practice employer identification number; names and DEA registration numbers of group practitioners; purpose of notification new, immediate, or renewal; certification of qualifying criteria for treatment and management of opiate dependent patients; certification of capacity to refer patients for appropriate counseling and other appropriate ancillary services; certification of maximum patient load, certification to use only those drug products that meet the criteria in the law. The form also notifies practitioners of Privacy Act considerations, and permits practitioners to expressly consent to disclose limited information to the SAMHSA Buprenorphine Physician Locator.

Since July 2002, SAMHSA has received over 17,000 notifications and has certified almost 16,000 physicians. Eighty-one percent of the notifications were submitted by mail or by facsimile, with approximately twenty percent submitted through the Web based online system. Approximately 60 percent of the certified physicians have consented to disclosure on the SAMHSA Buprenorphine Physician Locator.

Respondents may submit the form electronically, through a dedicated Web page that SAMHSA will establish for the purpose, as well as via U.S. mail.

The following table summarizes the estimated annual burden for the use of this form.

Purpose of submission	Number of respondents	Responses per respondent	Burden per response (hr.)	Total burden (hrs)
Initial Application for Waiver	1,500	1	.083	125
Notification to Prescribe Immediately	50	1	.083	4
Notice to Treat up to 100 patients	500	1	.040	20
Total	2,050			149

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov*. Written comments should be received within 60 days of this notice.

Dated: October 28, 2008.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E8–26247 Filed 11–3–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Performance Review Board appointments

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the 2008 Department of the Interior Performance Review Board.

DATES: These appointments are effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sharlyn Grigsby, Director, Office of Human Resources, Office of the Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, Telephone Number: (202) 208–6761.

Dated: October 22, 2008.

Sharlyn A. Grigsby,

Director, Office of Human Resources.

2008 Performance Review Board Eligibles

ABEITA, ETHEL J, DIRECTOR, OTR
ACHTERBERG, DAVID G., DIR, SECURITY, SAFETY & LAW ENFORCEMENT
ALBERTS, JASON P., ASSOC SOLICITOR-MINERAL RESOURCES
ANSPACH, ALLEN J., REGIONAL DIRECTOR
ARHA, KAUSHALENDRA, DEPUTY ASSISTANT SECRETARY
ARROYO, BRYAN, ASST DIR-ENDANGERED SPECIES
ASHE, DANIEL M., FISH AND WILDLIFE ADVISOR
BAGLIN, CHRISTINE S., DIR, OFC OF POLICY ANALYSIS
BAKER, KAREN D., ASSOC DIR FOR ADMIN POLICY & SERVICES
BARCHENGER, ERVIN J., REGIONAL DIRECTOR-MRCC ASSOCIATE DIRECTOR, AVIATION
BATHRICK, MARK L., MANAGMENT
BAYANI, THERESA WALSH, PROGRAM DIRECTOR FOR
BECK, RICHARD T., DIRECTOR, OFFICE OF PLANNING &
BECKMANN, DARRYL H., DEP COM, POLICY, ADMIN & BUDGET
BENNETT, ROBERT A., STATE DIRECTOR
BHAGOWALIA, SANJEEV NMN, CHIEF INFORMATION OFFICER
BISSON, HENRI R., DEPUTY DIRECTOR
BLACK, MICHAEL S., REGIONAL DIRECTOR-GREAT PLAINS
BLACKWELL, EDITH R., DEP ASSOC SOL-INDIAN AFFAIRS
BLANCHARD, MARY JOSIE, DEPUTY DIRECTOR
BOGERT, L. MICHAEL, COUNSELOR TO THE SECRETARY
BOURGEOIS, DOUGLAS J., DIRECTOR, NATIONAL BUSINESS CENTER
BRADLEY, OMAR, REGIONAL DIRECTOR
BREECE, CHARLES E., ATTORNEY—ADVISOR (GENERAL)
BROUN, LAURENCE I., DIRECTOR, OFFICE OF EMERGENCY MGMT
BROWN, LAURA B., DEP ASSOC SOL—LAND & WATER RES
BROWN, ROBERT E., ASSOC DIR FOR ADMIN AND BUDGET
BURCH, MELVIN E., REGIONAL FIDUCIARY TRUST
BURCKMAN, JAMES N., HUMAN RESOURCES PROJECT LEADER
BURKS, MARIA A., EXECUTIVE DIRECTOR CHIEF, OFFICE OF BUDGET &
BURZYK, CARLA M., PERFORMANCE
BUTLER, MITCHELL J., DEPUTY ASSISTANT SECRETARY—

CARL, LEON M., REGIONAL EXECUTIVE—EASTERN REGION
CASON, JAMES E., ASSOCIATE DEPUTY SECRETARY
CESAR, NILES C., REGIONAL DIRECTOR
CHICHARELLO, ELOUISE, SPECIAL ASST TO THE DIRECTOR, BIA
CLARK, DEBBIE LYNN, DIRECTOR, ADMINISTRATION
CLARK, HORACE G., REGIONAL SOLICITOR
COMER, ROBERT D., REGIONAL SOLICITOR
CONTE, ANTHONY R., REGIONAL SOLICITOR
CORDOVA-HARRISON, ELIZABE, DIR, MANAGEMENT SERVICES OFFICE
COTTER, GLADYS A., ASSOC CHIEF BIOL FOR INFO
CRAFF, ROBERT C., REG FIDUCIARY TRUST ADMINISTRATOR
CRAMER, DEWEY B., EXECUTIVE ADVISOR FOR LAND IMAGING
CRUICKSHANK, WALTER D., DEP DIR/ MINERALS MGMT SERV
CURRAN, JOSEPH L, CHIEF INFORMATION OFFICER
DALY, ELENA C, AD, NAT'L LANDSCAPE CONSER SYS
DANENBERGER, ELMER P., CHIEF, OFFSHORE REGULATORY
DAVIS, MARK H., CHIEF, DIV OF BUDGET &
DEERINWATER, DANIEL J., REGIONAL DIRECTOR
DELAPLAINE, L. BRUCE, GENERAL COUNSEL
DELUISE, FRANK M., DIR, NAT RES DAMAGE ASSESSMENT
DEMULDER, MARK L., CHIEF, GEOGRAPHIC INFORMATION
DICKINSON, WILLIAM K., PARK MANAGER (SUPERINTENDENT)
DIERAUF, LESLIE A., REGIONAL EXECUTIVE—WESTERN REGION
DITMANSON, DALE A., PARK MANAGER-(SUPERINTENDENT)
DOMENECH, DOUGLAS W., DEPUTY CHIEF OF STAFF
DOUGLAS, JAMES C., ASSISTANT DIRECTOR, FIRE AND AVIATION
DOYLE, ROBERT E. JR., DEPUTY DIRECTOR
DUPUY, JOHN EDWARD, DEPUTY ASST INSPECTOR GENERAL
DYER, THOMAS H, STATE DIRECTOR
EAMES, MATTHEW C, DIRECTOR, CONGRESSIONAL AND
EDWARDS, BERT T., EXECUTIVE DIRECTOR, OFFICE OF
ELLER, SHARON D., DIRECTOR, OFFICE OF CIVIL RIGHTS
ELMORE, KIMBERLY, ASST IG FOR INSPECTIONS & EVALS
ERWIN, DONNA MARIE, PRINCIPAL DEPUTY SPECIAL REGIONAL EXECUTIVE—NORTH CENTRAL
ETHRIDGE, MAX M., AREA
FABER, ROBERT C., ASSOC SOL—PARKS & WILDLIFE
FERGUSON, MICHAEL A., ASSISTANT DIRECTOR, BUSINESS
FERRITER, OLIVIA B., DIR. CONSERVATION, PARTNERSHIPS &
FEUERSTEIN, RANDY R., CHIEF INFORMATION OFFICER
FINFER, LAWRENCE A., DEPUTY DIRECTOR, OFFICE OF
FLETCHER, DANIEL L. JR., DIR–OFF OF FIN MGMT & DEP CFO
FORREST, VICKI L., DEPUTY DIRECTOR—TRUST SERVICES
FRAZER, GARY D., AD–FISHERIES & HABITAT CONSERVATION
FREEMAN, SHAREE M., DIRECTOR, OFC OF SELF-GOV AD, NATURAL RESOURCE STEWARD &
FROST, HERBERT C., SCIENCE
GABALDON, MICHAEL R., DIRECTOR, TECHNICAL RESOURCES
GALLAGHER, KEVIN T., DEPUTY ASSOCIATE DIRECTOR FOR
GARY, ARTHUR E., ASSOCIATE SOLICITOR—GENERAL LAW
GIDNER, JEROLD L., DIRECTOR, BUREAU OF INDIAN AFFAIRS
GLASER, DONALD R., REGIONAL DIRECTOR
GOKLANY, INDUR M., MGR. SCIENCE & ENGINEERING
GOLL, JOHN T., REGNL DIRECTOR, ALASKA OCS RGN
GONZALES-SCHREINER, ROSEA, DIRECTOR, PROGRAM & POLICY SERVICES
GOULD, GREGORY J., ASSOC DIR FOR MINERALS REVENUE MGMT
GOULD, ROWAN W., DEPUTY DIRECTOR
GRAY, LORRI J., REGIONAL DIRECTOR
GRIGSBY, SHARLYN A., DIRECTOR, OFFICE OF HUMAN RESOURCES
GUERTIN, STEPHEN D., REGIONAL DIRECTOR—DENVER, CO
GUNDERSEN, LINDA C., CHIEF SCI FOR GEOLOGY
HAMILTON, SAMUEL D., REGIONAL DIRECTOR—ATLANTA
HANNA, JEANETTE D., REGIONAL DIRECTOR
HARDGROVE, STEPHEN A., ASST. IG FOR INVESTIGATIONS
HARTLEY, DEBORAH J., CHIEF INFORMATION OFFICER, DEPUTY DIRECTOR FOR SUPPORT
HARVEY, LINDI L., SERVICES
HASELTINE, SUSAN D., ASSOCIATE DIRECTOR FOR BIOLOGY
HASKETT, GEOFFREY L., REGIONAL DIRECTOR—ANCHORAGE
HAZE, PAMELA K., DIRECTOR, OFFICE OF BUDGET
HENNE, PAUL W., ASST DIR—BMO
HERBST, LARS T., REG, DIR GULF OF MEXICO OCS REGION
HOWARTH, ROBERT G., DEPUTY DIRECTOR
HROBSKY, JON A., DEPUTY DIRECTOR FOR POLICY
IUDICELLO, FAY S., DIRECTOR, EXEC SEC & REG AF
JAEGER, ROBERT R., DIR, INDIAN LAND CONSOL CTR
JAMES, JIM D., REGIONAL FIDUCIARY
JARVI, CHRISTOPHER K., AD, PART, INTERP & ED, VOL & OUT REC
JARVIS, JONATHAN B., REG. DIR. PACIFIC WEST REG
JENSEN, LAWRENCE J., DEPUTY SOLICITOR
JOHNSON, LUKE DANIEL, DEPUTY DIRECTOR, PROGRAMS AND POLICY
JOHNSON, LYNN A., REGIONAL SOLICITOR
JONES, KENNETH B., CHIEF SCIENTIST FOR BIOLOGY
JORJANI, DANIEL H., COUNSELOR TO THE DEPUTY SECRETARY
KEABLE, EDWARD T., ASSOCIATE SOLICITOR, ADMINISTRATION
KEARNEY, CHRISTOPHER B., DEPUTY ASSISTANT SECRETARY FOR
KEEL, M. FRANKLIN, REGIONAL DIRECTOR
KENDALL, MARY L., DEPUTY INSPECTOR GENERAL
KIMBALL, DANIEL B., PARK MANAGER (SUPERINTENDENT)
KIMBALL, SUZETTE M., ASSOCIATE DIRECTOR FOR GEOLOGY
KINSINGER, ANNE E., REGIONAL DIRECTOR—WESTERN REGION
KLEIN, ALLEN D., REGIONAL DIRECTOR
KREISHER, ERNESTINE W., DIRECTOR, OFFICE OF COMMUNICATIONS
LABELLE, ROBERT P., DEPUTY ASSOC. DIRECTOR FOR
LANE, RONGERLIS C.L., AD, INFORMATION RESOURCES MGMT
LARSEN, MATTHEW C., ASSOCIATE DIRECTOR FOR WATER
LAWS, JULIA M., ASSISTANT DIRECTOR FOR HR SYSTEMS
LEWIS, SUZANNE, PARK MANAGER (SUPERINTENDENT)
LOFTIN, MELINDA J., DESIG. AGENCY ETHICS OFFICIAL
LOHOEFENER, RENNE R., REGIONAL DIRECTOR, SACRAMENTO, CA
LONNIE, THOMAS P., STATE DIRECTOR
LORDS, DELANO J, DEP SPEC TRUSTEE—TRUST SVC
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LUTHI, RANDALL B., DIRECTOR
LYDER, JANE M., ASSISTANT DEPUTY SECRETARY
MALAM, PAMELA R., ASSOCIATE DIRECTOR FOR HUMAN CAPITAL
MARTIN, GEORGIA KAY, CHIEF APPRAISER
MARTIN, STEPHEN P., PARK MANAGER

MASICA, SUE E., REGIONAL DIRECTOR, ALASKA REGION
MATTHEWS, JANET S., ASSOC DIRECTOR, CULTURAL RESOURCES
MAY, JAMES G., EXEC DIR, SO FLA ECO REST
MAZER, BERNARD J., ASST DIR—INFO RES TECH MGMT/CIO
MCDONALD, JOHN W., REGIONAL DIRECTOR
MCKENNA, ROBERT C., CHIEF INFORMATION OFFICER
MCKEOWN, MATTHEW J., DEPUTY ASSOCIATE SOLICITOR
MELIUS, THOMAS O., REGIONAL DIRECTOR—TWIN CITIES DIRECTOR, INDIAN ENERGY RESOURCES
MIDDLETON, ROBERT W., DEV
MILLER, MARY JANE A., BUDGET OFFICER
MORE, ROBERT S., DIRECTOR, OFFICE OF HEARINGS
MORIARTY, MARVIN E., REGIONAL DIRECTOR
MORRIN, LAWRENCE H., REGIONAL DIRECTOR
MORRIS, DALE R., REGIONAL DIRECTOR–PACIFIC
MOSHER, JAMES A., DEPUTY ASSISTANT SECRETARY
MOYLE, THOMAS R. III, DEPUTY AIG FOR OFFICE OF MANAGEMENT
MURPHY, TIMOTHY M., DEPUTY ASSISTANT DIRECTOR
MYERS, RICHARD G., REGIONAL SOLICITOR–ALASKA REGION
Name Position Title
NEDD, MICHAEL D., AD, MINS, REAL, & RES PRO
NOE, MONICA A., DAS–HUMAN CAPITAL, PERFORMANCE AND
NYCE, JOHN W., ASSOC DIRECTOR, ACQUISITION SERVICES
O'DELL, MARGARET G., PARK MANAGER (SUPERINTENDENT)
OLSEN, MICHAEL D., DEPUTY ASSISTANT SECRETARY
O'NEILL, BRIAN, PARK MANAGER
ONLEY, KAMERAN L., ASSISTANT DEPUTY SECRETARY
OWENS, GLENDA HUDSON, DEPUTY DIRECTOR–OSM
OYNES, CHRIS C., ASSOCIATE DIRECTOR FOR
PALMA, JUAN M., STATE DIRECTOR
PARISIAN, EDWARD F., REGIONAL DIRECTOR
PARKINSON, LARRY R., DAS–LAW ENFORCEMENT & SECURITY
PAYNE, GRAYFORD F., CHIEF FINANCIAL OFFICER
PEREZ, BENITO ARTURO, CHIEF, OFFICE OF LAW ENFORCEMENT
PETERSON, LYNN, REGIONAL SOLICITOR
PETTIS, RENEE M., ASSISTANT INSPECTOR GENERAL
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PIMLEY, LOWELL D., DIR, TECHNICAL SERVICE CTR
POLLY, KRIS D., DEPUTY ASSISTANT SECRETARY
PONCE, STANLEY L. REGIONAL EXECUTIVE–SOUTH CENTRAL AREA
POOL, MICHAEL J., STATE DIRECTOR
POWERS, MICHAEL T., ASSOC DIR FOR FIN RPTING & SYSTEMS
PULA, NIKOLAO IULI, DIRECTOR, OFFICE OF INSULAR AFFAIRS
QUINT, ROBERT J., DIRECTOR, WASHINGTON OPERATIONS
QUINTANA, ERNEST, REGIONAL DIRECTOR, MIDWEST REGION
RAGSDALE, WILLIAM PATRICK, DEPUTY DIRECTOR–JUSTICE SERVICES
REIDENBACH, DENNIS R., REGIONAL DIRECTOR, NORTHEAST
REVER, JOHN N., DIR FAC, ENV, SAF & CUL RES MGMT
REYNOLDS, THOMAS G., REGIONAL FIDUCIARY TRUST ADMIN
RIDEOUT, STERLING J. JR, ASST DIRECTOR–PROGRAM SUPPORT
ROBERSON, EDWIN L., AD, RENEWABLE RES & PLANNING
ROMANYSHYN, ROBERT, ASST INSPECTOR GENERAL FOR AUDITS
ROTH, BARRY N., DEPUTY ASSOCIATE SOLICITOR
RUGEN, CATHERINE E., REGIONAL FIDUCIARY TRUST
RUNDELL, LINDA S.C., STATE DIRECTOR
RUSS, DAVID P., REGIONAL EXECUTIVE NORTHEAST
RYAN, MICHAEL J., REGIONAL DIRECTOR
SAFFARINIA, EGHBAL, ASSISTANT INSPECTOR GENERAL
SALT, TERRENCE C., DIRECTOR EVERGLADES
SANT, DONALD T., SENIOR POLICY ADVISOR
SCHMIDT, PAUL RUDOLPH, ASST DIR–MIG BIRDS & STATE PROG
SCHOLZ, DONNA K., FIRE PROGRAM ANALYSIS PROJECT DIR
SCHULTZ, RICHARD D., NATIONAL BORDERLAND COORDINATOR
SCOTT, MARY GIBSON, PARK MANAGER (SUPERINTENDENT)
SHEAFFER, C. BRUCE, FINANCIAL ADVISOR (COMPTROLLER)
SHEARER, DAVID P, FBMS PROGRAM DIRECTOR
SHEEHAN, DENISE E., ASST–DIR BUDGET, PLNG & HR
SHEPARD, EDWARD W, STATE DIRECTOR
SHILLITO, DANIEL G., REGIONAL SOLICITOR
SHOPE, THOMAS D., REGIONAL DIRECTOR
SIDERELIS, KAREN C., GEOSPATIAL INFORMATION OFFICER
SIERRA, SELMA, STATE DIRECTOR
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SKIBINE, GEORGE T.C., DIRECTOR, OFC OF INDIAN GAMING MGMT.
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SMITH, MICHAEL R., DEPUTY DIRECTOR, FIELD OPS
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SPEAKS, STANLEY M., REGIONAL DIRECTOR
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STEVENSON, KATHERINE H., ASSOC DIR., BUSINESS SERVICES
STEWARD, JAMES D., PROGRAM DIRECTOR FOR RIK
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TAYLOR-GOODRICH, KAREN F., ASSOC DIR, VISITOR & RESOURCE PROTECT
TERLAND, GENE R., STATE DIRECTOR
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THORSON, ROBYN, REGIONAL DIRECTOR–PORTLAND
TOLLEFSON, MICHAEL J., PARK MANAGER (SUPERINTENDENT)
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TSCHUDY, DEBORAH GIBBS, DEPUTY ASSOCIATE DIRECTOR FOR
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VELA, R. DAVID, REGIONAL DIRECTOR, SE REGION
VELASCO, JANINE M., ASSISTANT DIRECTOR
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VIRDEN, TERRANCE LEE, REGIONAL DIRECTOR–MIDWEST
WADE, FOSTER L., DEPUTY ASSISTANT SECRETARY
WAIDMANN, BRIAN, CHIEF OF STAFF
WAINMAN, BARBARA W., DIRECTOR, OFFICE OF
WALKOVIAK, LARRY P., REGIONAL DIRECTOR
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WEISMAN, SANDRA L., CHIEF, FINANCIAL ADVISOR
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WENK, DANIEL N., DEPUTY DIRECTOR, OPERATIONS
WENKER, RONALD B., STATE DIRECTOR
WHEELER, KATHLEEN J.H., DEPUTY CHIEF HUMAN
WHITESELL, STEPHEN E., ASSOC DIR., PARK PLAN, FACILIT & LANDS
WHITTINGTON, SAMUEL Q., MANAGER, DENVER SERVICE CENTER
WILLIAMS, JERRY E., DEPUTY CHIEF INFORMATION OFFICER
WILLIAMS, LC, ASSOCIATE DIRECTOR, FPPSSD
WILLIAMS, MARGARET C., DEP SPEC TRUSTEE–TRUST ACCOUNTABILITY
WIRKUS, KARL E., DEPUTY COMMISSIONER–OPERATIONS
WISELY, SARAH E., STATE DIRECTOR
WOLF, ROBERT W., DIR, PROGRAM & BUDGET
WOLFE, SHANE B., PRESS SECRETARY
WOOD, MICHAEL F., CHIEF OF STAFF
WOODY, WILLIAM C., DIR. LAW ENFORCE, SEC. & PROT.
WORONKA, THEODORE, ASST DIR–FOR FINANCE & ADMIN.
ZIELINSKI, ELAINE Y., STATE DIRECTOR
ZIPPIN, JEFFREY P., DEPUTY DIRECTOR, OHTA

[FR Doc. E8–26240 Filed 11–3–08; 8:45 am]

BILLING CODE 4310–17–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L10200000–MJ0000–LLORL00100; HAG 09–0010]

Southeast Oregon Resource Advisory Council: Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast Oregon Resource Advisory Council: Meeting.

Pursuant to the Federal Advisory Committee Act, the Department of the Interior Bureau of Land Management (BLM) announces the following advisory committee meeting:

Name: Southeast Oregon Resource Advisory Council (SEORAC).

Time and Date: 1 p.m. November 13, 2008; 8 a.m. November 14, 2008.

Place: Lakeview District Office, 1301 South G Street, Lakeview, Oregon 97630.

Status: Open to the public.

Summary: The SEORAC will be briefed on BLM's wild horse and burro program, BLM's sagebrush habitat treatments and the current status of the Oregon Explorer grant. Council members will also provide orientation to new members, conduct chair elections, establish their 2009 annual work plan and meeting schedule, receive information from designated federal officials, give constituent updates, implement a subgroup establishment process, present active subgroup reports and identify agenda items for the next meeting. Any other matters that may reasonably come before the SEORAC may also be addressed.

The public is welcome to attend all portions of the meeting and may contribute during the public comment period at 11:30 a.m. on November 14, 2008. Those who verbally address the SEORAC during the public comment period are asked to provide a written statement of their comments or presentation. Unless otherwise approved by the SEORAC chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of five minutes.

For Further Information Contact: Program information, meeting records and a roster of council members may be obtained from Scott Stoffel, public affairs specialist, 1301 South G Street, Lakeview, OR 97630, (541) 947–6237. The meeting agenda will be posted at *http://www.blm.gov/or/rac/seorrac-minutes.php* when available.

Should you require reasonable accommodation, please contact the Lakeview District BLM at (541) 947–2177 as soon as possible.

Dated: October 24, 2008.

Michael J. Haske,

Acting District Manager.

[FR Doc. E8–26180 Filed 11–3–08; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–1430–FQ; MTM 40878]

Opening of Public Land; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This notice opens 9.92 acres of land to appropriation under the public land laws. The land is no longer needed by the Bureau of Reclamation and was determined suitable for return to the public domain.

DATES: *Effective Date:* December 4, 2008.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101.

SUPPLEMENTARY INFORMATION: The land was returned to the United States through an exchange with the State of Montana. Public Law No. 304 withdrew the land for reclamation purposes and delegated authority to the Secretary of the Interior to restore to the public domain any lands not needed for reservoir purposes. The following land is hereby opened to settlement, location, entry, and selection under the public land laws:

Principal Meridian, Montana

T. 23 N., R. 1 W.,
sec. 27, Tract within SW¼SE¼SW¼.

The area described contains 9.92 acres in Teton County.

At 9 a.m. on December 4, 2008, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on December 4, 2008, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Authority: 43 CFR 2091.6.

Dated: October 28, 2008.

Theresa M. Hanley,

Deputy State Director, Division of Resources.

[FR Doc. E8–26238 Filed 11–3–08; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

Initiation of Pilot Mediation Program for Investigations Under Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has approved the initiation of a voluntary pilot mediation program for investigations under section 337 of the Tariff Act of 1930, as amended.

FOR FURTHER INFORMATION CONTACT: James Holbein, Supervisory Attorney for Docket Services, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1873, or James Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has approved the initiation of a voluntary pilot mediation program for investigations under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''). The purposes of the pilot mediation program are to facilitate the settlement of disputes and to evaluate the possible implementation of a permanent mediation program.

As discussed in a Users' Manual for the Commission Pilot Mediation Program (Users' Manual), available at *http://www.usitc.gov*, the Commission will facilitate the holding of a settlement conference with a professional mediator for investigations participating in the pilot mediation program. The administrative management of the pilot mediation program is coordinated by the Supervisory Attorney for Docket Services. The pilot mediation program is supervised by the Office of the Chairman.

All section 337 investigations are eligible for participation in the pilot mediation program. A presiding Administrative Law Judge may nominate an investigation for inclusion in the pilot mediation program by so indicating to the Supervisory Attorney for Docket Services. Private parties may also request, individually or jointly, that an investigation be included in the pilot mediation program by filing a Confidential Request to Enter Mediation, a form which will be available from the Office of Dockets and at *http://www.usitc.gov*. Such a request should be submitted to: James R. Holbein, Supervisory Attorney, Docket Services, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436.

While it is expected that all or nearly all of the selections for inclusion in the pilot mediation program will be made at the initiative of the presiding Administrative Law Judge or counsel for the parties, the Supervisory Attorney for Docket Services may select additional investigations for inclusion in the pilot mediation program at the direction of the Office of the Chairman. Although the Administrative Law Judge and the Commission have the power under the Administrative Procedure Act to require attendance at a settlement conference, including the use of alternative dispute resolution, the Commission has determined that parties' participation in the pilot mediation program will be on a voluntary basis. At the same time, the mediator will conduct the mediation only if he or she believes that the case would benefit from mediation and has settlement potential. The Commission gives notice that parties should not seek to delay or postpone proceedings before the presiding administrative law judge based on their participation in the pilot mediation program.

As described in the Users' Manual, mediation is a confidential process. The Commission investigative attorney will not conduct, participate in, or have knowledge of the proceedings, but may, consistent with current practice, review any settlement agreement that arises out of a successful mediation in making a recommendation to the Administrative Law Judge regarding whether a settlement is in the public interest.

The authority for the Commission's determination is contained in the Administrative Procedure Act, as amended, *see* 5 U.S.C. 556(c)(6)–(8), 572–74, 583, and in sections 335 and 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1335, 1337.

By order of the Commission.

Issued: October 29, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–26196 Filed 11–3–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation In In Re Dura Automotive Systems, Inc. Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Notice is hereby given that on October 28, 2008, a proposed Stipulation was lodged with the United States Bankruptcy Court for the District of Delaware in *In re Dura Automotive Systems, Inc.*, Case No. 06–11202. The Stipulation between the United States on behalf of the U.S. Environmental Protection Agency (''U.S. EPA''), and Dura Automotive Systems, Inc. and its Debtor subsidiaries, relates to certain liabilities under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.*, in connection with the Main Street Well Field Superfund Site in Elkhart, Indiana (the ''Site''). Pursuant to the proposed Stipulation, the United States will receive allowed claims totaling $621,692 in connection with the Site.

The Department of Justice will receive comments relating to the Stipulation for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Dura Automotive Systems, Inc.*, DJ Ref. No. 90–11–3–799/2.

The Stipulation may be examined at the Office of the United States Attorney for the District of Delaware, Nemours Building, 1007 North Orange Street, Wilmington, DE 19899, by request to Assistant U.S. Attorney Ellen W. Slights, and at the U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Stipulation may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Stipulation may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $2.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–26184 Filed 11–3–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. National Association of Realtors; Response to Public Comments on the Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes the public comments received on the proposed Final Judgment in *United States* v. *National Association of Realtors,* No. 05–C–5140, and the response to the comments. On October 4, 2005, the United States filed an Amended Complaint alleging that the National Association of Realtors (''NAR'') violated Section 1 of the Sherman Act, 15 U.S.C. 1, by adopting policies that suppress competition from real estate brokers who use password-protected ''virtual office Web sites'' or ''VOWs'' to deliver high-quality brokerage services to their customers. The proposed Final Judgment, filed on

May 27, 2008, requires NAR to repeal the challenged policies and to adopt new rules that do not discriminate against brokers who use VOWs. Copies of the Amended Complaint, proposed Final Judgment, Competitive Impact Statement, Public Comments, the United States' Response to the Comments, and other papers are currently available for inspection in Suite 1010 of the Antitrust Division, Department of Justice, 450 5th Street, NW., Washington, DC 20530, telephone: (202) 514–2481, on the Department of Justice's Web site (*http://www.usdoj.gov/atr*), and the Office of the Clerk of the United States District Court for the Northern District of Illinois. Copies of any of these materials may be obtained upon request and payment of a copying fee set by Department of Justice regulations.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

United States District Court for the Northern District of Illinois, Eastern Division, United States of America, Plaintiff, v. National Association of Realtors, Defendant

[Civil Action No. 05 C 5140]

Judge Kennelly

Response of the United States to Public Comments on the Proposed Final Judgment

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Attachment 2: Comments submitted by Prudential Real Estate Services Company, LLC, and Prudential Real Estate Affiliates, Inc.

Attachment 3: Comments submitted by Home Buyers Marketing II, Inc.

Attachment 4: Comments submitted by the National Association of Exclusive Buyer Agents.

Attachment 5: Comments submitted by the Buyer's Broker of Northern Michigan, LLC.

Attachment 6: Comments submitted by MLS4owners.com.

Attachment 7: Comments submitted by Realty Specialist, Inc.

Attachment 8: Anonymous comments from brokers in Montgomery County, Pennsylvania.

Attachment 9: Anonymous comments from broker in San Jose, California.

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), the United States responds to nine public comments concerning the proposed Final Judgment that has been lodged with the Court for eventual entry in this case. After review of the comments, the United States has concluded that the proposed Final Judgment, with minor modifications to which Defendant National Association of Realtors (''NAR'') has agreed, will provide an effective and appropriate remedy for the antitrust violation alleged in the Amended Complaint. The United States will move the Court for entry of the proposed Final Judgment on November 7, 2008, as ordered by the Court, after the comments and this Response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

I. Procedural History

The United States brought this civil antitrust action against NAR on September 8, 2005, to stop NAR from violating Section 1 of the Sherman Act, 15 U.S.C. 1, by its suppression of competition from real estate brokers who use password-protected ''virtual office Web sites,'' or ''VOWs,'' to deliver high-quality brokerage services efficiently to consumers. On May 27, 2008, the United States and NAR reached a settlement. On that day, the United States filed a Stipulation and proposed Final Judgment to eliminate the likely anticompetitive effects of NAR's policies.

The United States and NAR have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Pursuant to that statute, the United States filed a Competitive Impact Statement (''CIS'') on June 12, 2008; the proposed Final Judgment and CIS were published in the **Federal Register** on August 14, 2008 [1]; and a summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, was published for seven days in the *Washington Post*, from June 27th to July 3rd, and in the *Chicago Tribune*, from July 7th to July 13th. NAR filed the statement required by 15 U.S.C. 16(g) on June 10, 2008.

The sixty-day public comment period ended on October 13, 2008. The United States received nine comments, which are addressed below.

II. Summary of the Allegations in the Amended Complaint

A. Overview

The United States' Amended Complaint challenged policies adopted by NAR that restrain the ability of real estate brokers to use VOWs to serve their customers and clients. NAR is a trade association that promulgates rules that govern the operation of its approximately 800 affiliated multiple listing services (''MLSs'') across the United States. The Amended Complaint alleged that, through its ''VOW Policy,'' adopted on May 17, 2003, and its ''Internet Listings Display Policy'' (''ILD Policy''), adopted on September 8, 2005 (collectively, the ''Challenged Policies''), NAR suppressed new and efficient competition and harmed consumers. By enjoining NAR from permitting its affiliated MLSs to adopt the Challenged Policies, innovative broker members of NAR's 800 affiliated MLSs would be free to use VOWs to provide their customers better service at a lower cost.

B. Multiple Listing Services

MLSs are joint ventures among virtually all residential real estate brokers operating in local or regional areas. NAR's MLS rules require member brokers who have been hired by home sellers to market their properties to submit information about those listed properties to the MLS.[2] The MLS

[1] 73 FR 47613. An incorrectly typeset version of the proposed Final Judgment and CIS had been published in the **Federal Register** on June 25, 2008. 73 FR 36104.

[2] For this service, home sellers typically agree to pay real estate brokers a commission based on the ultimate sales price of the property. Listing brokers create incentives for other MLS members to try to find buyers for their listed properties by submitting to the MLS with each new listing an ''offer of cooperation and compensation,'' identifying the amount (usually specified as a percentage of the listing broker's commission) that the listing broker will pay to any other broker who finds a buyer for the property.

compiles this information into a database containing all properties listed for sale through member brokers. Member brokers can then search the listings database for properties that prospective buyers might be interested in purchasing.

As alleged in the Amended Complaint, MLSs possess substantial market power because brokers regard participation in the MLS to be critical to their ability to effectively compete with other brokers for home buyers and sellers. By participating in the MLS, brokers can promise seller clients that the information about the seller's property will immediately be made available to all other brokers in the area. Brokers who work with buyers can likewise promise them access to the widest possible array of properties listed for sale through brokers. To compete successfully, a broker must be an MLS member. To be a member, a broker must adhere to any restrictions imposed by the MLS.

C. VOW Brokers

NAR's rules permit brokers to provide to prospective buyers information from the MLS about all properties that satisfy the buyers' expressed needs or interests. Brokers typically give this information to buyers by hand, mail, fax, or e-mail. While many brokers who use VOWs (''VOW brokers'') operate in most respects like other brokers, they differ from traditional brokers in their use of their password-protected VOWs to provide listings to consumers. A VOW broker's customers can search for and retrieve MLS listings information on the broker's VOW, rather than relying on the personal involvement of the broker in all stages of the process of finding a home.

As alleged in the Amended Complaint, VOWs help brokers operate more efficiently and increase the quality of services they provide. For example, VOWs enable consumers to search for and retrieve relevant MLS listings and educate themselves without the broker's expenditure of time. As a result, a VOW broker can spend less time, energy, and resources educating customers. Lower costs and increased productivity have enabled some VOW brokers to offer commission rebates to their buyer customers.

Some VOW brokers have differentiated themselves further from traditional brokers by focusing solely on the high-technology aspects of brokerage services that can be delivered over the Internet. Like other VOW brokers, these ''referral VOWs'' allow prospective buyers to search for homes online, but when buyers are ready to tour homes, the referral VOW broker directs them to other brokers or agents who can guide them through the negotiating, contracting, and closing process. The customers of referral VOWs can benefit from the specialized service provided by the referral VOW broker and the broker or agent to whom the customer is referred. In some instances, referral VOW brokers have also offered commission rebates or other financial benefits to their customers.

D. The Challenged Policies

As alleged in the Amended Complaint, NAR's Challenged Policies discriminate against and restrain competition from VOW brokers. They do so, most significantly, by denying VOW brokers the ability to use their VOWs to provide customers access to the same MLS listings that the customer could obtain from all other brokers by other delivery methods. Under the ''opt-out'' provisions of the Challenged Policies, NAR permitted brokers to withhold their seller clients' listings from display on VOWs. NAR's MLS rules otherwise do not permit one broker to withhold listings from another broker based on how that competitor conveys his or her listings to customers. By blocking VOW brokers from allowing their customers to review the same set of MLS listings that traditional brokers can provide to their customers, NAR's rules restrained VOW brokers from competing in a way that is efficient and desired by many customers.

The Amended Complaint also alleged that the Challenged Policies restrained competition from referral VOW brokers. NAR's May 17, 2003 VOW Policy prohibited referral VOW brokers from receiving any compensation for the referral of a customer to another broker. NAR's rules do not otherwise restrict broker-to-broker referrals. In its September 8, 2005 ILD Policy, NAR revised and reinterpreted its rule on MLS membership to prevent referral VOW brokers from becoming members of the MLS and obtaining access to MLS listings.

Finally, the Amended Complaint challenged restrictions on VOW brokers' advertising activities and provisions that permitted MLSs to degrade the data the MLS provided to VOW brokers.

III. Summary of Relief To Be Obtained Under the Proposed Final Judgment

As explained in the CIS, the proposed Final Judgment eliminates the likely anticompetitive effects of NAR's Challenged Policies, prevents the recurrence of anticompetitive effects associated with NAR's Challenged Policies, and enjoins NAR from taking future actions to discriminate against VOW brokers. The proposed Final Judgment requires NAR to repeal its Challenged Policies and to replace them with a ''Modified VOW Policy'' (attached to the proposed Final Judgment as Exhibit A) that makes it clear that brokers can operate VOWs without interference from their rivals.[3] With respect to any issues concerning the operation of VOWs that are not explicitly addressed by the Modified VOW Policy, the proposed Final Judgment imposes a general obligation that NAR and its MLSs not discriminate against VOW brokers.[4]

Under the Modified VOW Policy, brokers are not permitted to opt out and withhold their seller clients' listings from display on VOWs.[5] The Modified VOW Policy instead requires MLSs to provide to VOW brokers, for display on their VOWs, all MLS listings information that brokers can give customers by all other methods of delivery.[6]

The Modified VOW Policy that NAR must adopt under the proposed Final Judgment also permits brokers to operate referral VOWs. Some existing referral VOWs have established relationships with Internet companies or other businesses and consequently have developed significant numbers of potential buyer leads. These referral VOWs educate those buyers on their VOWs and then refer those buyer customers to other brokers once the customers have selected properties in which they are interested and are ready to enter the negotiating, contracting, and closing process. The Modified VOW Policy expressly prohibits MLSs from impeding VOW brokers from referring customers to other brokers for compensation.[7]

The Modified VOW Policy allows a broker, who independently qualifies for MLS membership by actively endeavoring to provide in-person brokerage services to buyers and sellers, to either operate its own referral VOW or contract with an ''Affiliated VOW Partner'' (''AVP'') to operate a referral VOW on its behalf and subject to its supervision and accountability. Under the proposed Final Judgment, a broker who actively endeavors to obtain some seller clients for whom it will market properties or some buyer clients to whom it will offer in-person brokerage services can become a member of the

[3] *See* proposed Final Judgment, ¶¶ V.A–V.D.

[4] *See id.,* ¶¶ IV.A–IV.B.

[5] *See* Modified VOW Policy, ¶ I.4.

[6] *See id.,* ¶ III.2.

[7] See id., ¶ III.11.

MLS and use MLS data as a member, including to populate its referral VOW.[8]

Additionally, such a broker can designate an entity (even another broker) as its AVP, allowing the AVP to receive MLS listings data to operate the VOW on behalf of the designating broker.[9] The MLS must provide listings to the AVP on the same terms and conditions as it would provide listings to the designating broker, although the AVP's rights to the data would be entirely derivative of the rights of the designating broker.[10] An AVP, just like any broker, can, through Internet marketing or other relationships, establish sources of potential buyer leads. The designating broker can take some or all of the buyer leads from its AVP on whatever compensation terms the designating broker and AVP agree to.[11]

Finally, the Modified VOW Policy prohibits MLSs from using an inferior data delivery method to provide MLS listings to VOW brokers and from unreasonably restricting the advertising and co-branding relationships VOW brokers establish with third parties.

IV. Standard of Judicial Review

Upon the publication of the public comments and this Response, the United States will have fully complied with the APPA and will move the Court for entry of the proposed Final Judgment as being ''in the public interest.'' 15 U.S.C. 16(e), as amended. Because the United States frequently files antitrust actions and consent judgments in the District of Columbia, the Court of Appeals for the District of Columbia Circuit has been the primary source of judicial interpretations of the APPA. No decision from a court in the Seventh Circuit has considered the APPA's requirements.

In making the ''public interest'' determination, the Court should review the proposed Final Judgment in light of the violations charged in the Amended Complaint, *see, e.g., Massachusetts School of Law at Andover, Inc.* v. *United States,* 118 F.3d 776, 783 (D.C. Cir. 1997) (quoting *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1462 (D.C. Cir. 1995)), and be ''deferential to the government's predictions as to the effect of the proposed remedies.'' *Microsoft,* 56 F.3d at 1461.

The APPA states that the Court shall consider in making its public interest determination:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). *See generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1, 11 (D.D.C. 2007) (concluding that the 2004 amendments to the APPA ''effected minimal changes'' to the court's scope of review under APPA, and that review is ''sharply proscribed by precedent and the nature of Tunney Act proceedings'').[12]

As the Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62 (D.C. Cir. 1995). With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (*citing United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also *Microsoft,* 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. *The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.''* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted). *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ''). In making its public interest determination, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations because this may only reflect underlying weakness in the government's case or concessions made during negotiation.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant ''due respect to the [United States'] prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case'').

Court approval of a consent decree requires a standard more flexible and less strict than that appropriate to court adoption of a litigated decree following a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v.

[8] The proposed Final Judgment permits NAR's affiliated MLSs to implement new requirements for MLS membership that NAR originally adopted with its ILD Policy. *See* proposed Final Judgment, ¶ VI.A. This revised and reinterpreted membership rule, attached to the proposed Final Judgment as Exhibit B, contains an interpretative note that explains that a broker who meets the new rule's membership requirements cannot be denied membership on the grounds that the broker operates a VOW, ''including a VOW that the [broker] uses to refer customers to other [brokers].''

[9] *See* Modified VOW Policy, ¶ III.10.

[10] *See id.*

[11] Once an AVP refers a buyer lead to a broker or agent for whom it operates a VOW and the buyer registers on the VOW, that buyer becomes a customer of the broker or agent.

[12] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006).

Alcan Aluminum Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the district court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in the Amended Complaint, and the APPA does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As the District Court for the District of Columbia recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In the 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). The language effectuated what the Congress that enacted the APPA in 1974 intended, as Senator Tunney then explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).

V. Summary of Public Comments and the Response of the United States

The United States received nine comments during the sixty-day public comment period. Among the commentors were two significant VOW brokers and a real estate franchisor that operates VOWs for hundreds of its broker franchisees. These VOW operators are best positioned to evaluate the likely effects of the proposed Final Judgment on competition from VOW brokers, and none suggested that the public interest would not be served by entry of the proposed Final Judgment. On the contrary, ZipRealty, which founded its VOW-based brokerage in 1999 and currently operates in thirty-five major markets in twenty states, submitted its comment ''in support of the [p]roposed Final Judgment'' because it believes the proposed Final Judgment ''favors public and consumer interests.'' Real estate franchisor Prudential, which operates VOWs for 480 of its franchisees, also asserted in its comments that ''entry of the Proposed Final Judgment is in the public interest'' because it ''resolve[s] the fundamental issues raised in the [United States' Amended] Complaint against NAR.''

Upon review and consideration of each of the nine comments, the United States believes that nothing in the comments suggests that the proposed Final Judgment is not in the public interest. Based on the comments, the United States, with the support of NAR, believes two minor modifications should be made to the Modified VOW Policy to eliminate any ambiguity and to effectuate the intention of the parties.[13] The United States identifies these minor modifications and summarizes and addresses each of the comments it received below.

A. Comments Submitted by Entities Operating VOWs

1. Comments Submitted by ZipRealty

ZipRealty is a VOW broker operating in thirty-five markets nationwide. It (along with eRealty, a company later purchased by Prudential) was one of the first two innovative brokers that, in 1999, launched VOWs as a way to provide better service to consumers at a lower price than many of its competitor brokers. It submitted comments (Attachment 1) supporting entry of the proposed Final Judgment, asserting that the proposed Final Judgment ''favors public and consumer interests.'' According to ZipRealty's comments, ''had the proposed NAR policy challenged by the United States * * * been implemented, [ZipRealty's] business would likely have faced significant challenges.''

Based on its past experiences with MLSs that favored traditional, bricks-and-mortar brokers over VOW brokers, ZipRealty's comments caution that ''it is essential that * * * MLSs reasonably interpret the terms of the Proposed Judgment and [Modified VOW] Policy to ensure that they apply the same policies, rules and regulations to Brokers operating VOWs as are applied to 'traditional' Brokers, and that they do not subject Brokers operating VOWs to inappropriate and unreasonable additional costs, fees or restrictions not imposed on other Brokers.''

Under the proposed Final Judgment, NAR is required to direct its affiliated MLSs to adopt, maintain, act consistently with, and enforce the Modified VOW Policy.[14] It is also required to withhold insurance from and report to the United States the identity of any MLS that fails to do so.[15] NAR is also required to forward to the United States any communications it receives concerning any MLS's noncompliance with the terms of the proposed Final Judgment or Modified VOW Policy.[16] The United States believes that these provisions will cause MLSs to comply with the Modified VOW Policy and will provide the United States with the ability to detect whether MLSs are, in fact, complying. If MLSs fail to comply, the United States will be prepared to move to enforce the proposed Final Judgment in the event of NAR inaction, or to consider any additional antitrust enforcement activities, including suing the MLS directly, if necessary.[17]

[13] The United States and NAR have also agreed to a third, minor modification to the proposed Final Judgment. This modification was not precipitated by a comment from a third party. As filed with the Court and published in the **Federal Register**, the proposed Final Judgment would require NAR's local Boards or Associations of Realtors that *do not own or operate MLSs* to adopt and adhere to the Modified VOW Policy (which sets forth the rules an MLS must have for VOWs). *See* proposed Final Judgment, ¶¶ V.D & E (requiring all ''Member Boards'' to adopt the Modified VOW Policy or risk losing coverage under NAR's insurance policy). The United States agrees with NAR that requiring Boards or Associations of Realtors that do not own or operate MLSs to adopt the Modified VOW Policy would serve no purpose. As a result, the United States will move the Court to enter a proposed Final Judgment that clarifies that only Boards or Associations of Realtors that own or operate MLSs must adopt and adhere to the Modified VOW Policy. This additional, minor modification will not necessitate a second public comment period. *See Hyperlaw, Inc.* v. *United States,* No. 97–5183, 1998 WL 388807, at *3 (D.C. Cir. May 29, 1998) (finding that, because the proposed modification was a ''logical outgrowth'' of the original proposed consent decree, no additional public comment period was required).

[14] *See* proposed Final Judgment, ¶ V.D.

[15] *See id.*

[16] *See id.*, ¶ V.H.

[17] The United States has not been reluctant to sue MLSs to bring an end to violations of the antitrust laws. The United States recently brought actions against two MLSs in South Carolina that are among the approximately 200 MLSs in the country not affiliated with NAR. On May 2, 2008, the United States brought an antitrust action against the MLS in Columbia, South Carolina, alleging that its rules restrain competition among real estate brokers in that area and likely harm consumers. *See* Complaint in *United States* v. *Consolidated Multiple Listing*

2. Comments Submitted by Prudential Real Estate Services Company, LLC, and Prudential Real Estate Affiliates, Inc.

Prudential Real Estate Affiliates is a real estate franchisor with over 600 broker franchisees across the United States. Prudential Real Estate Services Company operates Web sites, including VOWs, on behalf of 480 of Prudential's broker franchisees. These companies (''Prudential'') collectively submitted a lengthy set of comments on the proposed Final Judgment (Attachment 2).

Like ZipRealty, Prudential believes that entry of the proposed Final Judgment would be in the public interest. Prudential observes that the proposed Final Judgment, including the Modified VOW Policy resolves the ''fundamental issues'' raised in the United States Amended Complaint by eliminating a broker's ability to ''opt out'' of allowing VOW brokers to display the broker's clients' listings and by requiring MLSs to provide VOW brokers the same complete MLS listings that other brokers can give to their customers and clients by traditional delivery methods.

Prudential, however, asks that the United States use this Response to Public Comments ''to clarify, or to provide interpretive guidance for certain provisions of the [p]roposed Final Judgment and the Modified VOW Policy.'' Prudential then lists twelve areas on which it seeks clarification or interpretive guidance. The United States summarizes and responds to Prudential's twelve specific comments below.

(i) Minor Modification Warranted

Prudential raises two provisions that the United States agrees warrant a minor modification of the proposed Final Judgment. First, Prudential seeks clarification of the requirement in paragraph II.2.c.iv of the Modified VOW Policy that a VOW brokers' customers commit, through the terms of use, not to ''copy, redistribute, or retransmit'' any listings data they receive on the VOW. This provision protects the MLS from someone using a VOW not to purchase a property, but to access and sell the information found on a VOW to third parties. Prudential, however, believes that this requirement as currently written is too broad and would prevent the customer of a VOW broker from saving listings to an electronic property portfolio or from forwarding copies of any listings to spouses, friends, lenders, or others who are assisting the customer in his or her home purchase.

The United States agrees that paragraph II.2.c.iv of the Modified VOW Policy is too broad as currently written and could unreasonably discriminate against VOW brokers by preventing their customers from saving copies of listings in which they might have an interest or sharing listings with persons with whom they wish to consult in making a purchase decision. Customers of traditional, bricks-and-mortar brokers are not subject to the same limitations. NAR has agreed to a minor modification to paragraph II.2.c.iv to eliminate any unintended discriminatory effect.

Current version of paragraph II.2.c.iv: That the Registrant will not copy, redistribute, or retransmit any of the data or information provided.

Revised version of paragraph II.2.c.iv: That the Registrant will not copy, redistribute, or retransmit any of the data or information provided, except in connection with the Registrant's consideration of the purchase or sale of an individual property.

Second, Prudential discussed paragraph II.5.a of the Modified VOW Policy, which permits individual property sellers, concerned with the dissemination of information about their properties over the Internet, to direct that their listings or property addresses be withheld from the Internet. This provision also states that VOW brokers are permitted to provide withheld listings to customers by any other method of delivery such as e-mail or fax. Prudential points out that this provision, as written, does not explicitly authorize VOW brokers to provide withheld property addresses as well to customers using other delivery methods.

This result was unintended. The United States intended that a VOW broker be permitted also to provide customers the property addresses withheld from VOW display, by other methods of delivery. NAR has agreed to a minor modification to paragraph II.5.a to correct this oversight.

Current version of paragraph II.5.a: No VOW shall display the listings or property addresses of sellers who have affirmatively directed their listing brokers to withhold their listing or property address from display on the Internet. The listing broker or agent shall communicate to the MLS that a seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as e-mail, fax, or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet.

Revised version of paragraph II.5.a: No VOW shall display the listing or property address of any seller who has affirmatively directed its listing broker to withhold its listing or property address from display on the Internet. The listing broker or agent shall communicate to the MLS that a seller has elected not to permit display of the listing or property address on the Internet. Notwithstanding the foregoing, a Participant who operates a VOW may provide to consumers via other delivery mechanisms, such as e-mail, fax, or otherwise, the listing or property address of a seller who has determined not to have the listing or address for its property displayed on the Internet.

The United States will move the Court to enter a proposed Final Judgment with these modifications.

(ii) The Proposed Final Judgment Means What It Says

Prudential seeks clarification from the United States that, as to three different provisions of the Modified VOW Policy, the provisions literally mean what they say. It first seeks clarification concerning the requirement in paragraph II.5.a of the Modified VOW Policy that VOW brokers not display the listing or property addresses of sellers who have affirmatively directed that information about their properties be withheld from ''the Internet.'' Prudential says that the provision ''presumably means'' that information withheld from ''the Internet'' must mean that the information be withheld ''from all forms of Internet display'' and excluded from any data that the listing broker or MLS sends to any other Web sites.

Prudential has interpreted paragraph II.5.a of the Modified VOW Policy correctly. Under the Modified VOW Policy, an MLS may not permit a seller to single out individual VOWs or VOWs generally and withhold the listing or property address from only VOW Web sites. Rather, the MLS and listing broker would also be required to withhold the seller's listing or property address from all other non-VOW Web sites.

Prudential next seeks to confirm the meaning of the requirement in paragraph III.2 of the Modified VOW Policy that MLSs provide VOW brokers ''all MLS non-confidential listing data.'' Prudential seeks to clarify that this does not permit MLSs to refuse to provide

Service, Inc., No 3:08–cv–01786–SB (D.S.C. May 2, 2008), *available at http://www.usdoj.gov/atr/cases/f232800/232803.htm.* The United States challenged similar allegedly anticompetitive rules imposed by the MLS in Hilton Head, South Carolina, also not affiliated with NAR. *See* Complaint in *United States* v. *Multiple Listing Service of Hilton Head Island, Inc.*, No. 9:07–cv–03435–SB (D.S.C. Oct. 16, 2007), *available at http://www.usdoj.gov/atr/cases/f226800/226869.htm.* The MLS in Hilton Head agreed to settle the case by repealing the challenged rules and agreeing to other conduct restrictions, and the court entered the Final Judgment in the case on May 28, 2008. *See* Final Judgment in *United States* v. *Multiple Listing Service of Hilton Head Island, Inc.*, No. 9:07–cv–03435–SB (D.S.C. May 28, 2008), *available at http://www.usdoj.gov/atr/cases/f233900/233901.htm.*

VOW brokers the listings of sellers who have requested that their listings not be displayed on the Internet. It explains that, unless VOW brokers receive from the MLS even the listings they are not permitted to show on their VOWs, the VOW brokers cannot meaningfully exercise their right under paragraph II.5.a to provide their customers those seller-withheld listings by other delivery methods. Prudential expresses some concern that MLSs might interpret paragraph III.4, which refers to a ''VOW-specific feed'' from which the seller-withheld listings have been removed, as a basis to disregard the requirement in paragraph III.2 that MLSs provide ''all MLS non-confidential listing data'' to VOW brokers who request it.

Paragraph III.2 of the Modified VOW Policy is unambiguous in requiring MLSs to provide ''*all* MLS non-confidential listing data'' (emphasis added) to VOW brokers who request it. MLSs may also offer to VOW brokers, under paragraph III.4 of the Modified VOW Policy, a ''VOW-specific feed'' from which seller-withheld listings or addresses have been removed. Some VOW brokers might opt for the VOW-specific feed as a matter of convenience, but nothing in paragraph III.4 suggests that such a VOW-specific feed could replace the MLS's unambiguous obligation under paragraph III.2. As Prudential explains, a contrary interpretation of the Modified VOW Policy would also prevent VOW brokers from filtering seller-withheld listings and delivering those listings to customers by non-VOW methods of delivery, as expressly permitted under paragraph II.5 of the Modified VOW Policy.

The third provision on which Prudential seeks clarification is paragraph II.5.c of the Modified VOW Policy. That paragraph requires a VOW broker to disable or discontinue, at the request of a home seller, any functionality providing automated market valuations on or any third-party commenting on or reviews about the seller's property. The seller may not, under this provision, selectively target particular VOWs with requests that these activities be discontinued. Under paragraph II.5.c, such a request by a seller is applicable to ''all Participants'' Web sites'' (*i.e.*, all Web sites operated by any member of the MLS). Prudential seeks confirmation that this provision cannot be exercised on a selective basis as to any single broker's VOW.

There is also no ambiguity in paragraph II.5.c. A sellers's request, under that provision, to discontinue automated market valuations or third-party comments or reviews about his or her listing applies to ''all Participants'' Web sites,'' whether VOW or non-VOW sites. This provision cannot be exercised selectively against a single VOW or against all VOWs, but would also be applicable to all non-VOW Web sites operated by all other MLS members.[18]

(iii) Nondiscrimination Provisions Apply Where Modified VOW Policy is Silent

Prudential seeks clarification or interpretative guidance with respect to two issues on which it suggests the Modified VOW Policy is silent. It first expresses concern that MLSs might interpret the requirement in paragraph II.5.e of the Modified VOW Policy, that VOW brokers refresh information on their Web sites no less frequently than every three days, to prohibit VOW brokers from refreshing the information on their VOW more frequently than every three days. Prudential states that ''[o]perating a VOW with three (3) day old data is totally unacceptable in a Web based environment,'' particularly when VOW brokers' traditional competitors can provide their customers listings data that is refreshed continuously by the MLS.

As Prudential observes, the Modified VOW Policy is silent as to how frequently VOW brokers may refresh the MLS listings they display on their VOWs. Paragraph II.5.e of the Modified VOW Policy states that VOW brokers ''shall refresh MLS data available on a VOW not less frequently than every 3 days.'' It does not state or imply that VOW brokers cannot refresh their data more frequently than every three days.

The proposed Final Judgment expressly prohibits NAR from adopting rules that discriminate against VOW brokers or that impede the operation of VOWs.[19] When issues concerning VOWs are not expressly covered by the Modified VOW Policy, these provisions would prevent NAR from filling the void with discriminatory rules. Here, the United States agrees with Prudential that, with no express provision in the Modified VOW Policy, the general nondiscrimination provisions found in paragraphs IV.A and IV.B of the proposed Final Judgment would apply to prevent MLSs from restricting the ability of VOW brokers to provide data to customers that is less current than the data that other brokers can provide to their customers.

Prudential also expresses concern that an AVP that operates VOWs for several different brokers in an MLS could be charged a separate data download fee for each broker for whom the AVP operates a VOW, even though the AVP could operate its entire network of VOWs using only a single data download.

Prudential describes a ''common circumstance'' in which a single AVP has been designated by several different brokers in a single MLSs to operate VOWs on their behalf. According to Prudential, the AVP would, as a technical matter, need to download the MLS data only one time and could use that data to populate all of the VOWs it operates. Paragraph III.10.b of the Modified VOW Policy prohibits MLSs from charging an AVP more than it charges a VOW broker to download MLS listings, but the proposed Final Judgment and Modified VOW Policy do not expressly address whether the MLS could charge separate downloading fees to the AVP for each VOW it operates. However, because the AVP would need only a single MLS data download, a rule requiring an AVP to pay for additional unnecessary downloads would likely violate paragraph IV.D of the proposed Final Judgment as it would impose fees on the AVP in excess of the MLSs costs in delivering data to the AVP. Moreover, because downloading data imposes some costs on the MLS, a rule requiring multiple unnecessary downloads for no apparent purpose other than to impose additional costs on AVPs and the brokers for whom they operate VOWs would likely unreasonably disadvantage the AVP and VOW broker and violate paragraph IV.B of the proposed Final Judgment.

(iv) Relief Not Sought by the United States

Prudential identifies two areas in which it believes additional relief, not sought by the United States, might be warranted. First, Prudential observes that the proposed Final Judgment would bind only NAR, the sole defendant in this case, and expresses concern whether the proposed Final Judgment sufficiently compels NAR to require its affiliated MLSs to abide by the terms of the proposed Final Judgment, including

[18] Prudential also suggests that such an election by a seller should apply to automated market valuations or third-party comments or reviews permitted by non-broker Web sites that display MLS-supplied listings. Paragraph II.5.c. applies only to MLS ''Participants' Web sites.'' While an MLS could require third-party Web sites, as a condition of receiving MLS data, to discontinue valuations, comments, or reviews, the United States believes the potential cost to third-party Web sites outweighs the benefits of such a requirement and elected not to insist on such a term in its proposed Final Judgment. As written, this provision strikes the appropriate balance among (i) Permitting sellers some ability to limit the extent to which their properties might be marketed in a bad light, (ii) preventing VOW brokers' competitors from directing sellers to target VOWs with requests to discontinue these services, and (iii) minimizing the effect on third parties.

[19] *See* proposed Final Judgment, ¶¶ IV.A–IV.B.

the Modified VOW Policy. Prudential specifically questions whether paragraphs V.E and V.F of the proposed Final Judgment, which require NAR to take action against MLSs when NAR ''determines'' that the MLSs are not in compliance, require NAR to find out about any noncompliance in the first place or to determine whether the conduct at issue complies with the proposed Final Judgment.

The United States believes that the proposed Final Judgment adequately compels NAR to direct its affiliated MLSs to comply with the Modified VOW Policy. The second sentence of Paragraph V.E of the proposed Final Judgment clearly says that NAR shall deny coverage under its insurance policy (a consequence that Prudential does not dispute will motivate compliance by the MLS) to any MLS that ''refuses to adopt, maintain, act consistently with, or enforce'' the Modified VOW Policy.

The proposed Final Judgment is drafted with the assumption that NAR would find out through multiple channels about an MLS's failure to act in accordance with the decree. First, MLSs would turn to NAR and ask if their conduct was consistent with the law and the decree in order to maintain their insurance coverage. MLSs routinely turn to NAR for advice and approval on various issues in order to maintain coverage under NAR's insurance.[20] Second, brokers who feel aggrieved can complain directly to NAR (or to the United States) about an MLS's conduct.[21] And third, the United States can alert NAR to any actions by an MLS that are inconsistent with the Modified VOW Policy and ask NAR to take action. Thus, there should be little concern that if NAR acts in good faith it will fail to find out that an MLS is acting inconsistently with the Modified VOW Policy.

The proposed Final Judgment does not require NAR to act on frivolous allegations of noncompliance by an MLS. But NAR is required to act when it determines the allegations are well-founded.[22] To the extent NAR operates in bad faith, failing to reach a determination when an allegation is well-founded, the United States could move to enforce the Final Judgment. Additionally, the United States retains the right to sue any MLS directly for violations of the antitrust law.[23]

The United States believes that the enforcement scheme negotiated through these provisions of the proposed Final Judgment appropriately incentivizes NAR to evaluate any information it receives concerning MLS noncompliance and to take timely and appropriate actions to bring its MLSs into compliance. NAR understands that its failure to respond where a response is warranted may mean the initiation of an inquiry by the United States. As a membership organization, NAR will want to minimize the circumstances under which its members (as well as NAR itself) receive direct scrutiny by the United States and will act to correct instances of noncompliance that it observes. This enforcement scheme also permits NAR to decline to address allegations of noncompliance that have no merit. The United States believes that these provisions strike the appropriate balance and will ensure that MLSs do not unreasonably discriminate against VOW brokers.

Second, Prudential discusses Paragraph IV.D of the proposed Final Judgment which forbids NAR from adopting, maintaining, or enforcing rules that impose fees or costs on a VOW broker ''that exceed the reasonably estimated actual costs'' an MLS incurs in providing listings to a VOW broker. Under paragraph III.5 of the Modified VOW Policy, an MLS is authorized to pass along to a VOW broker ''the reasonably estimated actual costs incurred by the MLS'' in establishing the ability to download listings data to VOW brokers. Prudential expresses concern that, because ''costs'' is not defined in the proposed Final Judgment or Modified VOW Policy, MLSs might assess against VOW brokers the salaries of software programmers or compliance officers, or other substantial additional expenses incurred by the MLS. Prudential seeks a clarification that "'costs'' may include only actual direct costs, and may not include any allocations of salaries, consultant fees, rent, utilities, or other overhead expenses.'' It also argues that, under paragraph III.5 of the Modified VOW Policy, an MLS may not charge VOW brokers more than it charges other brokers who download listings data from the MLS for other purposes.

The proposed Final Judgment and Modified VOW Policy permit MLSs to charge VOW brokers fees no greater than the MLSs ''reasonably estimated actual costs'' of providing services to VOW brokers[24] and equal to the ''reasonably estimated costs'' the MLS incurs in adding or enhancing downloading capacity for purposes of supporting VOWs.[25] Because the circumstances and capabilities of MLSs vary, the United States does not believe it would be appropriate to attempt to express with greater precision the type or level of costs it would be permissible for MLSs to impose upon VOW brokers. The United States believes that imposing on MLSs an obligation to account for the fees they impose on VOW brokers will be adequate to prevent the imposition of exorbitant fees. Furthermore, a definition is unnecessary because the United States agrees with Prudential that the proposed Final Judgment's general nondiscrimination provisions would forbid charging VOW brokers for downloading listings information differently than other brokers, unless the costs to the MLS differed as to each recipient.

(v) Long-Standing Provisions

Prudential expresses concern about three provisions that long existed in NAR's VOW Policy but that the United States did not challenge. First, it discusses a requirement in paragraph II.2.c of the Modified VOW Policy that consumers who seek to register on a VOW ''open and review'' the VOW's mandatory terms of use. Prudential asserts that this provision might be interpreted to prohibit the usual practice on many Internet Web sites of opening terms of use in ''a scrollable frame'' that the viewer can read if he or she desires. Prudential also asserts that, because traditional brokers provide listings information to customers upon a simple request of a consumer, the registration requirement in II.2.c of the Modified VOW Policy discriminates against VOW brokers.

NAR included the ''open and review'' requirement in the VOW Policy it adopted on May 17, 2003, and over 200 MLSs subsequently adopted rules implementing the VOW Policy. Through its lengthy investigation and litigation of this matter, the United States neither received any complaints about this requirement nor discovered any

[20] The proposed Final Judgment also requires NAR to educate its MLSs about the terms of the proposed Final Judgment by providing briefing materials on the ''meaning and requirements'' of the proposed Final Judgment and by holding an annual program that includes a discussion of the proposed Final Judgment. *See* proposed Final Judgment, ¶¶ V.G.4–V.G.5.

[21] Note that NAR is required under the proposed Final Judgment to furnish to the United States copies of any communications it receives from an MLS or an aggrieved third party concerning allegations of noncompliance by an MLS with the proposed Final Judgment or Modified VOW Policy. *See* proposed Final Judgment, ¶ V.H. The United States' access to such records will ensure that the United States knows what NAR knows about any instances of MLS noncompliance and will allow the the United States to make sure NAR fulfills its obligations.

[22] *See* proposed Final Judgment, ¶¶ V.E and V.F.

[23] *See id.,* ¶ IX.

[24] Proposed Final Judgment, ¶ IV.D.

[25] Modified VOW Policy, ¶ III.5.

evidence that it had restrained or was likely to restrain competition from any VOW broker. Had the United States proceeded to trial in this case, it would not have sought relief from the ''open and review'' requirement.

The United States notes, however, that it sees no inconsistency between the ''open and review'' requirement and the ''scrollable frame'' in which Prudential's franchisees currently present terms of use to their customers. In the event that MLSs in the future insist upon different and more onerous procedures from Prudential's franchisees or other VOW brokers than the ''scrollable frame'' currently offered, the United States would then be in a position to evaluate whether those procedures restrained competition from VOW brokers.[26]

Second, Prudential mentions paragraph II.2.d of the Modified VOW Policy, which prohibits the VOW broker from establishing any representation agreement or imposing any financial obligation upon a customer through use of a ''mouse click.'' According to Prudential, this provision ''would be tantamount to preventing VOW operators from engaging in electronic commerce at their Web sites.''

This provision was included in the 2003 VOW Policy. Discovery in this case revealed no evidence that this provision had restrained or was likely to restrain competition from VOW brokers. Additionally, the Modified VOW Policy recognizes explicitly that Web sites maintained by VOW brokers ''may also provide other features, information, or services in addition to VOWs.''[27] And, as Prudential concedes, the Modified VOW Policy would not prevent VOW brokers from ''engaging in electronic commerce'' on those non-VOW portions of their Web sites. Thus, the United States disagrees with Prudential that paragraph II.2.d of the Modified VOW Policy is likely to restrain competition from VOW brokers or to ''prevent[ ] VOW operators from engaging in electronic commerce at their Web sites.''

Third, Prudential mentions paragraph II.6 of the Modified VOW Policy, which requires VOW brokers to ''make the VOW readily accessible to the MLS and to all MLS Participants for purposes of verifying compliance with this Policy.'' Prudential expresses concern that MLSs might, under this provision, demand intrusive access to VOW brokers' systems and files and it asserts that MLSs should be permitted to observe only the password-protected portions of the VOW accessible by any customer of the VOW broker.

NAR included a nearly identical provision in its 2003 VOW Policy, which was adopted by over 200 MLSs. The United States heard no complaints nor uncovered any evidence that that provision had been exercised by any MLS in the manner about which Prudential expresses concern. Nevertheless, the United States agrees with Prudential and hereby clarifies that paragraph II.6 of the Modified VOW Policy, by its terms, cannot be used for purposes other than to verify compliance with NAR's policies and it should not provide a basis for MLSs to harass VOW brokers or to conduct a detailed examination of VOW brokers' business files or computer systems.

In over four years of investigation and litigation concerning the Challenged Policies, the United States had neither received complaints nor uncovered evidence that these three provisions had been used in the manner Prudential describes. But, by way of clarification and guidance, the United States reiterates that, to the extent that MLSs discriminate against and harm VOW brokers through these provisions in the future, the proposed Final Judgment allows the United States to investigate and bring an antitrust enforcement action as appropriate.[28]

3. Comments Submitted by Home Buyers Marketing II

Home Buyers Marketing II (''HBM II'') is a VOW broker operating in approximately 400 markets throughout the United States. HBM II's comments (Attachment 3) identify ''particular anticompetitive practices'' and seek confirmation that the proposed Final Judgment, including the Modified VOW Policy, would prohibit MLSs from engaging in those practices.[29]

HBM II expresses concern about paragraph II.3 of the Modified VOW Policy, which requires that VOW brokers ''be willing and able to respond knowledgeably to inquires from [customers].'' It seeks clarification that an MLS would not be permitted to demand a greater level of knowledge from a VOW broker concerning properties it displays to customers than the MLS demands from other brokers.

Because the Modified VOW Policy does not define the level of knowledge that a VOW broker must possess when responding to customer inquiries, the United States agrees with HBM II that the proposed Final Judgment's general nondiscrimination provisions would prevent MLSs from demanding greater knowledge from VOW brokers than they demand of other brokers.[30]

HBM II also comments on paragraph IV.1.e of the Modified VOW Policy. Under that provision, an MLS may limit to a ''reasonable number'' the listings that VOW brokers can provide to customers in response to a customer's query, but the number can be no fewer than 100 listings or five percent of all listings in the MLS, whichever is lower. HBM II suggests that even a limit of 100 listings would be unreasonable if the MLS permitted consumers to search without such limits on other Web sites populated with data provided by the MLS.

The Modified VOW Policy does not define when a limitation on the number of listings a VOW broker could provide to customers would be unreasonable. While Paragraph IV.1.e of the Modified VOW Policy sets 100 listings or five percent of all listings in the MLS as a floor below which an MLS cannot go, the use of the reasonableness limitation suggests that, in some circumstances, a limitation set higher than the floor could still be impermissible. HBM II suggests one such circumstance: A 100-listing limitation applicable to VOWs would be unreasonable if the MLS permitted non-VOW Web sites to show a greater number of listings to customers. The United States agrees with HBM II that, if an MLS were to restrict the number of listings a VOW broker could provide his or her customers but did not restrict in the same way other Web sites on which it permits its listings to be displayed, the MLS would unreasonably disadvantage VOW brokers and would violate the proposed Final Judgment's nondiscrimination provisions.

Finally, HBM II observes that the proposed Final Judgment or Modified VOW Policy do not define the word ''cost.'' HBM II seeks confirmation that

[26] *See* proposed Final Judgment, ¶ IX.

[27] Modified VOW Policy, I.3.

[28] *See* proposed Final Judgment, IX.

[29] Three issues raised by HBM II repeat concerns expressed by Prudential. HBM II repeats Prudential's comment concerning how frequently VOW brokers may update the MLS listings that populate their Web sites, the meaning of the requirement in paragraph II.2 of the Modified VOW Policy that MLSs provide VOW brokers ''all MLS nonconfidential listing data,'' and whether the United States and NAR intended, in paragraph II.2.c.iv of the Modified VOW Policy, to prevent a VOW brokers' customers from sharing listings with friends, family, lenders, or others with whom they need to consult in their home purchase decision. The United States addressed each of these issues fully in its response to Prudential's comments.

[30] As HBM II points out, NAR's general counsel explained in a June 16, 2008, speech that brokers cannot ''always be expected to have the answer right there'' when they receive inquiries from customers. ''In many instances, * * * you may have to say, 'I'll find that information out and I'll get back to you.' That would be responding knowledgeably.''

MLSs could not charge VOW brokers for the entire cost of items or services used only partially to support the use of VOWs.

As stated above, because MLSs vary, the United States has not sought to prescribe the types or levels of costs that MLSs could reasonably allocate to VOW-related activities for purposes of establishing fees applicable to VOW brokers. The United States agrees with HBM II, however, that the proposed Final Judgment would prohibit an MLS from ''allocat[ing] the cost of facilities (or staff time) used for other purposes exclusively or disproportionately to the VOW feed.'' Such an allocation would exceed the ''reasonably estimated actual costs'' incurred by the MLS in performing services for VOW brokers and would unreasonably disadvantage VOW brokers in violation of the proposed Final Judgment's nondiscrimination provisions.

B. Comments Submitted by Exclusive Buyer Agents

Two groups of exclusive buyer agents sent comments. Both expressed concerns that NAR's revision and reinterpretation of its membership rule, attached to the proposed Final Judgment as Exhibit B, might be interpreted to exclude them as members of the MLS. The United States has confirmed that such concerns are unfounded.

The first commentor, the National Association of Exclusive Buyer Agents (''NAEBA''), consists of real estate brokers and agents ''who represent buyers only and who never list property for sale or represent sellers.'' The second commentor, the Buyer's Broker of Northern Michigan, LLC, is a member of the NAEBA. Both the NAEBA and the Buyer's Broker of Northern Michigan submitted comments that are similar in substance. (Attachments 4 and 5).

The NAEBA began its comment by commending the Department for its ''efforts on behalf of the nation's consumers to address some of the anticompetitive practices in the real estate marketplace today.'' But both commentors expressed concern that, under NAR's revised membership rule, brokers or agents who commit to work exclusively with buyers and to be compensated exclusively by buyers, rather than receiving a share of the commission from the listing broker, might be precluded from joining the MLS. They worry that, because NAR's revision to its membership rule opens MLS membership only to licensed brokers who actually ''offer or accept cooperation and compensation to and from other [MLS members],'' they could be prevented from participating in the MLS.

First, even though exclusive buyer brokers do not list properties or represent sellers, they usually are compensated, at least in part, by a share of the commission that the listing broker offers to the broker who finds a buyer for the property. In such a circumstance, the buyer broker would be accepting cooperation and compensation and would be entitled to MLS membership under NAR's revised membership rule. Additionally, NAR's revised membership rule does not prevent, as the commentors feared, an exclusive buyer broker from accepting the commission offered by the listing broker (even if the offer is zero percent) and supplementing that commission with payment directly from the buyer. Moreover, NAR has told the United States that it does not interpret its revised membership rule to exclude a buyer broker who always refuses the share of the commission offered by the listing broker and chooses to be compensated entirely by the buyer. NAR recognizes that an exclusive buyer broker is still ''cooperating'' with the listing broker to sell the property and has stated that it will advise its MLS members in writing that such a broker is not to be excluded from the MLS.[31] Finally, if NAR changes its interpretation so that its MLSs begin to exclude exclusive buyer brokers from MLS membership in the future, the United States remains free to challenge such conduct as anticompetitive.[32]

C. Comments Submitted by MLS4owners.com

MLS4owners.com is a broker operating in the State of Washington. According to its comment (Attachment 6), it is a ''flat-fee, limited-service brokerage.'' Its comment concerns the third paragraph of the preamble to the proposed Final Judgment, which states that ''the United States does not allege that Defendant's Internet Data Exchange (IDX) Policy in its current form violates the antitrust laws.'' MLS4owners.com believes that NAR's IDX Policy does violate the antitrust laws, by permitting brokers operating IDX Web sites to exclude exclusive agency or limited-service listings from their own IDX Web sites.

As MLS4owners.com itself correctly observes, ''the IDX Policy was NOT the subject of the DOJ's pre-complaint investigation, complaint, amended complaint or discovery'' (emphasis in original). The United States takes no position as to the permissibility under the antitrust laws of NAR's IDX Policy; paragraph three of the preamble to the proposed Final Judgment reflects that this case involved only VOWs and not the IDX Web sites about which MLS4owners.com is concerned.[33]

To the extent that MLS4owners.com suggests that the United States' Amended Complaint should have challenged NAR's IDX Policy, its argument should be rejected. Review under the APPA should not involve an examination of possible competitive harms the United States did not allege. *See, e.g., Microsoft*, 56 F.3d at 1459 (stating that the district court may not ''reach beyond the complaint to evaluate claims that the government did not make'').

[31] NAR's rules already prohibit MLSs from excluding buyer brokers. *See* National Association of Realtors, *Handbook on Multiple Listing Policy* (2008), at 25 (''Since the MLS is an association service by which the participants make blanket unilateral offers of cooperation and compensation to the other participants with respect to listings for which they are an agent, no association or association MLS may make or maintain a rule which would preclude an individual or firm, otherwise qualified, from participating in an association MLS solely on the basis that the individual or firm functions, to any degree, as the agent of potential purchasers under a contract between the individual (or firm) and the prospective purchaser (client).'').

[32] In its penultimate paragraph, NAEBA expressed an additional concern about provisions IV.1.d and IV.1.f of the Modified VOW Policy, which allow MLSs to require VOW brokers to include the name of the listing broker or agent in any listings the VOW broker displays on its VOW. NAEBA believes this requirement would force an exclusive buyer broker who operates a VOW to advertise its competition—the broker who listed the property. However, NAR included these provisions in its 2003 VOW Policy and the United States chose not to challenge them as there did not appear to be any significant effects from notifying a customer of the identity of the listing agent. Additionally, the proposed Final Judgment allows MLSs to adopt these provisions only if the MLS imposes the same requirements on brokers who provide listings by more traditional methods of delivery. Thus, the MLS cannot use these provisions to discriminate against VOW brokers.

[33] VOWs are password protected Web sites through which brokers provide brokerage services to customers or clients, including the opportunity to search MLS listings and other information. NAR's ''Internet Data Exchange'' or ''IDX'' rules govern Web sites operated by brokers through which they can advertise listings to consumers with whom the broker has not yet established a customer or client relationship. As Prudential explains in its comments, ''[b]ecause any Web visitor can view a broker's IDX pages without having any direct contact with the broker who owns the site, the IDX listing information is the functional equivalent of newspaper or magazine advertising directed to the general public at large. * * * [A]n MLS' IDX data feed does not necessarily include all properties in the MLS' database compilation [or] all of the information about a listed property that MLS participants may delivery to customers or clients. * * *.''

D. Comments That Do Not Address the Amended Complaint or Proposed Final Judgment

The United States received three additional comments that do not address the Amended Complaint or proposed Final Judgment.

Bernard Tompkins of Realty Specialist Inc. submitted a comment (Attachment 7) critiquing a report published jointly in 2007 by the Department of Justice and the Federal Trade Commission entitled ''Competition in the Real Estate Brokerage Industry.'' [34] Mr. Tompkins' comments are not relevant to the Court's APPA inquiry.

The United States also received comments (Attachment 8) submitted anonymously by brokers from Montgomery County, Pennsylvania. These commentors propose relief, unrelated to the allegations in the Amended Complaint or the subject of this case, that they contend would ''prevent[ ] the loss of competition'' and ''better serv[e] the public interest.'' They suggest that brokers should be prohibited from referring customers to mortgage lenders, that brokers provide ''maximum exposure'' for listed properties, and that properties on NAR's Realtor.com Web site include home addresses. Whatever the merits of these suggestions, they do not address the allegations in the Amended Complaint or the relief obtained in the proposed Final Judgment.

Finally, an anonymous broker from San Jose, California, submitted a comment (Attachment 9) complaining about an unrelated rule adopted by his MLS that prevents him from publishing on the Internet the same median sold price information that brokers are permitted to publish in the newspaper. This allegation is not related to the United States' Amended Complaint or to the proposed Final Judgment and has no role in the Court's evaluation under the APPA.

VI. Conclusion

After careful consideration of the public comments, the United States concludes that, with the minor modifications identified above, the entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint and is therefore in the public interest. Accordingly, on November 7th, after this Response to Comments has been published in the **Federal Register** pursuant to 15 U.S.C. 16(b) and (d), the United States will move this Court to enter the proposed Final Judgment.

Dated: October 23, 2008.

Respectfully submitted,

David C. Kully,
Owen M. Kendler,
U.S. Department of Justice, Antitrust Division, 450 5th Street, NW., Suite 4000, Washington, DC 20530, Tel: (202) 307–5779, Fax: (202) 307–9952.

Certificate of Service

I, David C. Kully, hereby certify that on this 23rd day of October, 2008, I caused a copy of the foregoing Response of the United States to Public Comments on the Proposed Final Judgment to be served by ECF on counsel for the defendant identified below.

Jack R. Bierig, Sidley Austin LLP, One South Dearborn Street, Chicago, IL 60603, (312) 853–7000, *jbierig@sidley.com.*

David C. Kully.

[34] A copy of this report is available at *http://www.usdoj.gov/atr/public/reports/223094.pdf.*

September 23, 2008

Via Email
John Read
Chief, Litigation III Section
Antitrust Division
US Department of Justice
John.Read@usdoj.gov

Re: *United States of America v. National Association of Realtors*
United States District Court for the Northern District of Illinois
Civil Action No. 05 C 5140

Mr. Read:

ZipRealty Inc. ("ZipRealty") submits the following comment in support of the Proposed Final Judgment ("Proposed Judgment") in the above referenced matter pursuant to 15 U.S.C. §16.

ZipRealty is a full service real estate brokerage that has operated a VOW[1] since 1999. Presently, ZipRealty operates in 35 major markets in 20 states and has licensed real estate agents serving clients in all such markets. Due to the lack of specific regulation requiring fair and equal treatment for Brokers operating VOWs, various Member Boards and MLSs have subjected ZipRealty to practices and restrictions not applied to "traditional" or "bricks and mortar" Brokers, which placed ZipRealty at a competitive disadvantage due to its operation of a VOW. Further, had the proposed NAR policy challenged by the United States Department of Justice ("DOJ") been implemented, it is ZipRealty's position that its business would likely have faced significant challenges as a result of that policy. Accordingly, ZipRealty supports entry of the Proposed Final Judgment in the above referenced matter.

The Proposed Judgment and incorporated Modified VOW Policy ("Policy") prohibiting Member Boards and MLSs from discriminating against Brokers operating VOWs favors public and consumer interests. However, it is essential that Member Boards and MLSs reasonably interpret the terms of the Proposed Judgment and Policy to ensure that they apply the same policies, rules and regulations to Brokers operating VOWs as are applied to "traditional" Brokers, and that they do not subject Brokers operating VOWs to inappropriate and unreasonable additional costs, fees or restrictions not imposed on other Brokers.

[1] The definitions set forth in the Proposed Final Judgment shall apply to terms not defined in this letter.

Provided that the terms or the Proposed Judgment and Policy are fairly applied and enforced, it is ZipRealty's position that this Proposed Judgment and Policy will promote fair competition and innovation resulting in a substantial benefit to consumers.

Samantha E. Harnett, Esq.
Vice President and Assistant General Counsel

ARNSTEIN & LEHR LLP

October 10, 2008

John R. Read, Esq.
Chief, Litigation III Section
United States Department of Justice
Antitrust Division
450 5th Street, NW
Suite 4000
Washington, D.C. 20530

Re: United States of America v. National Association of REALTORS®, United States District Court for the Northern District of Illinois, Case No. 05 C 5140

Dear Mr. Read:

On behalf of Prudential Real Estate Services Company, LLC ("PRESCo") and Prudential Real Estate Affiliates, Inc. ("PREA"), we offer the following comments pursuant to 15 U.S.C. §16(b) with regard to the Proposed Final Judgment in *United States v. National Association of Realtors®*, Case No. 05 C 5140 and the Policy Governing Use of MLS Data In Connection With Internet Brokerage Services Offered By MLS Participants ("Virtual Office Websites") ("Modified VOW Policy"), attached as Exhibit A to the Proposed Final Judgment.

Both PREA and PRESCo are subsidiaries of Prudential Financial, Inc. PREA is a real estate brokerage franchise company. Pursuant to franchise agreements between PREA and its franchisees, otherwise known as "Affiliates," PREA grants the Affiliates the right to use Prudential trademarks and receive other benefits and services made available to brokerage companies as part of the PREA Network. As of June 30, 2008, the PREA Network consists of over 600 independently owned and operated real estate brokerage companies that have more than 54,000 affiliated sales professionals located in all fifty (50) states.

In January of 2004, Prudential Financial, Inc. acquired eRealty, Inc., a Houston based real estate brokerage company that pioneered the application of Internet technology to the real estate brokerage industry, and reorganized eRealty, Inc. as PRESCo. PRESCo is a technology services provider to PREA Affiliates. Pursuant to Application Services Provider ("ASP") Agreements between PRESCo and PREA

Affiliates, PRESCo designs, hosts and administers websites that are owned and controlled by PREA Affiliates. The sites have been commonly referred to as the PREA "Platform." PRESCo currently operates Platform sites for 480 PREA Affiliates throughout the United States and receives real estate data for use with these sites from 370 Multiple Listing Services ("MLSs").

The PREA Affiliate Platform web sites include "Internet Data Exchange" or "IDX" pages at which any web visitor can access and view IDX listing information supplied by the MLSs in which the PREA Affiliate participates. Because any web visitor can view a broker's IDX pages without having any direct contact with the broker who owns the site, the IDX listing information is the functional equivalent of newspaper or magazine advertising directed to the general public at large.

The National Association of Realtors® ("NAR") amended its Multiple Listing Policy in 2000 to require MLSs owned by one or more Associations of Realtors® to provide IDX data feeds to their participants to enable them to operate IDX websites. These IDX data feeds include listing information about properties listed with all MLS participants who have not "opted out" of the MLS' IDX program.

Since MLS participants can "opt out" of an MLS' IDX program; an MLS' IDX data feed does not necessarily include all properties in the MLS' database compilation that a participant can provide to customers or clients in a "bricks and mortar" environment. The MLS' IDX data feeds also do not necessarily include all of the information about a listed property that MLS participants may deliver to customers or clients using non-browser methods. For example, some MLSs exclude property addresses, property tax assessment information, or room dimensions from IDX data feeds.

The Platform also includes a "Virtual Office Website" feature or VOW. Visitors to the IDX pages of the Platform, who are interested in receiving additional information about a property shown on an IDX page, or wish to be contacted by an Affiliate's sales agent, are invited to register at the Affiliate's VOW. The registration pages of the VOW require a consumer to provide a verifiable email address, create a user name and unique password, and electronically "accept" by a mouse click a Terms of Use agreement that sets forth the terms and conditions upon which the registrant is being allowed to access and use the functionality available on the Affiliate's VOW.

The purpose of the VOW is to permit a consumer who becomes a "Registered User" of the VOW, to access, view, and save to a personal online portfolio, the same non-confidential information about listed properties that MLS participants and subscribers may deliver to their customers and clients in a "bricks and mortar" setting using non-browser based media. During the nearly five (5) years that PRESCo has operated the Platform on behalf of PREA Affiliates, only a few MLSs have been willing to provide PRESCo with a data feed of complete MLS listing content for use with the VOW component of the Platform. In most cases, the MLSs will only provide PRESCo

with a more limited IDX data feed, which PRESCo has been forced to use with both the IDX and VOW features of the Platform. A VOW that is forced to operate with an IDX feed is at a disadvantage compared with a data feed available for use in a "bricks and mortar" environment because the IDX data feed does not contain any "opted out" listings, and also may contain less information about listed properties than is included in the complete MLS database compilation that MLS participants are permitted to access when providing listing information to customers and clients using non-browser based methods.

PREA and PRESCo believe that, on balance, the Proposed Final Judgment, including the Modified VOW Policy resolve the fundamental issues raised in the Government's Complaint against NAR, and that entry of the Final Judgment is in the public interest. These fundamental issues are the so-called "blanket" and "selective" opt out feature of NAR's former VOW and ILD Policies that permitted MLS participants to withhold their listing information from some or all VOW operators, and the refusal of many MLSs to permit VOW operators to provide MLS data to VOW Registrants that is the equivalent of the MLS data that MLS participants may share with customers and clients in a non-VOW environment.

Nevertheless, PREA and PRESCo believe that certain provisions or ambiguities in the Proposed Final Judgment and Modified VOW Policy, if not clarified or modified, could enable NAR or its MLSs to continue to impose unreasonable burdens on the use of VOWs in the real estate brokerage industry to the detriment of real estate brokers and the home buying and selling public. Accordingly, PRESCo and PREA request the Antitrust Division to clarify, or provide interpretative guidance for, certain provisions of the Proposed Final Judgment and the Modified VOW Policy as set forth below to ensure that PREA Affiliates, and their VOW Registrants, will have continuous access on reasonable terms and conditions to current and complete MLS data for use on their VOWs.

Section V of the Proposed Final Judgment Should Be Interpreted To Require NAR To Respond To Complaints About Member Board Violations Of The Modified VOW Policy And To Require Its Member Boards To Report To NAR Concerning Any Complaints About Their Compliance With The Modified VOW Policy.

Significantly, Section III of the Proposed Final Judgment does not define NAR's Member Boards as being "in active concert" with NAR for the purposes of enforcement of the Final Judgment. This is true even though, pursuant to NAR's Constitution and Bylaws, NAR and its Member Boards collaborate to implement NAR's Multiple Listing Policy as adopted by NAR's Board of Directors. As such, the Proposed Final Judgment is directly enforceable only against NAR, notwithstanding that NAR itself does not operate any MLS, but instead adopts MLS Policies that the Member Boards in turn

implement by adopting and enforcing MLS Rules and Regulations in their respective local markets that are not inconsistent with NAR's MLS Policy.

Therefore, since NAR's Member Boards are not themselves bound by the Proposed Final Judgment, whether the Proposed Final Judgment will ultimately achieve its pro-competitive purposes depends, in large part, upon whether NAR adequately carries out its obligations to initially bring its Member Boards into compliance with the Modified VOW Policy, and thereafter ensure that such compliance continues throughout the term of the Proposed Final Judgment. Because NAR bears the primary responsibility under the Proposed Final Judgment to ensure that its Member Boards implement the terms of the Proposed Final Judgment and the Modified VOW Policy, PREA and PRESCo urge that the Antitrust Division clarify that Proposed Final Judgment, as written, imposes an obligation upon NAR to investigate and, if necessary, to take appropriate action against a Member Board when it receives any complaint or other information suggesting that a Member Board MLS is not complying with the terms of the Proposed Final Judgment or the Modified VOW Policy.

PREA and PRESCo contend that the terms of Proposed Final Judgment can be interpreted to impose such an obligation on NAR. Section V. D of the Proposed Final Judgment obligates NAR to direct its Member Boards not only to adopt the Modified VOW Policy, but also "not to adopt, maintain, or enforce any Rule or practice that NAR would be prohibited from adopting, maintaining or enforcing pursuant to Section IV of this Final Judgment. . . " The Proposed Final Judgment further includes Sections V. E. and V. F., which obligate NAR to take certain actions against a Member Board if it "determines" that a Member Board has not timely adopted the Modified VOW Policy, or has taken action that NAR would be prohibited from taking pursuant to the Proposed Final Judgment.

In addition to the provisions of Section V, the Proposed Final Judgment includes Section IV entitled "Prohibited Conduct," which states in the first paragraph that ". . . NAR shall not adopt, maintain, or enforce any Rule, or enter into or enforce any agreement or practice that directly or indirectly" constitutes any of the actions subsequently enumerated in Sections IV.A through IV.E. Section IV.E specifically prohibits NAR from maintaining or enforcing any Rule that "is inconsistent with the Modified VOW Policy.

Therefore, if NAR were to fail to act upon receipt of a complaint or other information suggesting that a Member Board or its MLS violated the Modified VOW Policy, NAR's inaction could be deemed to be the "maintenance" of a Rule that violates the Modified VOW Policy in violation of Section IV.E of the Proposed Final Judgment. For this reason, the Proposed Final Judgment, as currently drafted, can, and should, be interpreted to impose an affirmative obligation upon NAR to promptly investigate, and thereafter "determine," for the purposes of Section V. F of the Proposed Final

Judgment, the validity of any complaint, or other information that may be brought to NAR's attention, that a Member Board has violated the Modified VOW Policy.

Section V.G (2) of the Proposed Final Judgment obligates NAR's Antitrust Compliance Officer to

> "maintain copies of any communications with any Person containing allegations of any Member Board's (1) noncompliance with any provision of the Modified VOW Policy or with this Final Judgment, or (ii) failure to enforce any Rule implementing the Modified VOW Policy."

Section V.G (2) does not restrict the "communications" that NAR is obligated to maintain to those directed specifically to NAR. The communications subject to Section V.G (2) could include communications directed to the Member Boards or their MLSs, as well as to NAR. Therefore, the Antitrust Division should interpret Section V.G (2) to impose an obligation upon NAR to require Member Boards to provide NAR with copies of communications directed to the Member Boards or their MLSs of the type described in Section V.G (2). These communications provided by the Member Boards should be among the materials NAR's Antitrust Compliance Officer must furnish to the Antitrust Division on a quarterly basis pursuant to Section V.H of the Proposed Final Judgment.

Section II.2.c Of The Modified VOW Policy Should Be Clarified To Require A VOW Operator To "Enable", But Not "Require", A VOW Registrant To "Open And Review" The VOW Terms Of Use Agreement

Section II of the Modified VOW Policy sets forth policies that are applicable to MLS Participants' VOWs. Section II.2.c provides that a VOW operator must require a VOW Registrant to "open and review" a Terms of Use agreement before accepting it by a mouse click. Requiring a potential VOW Registrant to open and review the Terms of Use Agreement before accepting it is unreasonable given the current operation of web sites and the enforceability of Terms of Use Agreements that govern consumers' use of such sites. For example, many websites that require or invite a visitor to become a "registered user" display the applicable Terms of Use agreement within a scrollable frame. If potential registrants are interested in scrolling though the entire agreement within the frame, or printing a copy of it, they are free to do so. Otherwise, they can simply click "I accept" and complete the registration process.

There does not seem to be any reason for a VOW operator to be forced to compel a registrant to use a less user friendly registration process than is used on most other web sites at which consumers are agreeing to be bound by terms of use agreements that impose much more liability upon users of those sites that is imposed upon a VOW Registrant by a VOW Terms of Use. Such "scrollable" Terms of Use agreements are fully enforceable. See *Caspi, et al v. The Microsoft Network, LLC, et al,* 323 N.J. Super. 118, 732 A.2d 528 (N.J. App. Div., July 2, 1999).

Section II.2.c of the Modified VOW Policy is also inconsistent with Section IV B of the Proposed Final Judgment. Section IV.B of the Proposed Final Judgment prohibits NAR from adopting, maintaining, or enforcing any Rule, or entering into or enforcing any agreement or practice that "unreasonably disadvantages or unreasonably discriminates against a Broker in the use of a VOW. . . "

In a "bricks and mortar" environment, MLS participants are permitted to, and typically do, deliver full and complete MLS listing information to any consumer who asks for it without any requirement that the consumer and the MLS participant enter into a Terms of Use, or any other type of agreement governing the consumer's use of the information, or reasons for asking for it. Section II.2.c therefore "disadvantages" and "discriminates against" VOW operators as compared to their "bricks and mortar" counterparts by imposing an onerous process for securing a VOW Registrant's acceptance of a Terms of Use Agreement when a Terms of Use Agreement is not even required as a condition of delivering MLS listing data to a consumer in a non-VOW setting. Section II.2.c should be amended to require that a VOW operator simply display the Terms of Use Agreement to the potential VOW Registrant in a form that permits, but does not require, the Registrant to open and review the agreement before accepting it.

Section II.2.c.iv Of The Modified VOW Policy Should Be Clarified To Permit VOW Registrants To Deliver Information About "Saved" Listings To Relatives, Friends, Or Mortgage Loan Officers.

Section II.2.c.iv of the Modified VOW Policy requires that the Terms of Use Agreement that the VOW Registrant must accept include terms providing that the Registrant will not "copy, redistribute, or retransmit any of the data or information provided [on the VOW]." It is unclear what is meant by "copy, redistribute, or retransmit" the MLS data made accessible on the VOW.

The PRESCo Platform includes functionality through which VOW Registrants can "save" specific listings to a personal portfolio or "account. This functionality also permits a Registrant to forward a "saved" listing to a spouse, relative, or friend for review or comment, or to a mortgage loan officer with an indication that the property may be the object of the Registrant's upcoming loan application. This functionality is extremely useful to VOW Registrants and is quite commonly offered on almost all VOWs, as well as many IDX sites. Section II 2.c.iv of the Modified VOW Policy would seem to prohibit VOW operators from making this very valuable functionality available to VOW Registrants, and should be amended to make clear that VOW Registrants may "save" individual listing records in a personal portfolio and may retransmit such "saved" listing records to third parties, so long as the retransmission involves only isolated listing records and not the all, or substantially all, of the MLS data accessible on the VOW.

Section II.2.d Of The Modified VOW Policy Should Be Amended To Permit VOW Operators To Enter Into "Mouse Click" Agreements With VOW Registrants That Obligate The Registrant To Pay A Fee Or Create A Representation Relationship Between The VOW Operator And The Registrant If The "Mouse Click" Agreements Are Entered Into On A Non-VOW Section Of The VOW Operators Website.

Section II.2.d .of the Modified VOW Policy provides that:

"An agreement entered into at any time between the Participant and Registrant **imposing a financial obligation on the Registrant or creating representation of the Registrant by the Participant** must be established separately from the Terms of Use, must be prominently labeled as such and **may not be adopted solely by a mouse click."**

Emphasis added.

While they have not yet done so, PREA, PRESCo and PREA's Affiliates may decide to make available to VOW Registrants the opportunity to acquire ancillary products or services, for a fee, either from PREA, PRESCo or the Affiliate, or from third parties with whom these parties have executed joint marketing agreements. PREA, PRESCo and PREA Affiliates may also choose to enable VOW Registrants to enter into online representation agreements with the VOW operator at the VOW operator's website. VOW Registrants acquisition of these products or services, or execution of a representation agreement, would be accomplished online at the VOW by a "mouse click." In this respect, the VOW operator would include offerings similar to those made available in the participant's "bricks and mortar" office, which include mortgage loan, home owner's and title insurance, or home warranty products sold through affiliated business arrangements between the VOW operator and providers of such products.

The section of the Modified VOW Policy quoted above would permit such "mouse click" transactions to occur at a VOW so long as the "Participant" (i.e. the PREA Affiliate) is not a party to the transaction. It is illogical to permit a VOW operator to enable a third party to enter into "mouse click" transactions from the operator's VOW that require a Registrant to pay a fee, form a representation relationship, but forbid the VOW operator itself to enter the identical types of transactions or agreements.

Section II.2.d of the Modified VOW Policy presumably only applies to agreements entered into on the VOW section of the PREA Platform. Thus, a VOW operator would be free under Section II.2.d of the Modified VOW Policy to enter into agreements through a "mouse click" with VOW Registrants that would otherwise be prohibited by Section II.2.d so long as such agreements are formed on a section of the MLS

participant's website other than the VOW. Section I.1 of the Modified VOW Policy clearly states that a VOW may be one of several features of a Participant's website. Likewise, Section I.3 of the Modified VOW Policy expressly provides that "Participants' Internet websites, including those operated by AVPs, may also provide other features, information, or services in addition to VOWs (including the Internet Data Exchange ("IDX") function)."

Therefore, a VOW operator is presumably free to link VOW Registrants to these other sections of the VOW operator's website at which the VOW operator and the Registrant may via a mouse click enter into agreements of the type that Section II.2.d would prohibit from being consummated by a mouse click on the operator's VOW. Section II.2.d of the Modified VOW Policy should, therefore, be interpreted to make clear that its prohibition on mouse click agreements only applies to the VOW portion of a broker's website, and not any other portion of the broker's site. Needless to say, a VOW operator's ability to enter into mouse click agreements on other sections of the VOW operator's website demonstrates that Section II.2.d does not serve any useful purpose and should be deleted.

If Section II.2.d were interpreted to prohibit VOW operators from entering into mouse click agreements of the type prohibited by Section II.2.d on any page of an operator's website(s), Section II.2.d would be tantamount to preventing VOW operators from engaging in electronic commerce at their websites. If any other consortium of competitors enacted rules prohibiting their members from engaging in electronic commerce with consumers such an agreement would almost surely violate Section 1 of the Sherman Act. Likewise, there are not any state or federal consumer protection laws that prohibit companies operating in other industries from engaging in "e-commerce" transactions with consumers via "mouse clicks." If the operators of thousands of other e-commerce websites are trusted to enter into financial transactions with consumers by a "mouse click" so should a VOW operator.

Section II.5.a and Section III.4 of the Modified VOW Policy Should Be Interpreted To Make Clear That The Right Of Sellers To Exclude Their Listings From Internet Display May Only Be Exercised On A Blanket Basis And Must Also Apply To Any Other Internet Display Of Information About The Seller's Listing

The Modified VOW Policy at Section II.5.a provides that VOW operators must not "display listings or property addresses of sellers who have affirmatively directed their listing brokers to withhold their listing or property address from **display on the Internet**." Emphasis added. The use of the words "display on the Internet" in Section II.5.a presumably means that a VOW operator is bound by Section II.5.a only if (1) the seller has made an election to withhold his or her listing, or listing address, from all forms of Internet display, including all other VOW sites (a "blanket opt out"), and (2) the seller has directed the listing broker to exclude the seller's listing or listing address from

any data feed that the listing broker, the Member Board or its MLS sends to other web sites that aggregate real estate listing information such as Google Base, Yahoo Classifieds, Zillow, Cyberhomes, or Trulia. Section II.5.a should be interpreted to make explicit the foregoing limitations on its applicability.

Section II.5.a. Of The Modified VOW Policy Should Be Amended To Permit VOW Operators To Deliver Seller Excluded Addresses To VOW Registrants.

The last sentence of Section II.5.a provides that notwithstanding a seller's election to withhold the display of a listing, or the listing's address, on the Internet, a VOW operator "may provide to consumers via other delivery mechanisms, such as email, fax or otherwise, the listings of sellers who have determined not to have the listing for their property displayed on the Internet." This express permission to a VOW operator to deliver to VOW Registrants using non-browser based media information about listings that sellers have "opted out" of Internet display is limited only to listings that sellers have elected to withhold in their entirely from Internet display, and does not extend to the delivery through non-browser media of the listing **addresses** that the seller has decided to withhold from Internet display.

It is totally illogical to prohibit a VOW operator from delivering seller excluded addresses to VOW Registrants using non-browser media, but permit a VOW operator to deliver to a VOW Registrant using non-browser media, an entire seller-excluded listing record, including the seller's address, when the seller has elected to withhold all data about the listed property from Internet display. The last sentence of Section II.5.a of the Modified VOW Policy should be amended to permit VOW operators to deliver seller excluded addresses to VOW Registrants using non-browser media.

Section III.2 and Section III.4 Of The Modified VOW Policy Should Be Interpreted To Insure That MLSs Must Provide Seller Excluded Listings And Addresses In The "Download" Of MLS Data Required By Section III.2, Notwithstanding An MLS' Right To Exclude The Same Data From A "VOW-Specific Feed" Pursuant To Section III.4.

Despite the permission granted to VOW operators in the last sentence of Section II.5.a, Section III.4 of the Modified VOW Policy provides that "If an MLS provides a VOW-specific feed, that feed must include all of the non-confidential data included in the feed described in paragraph 2 above, **except for listings or property addresses of sellers who have elected not to have their listings or addresses displayed on the Internet."** Emphasis added. Section III.2 of the Modified VOW Policy, however, provides that

> . . . **MLSs shall, if requested by a Participant, provide basic 'downloading' of all MLS non-confidential listing data, including without limitation address fields, listings types, photographs, and links to virtual tours.** Confidential

> data includes only that which Participants are prohibited from providing to customers orally and by all other delivery mechanisms.. . . . "

Emphasis added. Section III.2 appears to require an MLS to provide basic downloading of non-confidential MLS data that includes any and all seller excluded listings or property addresses. Such data would not be deemed "confidential" based on the second sentence of Section III.2 since it is not data that MLS Participants are "prohibited from providing to customers orally and by all other delivery mechanisms."

To exercise the authority granted in the last sentence of Section II.5.a, a VOW operator must have the seller-excluded data on its VOW server. When a VOW Registrant executes a search request that would include otherwise have included the seller-excluded data, the VOW software code can be programmed to retrieve the seller-excluded data and deliver it to the VOW Registrant via an email alert.

This functionality can operate only if the seller excluded data is maintained on the same server as the other MLS data that can be displayed on a VOW. Section III.2 appears to require MLSs to permit this seller excluded data to be included in the MLS data that an MLS must permit to be "downloaded" by a VOW operator. An MLS must not be permitted to disregard the mandate of Section III.1 by providing a "VOW specific feed" that complies with the terms of Section III.4. Otherwise the permission granted to VOW operators in the last sentence of Section II.5.a is wholly illusory. Therefore, Sections III.2 and III.4 should be interpreted to require an MLS to provide the "downloading" mandated by Section III.2 whether or not an MLS elects to offer a "VOW-specific feed" pursuant to Section III.4.

Section II.5.c Of The Modified VOW Policy Should Be Interpreted To Require Any Seller Who Exercises A Right To Require The Disabling Of VOW Features That Permit Third Parties To Post Comments About The Listed Property, Or The Display Automated Valuations Of The Listed Property, To Do So Only On A Blanket Basis, And Also To Prohibit The MLS Or Listing Broker From Delivering The Seller's Listing To Any Real Estate Listing Aggregation Website That Permits The Display Of Third Party Comments Or Links To Sites That Provide Automated Valuations Of The Seller's Property.

Section II.5.c of the Modified VOW Policy obligates a VOW operator whose VOW includes functionality that (1) enables third parties to post comments about a listed property, or (2) retrieve automated estimates of value for the listed property to disable those features with respect to any listing for which the seller has "elected to have one or both of these features disabled or discontinued on all Participants' websites." The language "discontinued on all Participants' websites" in Section II.5.c should be interpreted to require that Section II.5.c only applies if the seller makes any directive to disable the identified functionality on a "blanket" basis applicable to all VOW operators, and not on a "selective" basis applicable only to certain VOW operators

Likewise Section II.5.c should be interpreted to mean that a VOW operator is not required to observe the seller's mandates to disable the identified functionality unless the seller also directs the listing broker to exclude the seller's listing from any data feed provided by the MLS to a real estate listing aggregation web site that permits the display of consumer comments about, or valuation estimates or, the seller's listing. Such real estate aggregation websites include Realtor.com, Trulia, Google Base, Yahoo Classifieds, Cyberhomes, or the MLS' own publicly accessible website.

It is understood, however, that sellers cannot prevent third party web sites, such as Zillow, that enable visitors to generate automated value estimates of unlisted as well as listed property from enabling visitors to generate an automated value estimate on a seller's property. On the other hand, a listing broker can direct that the MLS exclude the seller's listing from any feed of listed properties sent by the MLS to other non-VOW sites that allow consumer comments on listed property or links to automated value estimates.

Section II.5.e Of The Modified VOW Policy Should Be Interpreted To Make Certain That MLSs Must Provide MLS Data Feeds To VOW Operators Or AVPs That Are Updated In Real Time.

Section II.5.e of the Modified VOW Policy provides that "[e]ach VOW shall refresh MLS data available on the VOW not less frequently than every 3 days." The Modified VOW Policy is silent, however, on how frequently the MLS must provide a "refreshed" VOW data feed to VOW operators pursuant to Section III.4 or permit the VOW operator or AVP to "download" the MLS data pursuant to Section III.2. Since Section II.5.e permits a VOW operator refresh the VOW data only at three (3) day intervals, a Member Board MLS could decide that it will only refresh the "VOW specific data feed" or permit a broker to download the MLS data every third day, as opposed to in "real time." Operating a VOW with three (3) day old data is totally unacceptable in a web based environment. The Modified VOW Policy should be amended to make clear that Member Board MLSs must make MLS data available for display on a VOW at the same time the data is accessible to MLS participants and subscribers accessing the MLS' database compilation in a "bricks and mortar" environment. This requirement would be entirely consistent with the mandate of Section IV B of the Proposed Final Judgment.

Section II.6 Of The Modified VOW Policy Should Be Interpreted To Make Clear That VOW Operators Must Make Their VOWs "Accessible" For Compliance Purposes Only To The Extent Such Accessibility Is Made Available To A Registered User.

Section II.6 of the Modified VOW Policy requires a broker operating a VOW to "notify the MLS of its intention to establish a VOW and must make the VOW **readily accessible** to the MLS and **all MLS Participants** for purposes of verifying compliance with this Policy and any other applicable MLS rules or policies." Emphasis added.

Section II.6 does not provide any definition of the terms "make the VOW readily accessible."

It is possible for a Member Board MLS, or its MLS participants, to construe these terms to mean that a VOW operator or AVP must provide access to its computer servers, software source code, or the terms and conditions of agreements with AVPs or joint marketing partners, as part of an effort to "verify" compliance with the MLS' rules and regulations. This type of intrusive inquiry would be unreasonable and harassing, and totally inappropriate if undertaken by a competitor of a VOW operator.

It is also inappropriate for the MLS to undertake such an intrusive inquiry absent "probable cause" that the VOW participant was in fact violating the MLS' rules and regulations. Section II.6 should therefore be interpreted to mean that a VOW operator need only provide the MLS and other interested MLS Participants with a user name and password to access the VOW for compliance monitoring purposes, and then only to the extent the VOW can be accessed by a bona fide Registrant.

There is not any equivalent provision of the NAR MLS Policy that requires MLS participants to make their "bricks and mortar" real estate offices "readily accessible" to their competitors to enable those competitors to investigate whether the participants are using MLS data in violation of the MLS' rules. Obligations imposed upon VOWS that are not also imposed upon "bricks and mortar" offices are inconsistent with Section IV B of Proposed Final Judgment.

Sections III.5 Of The Modified VOW Policy And Section IV.D Of Proposed Final Judgment Should Be Interpreted To Prohibit MLSs Or Member Boards From Passing On Costs To VOW Operators Or AVPs That Include Allocations Of Staff Salaries Or Administrative Overhead.

Section III.5 of the Modified VOW Policy provides that "[a]n MLS may pass on to those Participants who will download listing information the reasonably estimated costs incurred by the MLS in adding or enhancing its 'downloading' capacity to enable such Participants to operate VOWs." Section IV D of the Proposed Final Judgment prohibits NAR (as opposed to a Member Board MLS) from adopting any Rule

> "that imposes fees or costs upon any Broker who operates a VOW or upon any Person who operates a VOW for any Broker that exceed the estimated actual costs incurred by a Member Board in providing Listing Information to the Broker or Person operating the VOW or in performing any other activities relating to the VOW, or discriminates in such VOW-related fees or costs between those imposed upon a Broker who operates a VOW and those imposed upon a Person who operates a VOW for a Broker, unless the MLS incurs greater costs in providing a service to a Person who operates a VOW for a Broker that it incurs in providing the same service to the Broker."

These Sections of the Modified VOW Policy and the Proposed Final Judgment do not adequately define the "costs" that are permissible to be assessed against a VOW operator. For example, there is not any definition of "actual costs incurred by a Member Board in providing Listing Information to the Broker or [AVP]." So-called "actual costs" could include the salaries or consultant fees for software programmers, "compliance officers" who are charged with monitoring and auditing VOWs, or an allocation of the MLS Chief Executive Officer's salary based on the time the Executive spends on administering and enforcing the MLS' policies relating to VOWs.

If only a handful of MLS participants in a particular Member Board MLS operate VOWs, and these types of overhead costs are allowed to allocated to those few VOW operators, the costs imposed on any single VOW operator can be highly disproportional to equivalent fees assessed to "bricks and mortar" MLS participants. Furthermore, such a "surcharge" would strongly deter MLS participants from starting a VOW. Therefore, both Section IV D of the Proposed Final Judgment and Section III 5 of the Modified VOW Policy should be interpreted to make clear that the term "costs" may only include actual direct costs, and may not include any allocations of salaries, consultant fees, rent, utilities, or other overhead expenses.

While Section IV D of the Proposed Final Judgment refers to "estimated actual costs" that an MLS may impose upon VOW operators, Section III 5 of the Modified VOW Policy only refers to "reasonably estimated costs", omitting the word "actual." Hence, Section III 5 of the Modified VOW Policy would permit an MLS to annually budget for VOW administration and enforcement expenses and then divide the budget estimate among those MLS participants that are currently operating VOWs. Depending upon how the Member Board MLS chooses to allocate its budget between VOW and non-VOW activities, the "reasonably estimated costs" imposed upon VOW operators could be exorbitant. This is especially true when only a handful of MLS participants may be operating VOWs in a particular market. Such a VOW "surcharge" would act as a strong deterrent to MLS participants considering the creation of a VOW.

Section III 5 of the Modified VOW Policy should be interpreted to permit a Member Board MLS to impose VOW related "surcharges" on VOW operators only if surcharges for the same types of "reasonably estimated expenses" are also imposed upon MLS participants operating IDX sites and those participants who receive an MLS data feed for use solely in a "bricks and mortar" environment. If participants receiving feeds of MLS data for non-VOW uses are not required to pay special surcharges to cover the "reasonably estimated costs incurred by the MLS" in delivering those non-VOW services, then the Member Board MLS' imposition of such surcharges upon VOW operators would violate Section IV. B of the Proposed Final Judgment, which prohibits the imposition of a rule or policy that "unreasonably disadvantages or unreasonably discriminates against a Broker in the use of a VOW. . . "

Section III.10.b Of The Modified VOW Policy Should Be Interpreted To Prohibit An MLS Or Member Board From Imposing More Than One Surcharge Upon An AVP Regardless Of The Number Of MLS Participants For Whom The AVP Operates A VOW.

Section III.10.b of the Modified VOW Policy provides that:

"An MLS may not charge an AVP, or a Participant on whose behalf an AVP operates a VOW, more than a Participant that chooses to operate a VOW itself (including any fees or costs associated with a license to receive MLS data, as described in (g) below), except to the extent the MLS incurs greater costs in providing listing data to the AVP than the MLS incurs in providing listing data to a Participant."

The comments on Section III.5 of the Modified VOW Policy on the circumstances under which an MLS may impose surcharges upon VOW operators are equally applicable to the types of surcharge costs that may be imposed upon AVPs who operate VOWs for their broker clients pursuant to Section III.10.b.

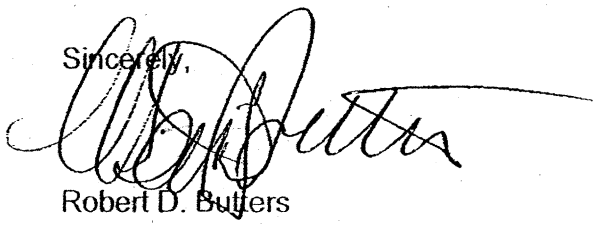
Section III.10.b provides that MLS may not impose higher charges upon AVPs than it imposes upon MLS participants who operate VOWs without the services of an AVP. Section III.10.b does not, however, address the common circumstance in which an AVP, such as PRESCo, operates VOWs for multiple participants in the same MLS. If each of the MLS participants using the same AVP were to operate their VOWs without an AVP, each MLS participant could, in theory, be assessed the VOW surcharge imposed by the MLS on VOW operators. These fees are ostensibly assessed for the costs of delivering the VOW data feed to the MLS participant.

On the other hand, an AVP operating VOWs for multiple participants in the same MLS typically only receives a single VOW data feed, or download, from the MLS, which the AVP then uses with the VOWs of each of its customers or clients who participate in that MLS. Under this scenario, it would be unreasonable for an MLS to assess an AVP with multiple clients who participate in that MLS a separate VOW surcharge for each of the MLS participants since the AVP is only receiving a single VOW data feed, or download, from the MLS.

Therefore, an MLS should be prohibited from assessing the AVP more than a single VOW surcharge even if the MLS could justifiably assess such VOW surcharges to each of the AVP's MLS participant clients had those clients chosen to operate their VOWs without the use of an AVP. Accordingly, Section III.10.b should be interpreted to make clear that an MLS that may only impose a single VOW surcharge upon an AVP regardless of the number of participants in that MLS on whose behalf the AVP operates a VOW.

PREA and PRESCo appreciate the opportunity to submit the foregoing comments on the Proposed Final Judgment and Modified VOW Policy. If you have any questions concerning these comments please do not hesitate to contact me at your convenience.

Sincerely,



Robert D. Butters

RDB:lp

cc: Ms. Laurie Keenan, President, Prudential Real Estate Affiliates, Inc.
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October 7, 2008

VIA U. S. MAIL AND E-MAIL

John R. Read
Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street NW
Washington, DC 20530

Re: United States v. National Association of Realtors®, 05 C 5140 (N.D. Ill.)
Evaluation of Settlement Under Antitrust Procedures and Penalties Act

Dear Mr. Read:

I represent Home Buyers Marketing II, Inc. ("HBM II"), a national real estate company that provides online real estate brokerage services in approximately 400 markets. HBM II submits these comments regarding the determination to be made by the United States District Court under the Antitrust Procedures and Penalties Act: whether the proposed settlement of the above-referenced antitrust lawsuit brought by the United States Department of Justice is "in the public interest."

HBM II strongly supports what the Department of Justice describes as the "fundamental principle" intended to be embodied in the settlement: "that an association of competing brokers, operating [a multiple listing service, or "MLS"], cannot use the aggregated power of the MLS to discriminate against a particular method of competition (in this case, VOWs)."[1] HBM II also supports the general nondiscrimination principles included in the proposed final judgment. However, as an online broker with firsthand knowledge of the discriminatory MLS practices identified by the Department, HBM II is concerned that the settlement could create uncertainties that MLSs could exploit to persist in discriminating against online brokers. Consequently, as a prerequisite to approval of the settlement, it is essential that the Department confirm that MLSs are prohibited from engaging in certain anticompetitive practices that are either (a) not explicitly addressed in the Modified Virtual Office Website ("VOW") Policy attached as Exhibit A to the Proposed Final Judgment, or (b) are addressed in a way that is potentially ambiguous.

[1] *United States v. National Association of Realtors®*; Proposed Final Judgment and Competitive Impact Statement 73 Fed. Reg. 47613, 47629 (Aug 14, 2008).

I. Background

A. *About HBM II*

HBM II, an innovator in online real estate brokerage, has helped more than two million buyers find homes. In the past, HBM II has focused on serving buyers when they are searching for homes, leaving it to a different broker to negotiate the terms of purchase and close the transaction. HBM II has led the way in adding new features that have improved the online experience of the home buyer, and continues to provide what is believed to be the most complete and detailed Spanish translation of MLS property information to be offered by any online real estate company.

In response to changes in the real estate industry, including the announcement of the proposed settlement of the Justice Department's lawsuit against the National Association of Realtors® ("NAR"), HBM II is adding a new dimension to its business model. Across the United States, HBM II is in the process of hiring full service brokers – knowledgeable real estate professionals who will seek to list and sell homes. HBM II will also continue to provide its cutting-edge online services for buyers who ultimately go to closings with other brokers.

B. *How the Challenged NAR Policies Discriminate and Restrain Competition from Online Brokers*

As the Competitive Impact Statement filed by the Department of Justice explains, Defendant NAR engaged in a number of "Challenged Policies" that "discriminate against and restrain competition from brokers who use VOWs."[2] These policies "denied VOW brokers the ability to use their VOWs to provide customers access to the same MLS listings that the customer could obtain from all other brokers by other delivery methods."[3] As an online broker operating in markets across the country, HBM II has repeatedly encountered and been injured by these discriminatory policies.

The Challenged Policies that discriminated against online brokers included (a) "opt-out" policies that permitted traditional brokers to withhold their listings from VOWs, (b) "anti-referral" policies that prohibited brokers from using VOWs to support alternative business models, (c) policies that prohibited VOWs from selling advertising on pages displaying listings, and (d) policies that permitted MLSs to degrade the data provided to VOWs, thus limiting a VOW's ability to offer innovative services.[4]

These and other anticompetitive policies challenged by the Department of Justice have caused substantial harm to competition. As the Competitive Impact Statement points out, the existence of opt-outs "renders a VOW broker unable to promise customers access to all relevant

[2] *Id.* at 47627.
[3] *Id.*
[4] *Id.* at 47627-28.

MLS listings, materially disadvantaging brokers who use a VOW to compete."[5] Restrictive membership and anti-referral rules prevented "two brokers from working together in an innovative and efficient way, with a VOW broker attracting new business and educating potential buyers about the market, and the other broker guiding the buyer through home tours and the negotiating, contracting, and closing process."[6] The practice of giving VOWs an inferior data feed also prevented online brokers from competing on a level playing field.

These policies, individually and collectively, plainly violated the federal antitrust laws prohibiting unreasonable restraints of trade for the reasons set forth in the Competitive Impact Statement. As the Department explains, a MLS "cannot create rules that unreasonably impede competition among brokers and harm consumers."[7] *See United States v. Realty Multi-List*, 629 F.2d 1351, 1371 (5th Cir. 1980). NAR's Challenged Policies restrain competition because they (1) "dictate how the MLS's broker-members could compete–specifically, restricting how they could compete using a VOW," (2) "impede the operations of a particularly efficient class of competitors: VOW brokers," (3) deny consumers "the full MLS listings information (including valuable information such as sold data and data fields such as days on market) that consumers want", and (4) "produced no procompetitive benefits that justified the restraints."[8]

C. *How the Settlement Purports to "End the Competitive Harm" Caused by the Challenged NAR Policies*

1. Specific Practices Addressed under The Modified VOW Policy

The proposed settlement is embodied in a submission that consists of three documents: (a) a "Proposed Final Judgment" that sets forth the general principles underlying the settlement, (b) a "Modified VOW Policy," Exhibit A to the Proposed Final Judgment, that includes more detailed rules about how MLSs must treat VOWs, and (c) a red-lined membership rule and accompanying explanatory note, attached as Exhibit B. If the settlement is approved and becomes effective, NAR would be bound by the Proposed Final Judgment, NAR-affiliated MLSs would be directed to adopt the Modified VOW Policy, and NAR would be permitted to adopt the revised membership rule and accompanying note.

The Modified VOW Policy explicitly addresses some of the anticompetitive practices that MLSs have used to harm online brokers and restrain competition. For example, the Modified VOW Policy requires a MLS to provide basic downloading of all MLS non-confidential listing data [Section III(2)] and prohibits a MLS from prohibiting "branding" or "co-branding." [Section III(6).]

As discussed more fully below, there are a number of anticompetitive practices encompassed in the lawsuit that are either (a) not explicitly addressed in the Modified VOW

[5] *Id.* at 47628.
[6] *Id.*
[7] *Id.*
[8] *Id.* at 47628-29.

Policy or (b) are addressed in a way that is potentially ambiguous. The Department of Justice suggests that even if such anticompetitive practices are not explicitly addressed by the Modified VOW Policy, they are prohibited under the Proposed Final Judgment's "general non-discrimination provisions," which state:

> Subject to the provisions of Sections V and VI of this Final Judgment, the Modified VOW Policy (Exhibit A), and the definition of MLS Participant and accompanying Note (Exhibit B), NAR shall not adopt, maintain, or enforce any Rule, or enter into or enforce any agreement or practice, that directly or indirectly[:]
>
> A. Prohibits a Broker from using a VOW or prohibits, restricts, or impedes a Broker who uses a VOW from providing to Customers on its VOW all of the Listing Information that a Broker is permitted to Provide to Customers by hand, mail, facsimile, electronic mail, or any other methods of delivery;
>
> B. Unreasonably disadvantages or unreasonably discriminates against a Broker in the use of a VOW to Provide to Customers all of the Listing Information that a Broker is permitted to Provide to Customer by hand, mail, facsimile, electronic mail, or any other methods of delivery...[9]

According to the Department's Competitive Impact Statement, "[w]ith respect to any issues concerning the operation of VOWs that are not explicitly addressed by the Modified VOW Policy, the proposed Final Judgment's general nondiscrimination provisions apply."[10]

II. The Department should confirm that MLSs are prohibited from engaging in certain anticompetitive practices that are either (a) not explicitly addressed in the Modified VOW Policy or (b) are addressed in a way that is potentially ambiguous

HBM II supports the general nondiscrimination provisions set forth in the Proposed Final Judgment. Unfortunately, in light of recent history, there is a legitimate basis for concern that these provisions, standing alone, may not stop MLSs from engaging in anticompetitive practices that are either (a) not explicitly addressed in the Modified VOW Policy or (b) are addressed in a way that is potentially ambiguous.

The general nondiscrimination principles included in the Proposed Final Judgment restate antitrust principles that have been well-established for many years. *See, e.g., United States v. Realty Multi-List, Inc.* 629 F.2d 1351, 1371 (5th Cir. 1980) (prohibiting MLSs from adopting rules that unreasonably restrain competition); *Austin Board of Realtors v. e-Realty, Inc.*, No. 00-

[9] *Id.* at 47618.
[10] *Id.* at 47629.

CA-154, 2000 WL 34239114 (W.D. Tex. Mar. 30, 2000) (prohibiting discrimination against online brokers). However, even after being confronted with these precedents and general principles, MLSs have continued to engage in anticompetitive practices that discriminate against online brokers. In the face of such anticompetitive conduct, the online broker can then choose to litigate (*see, e.g., Austin Board of Realtors*) or, under the Proposed Final Judgment, make a complaint. However, when the online broker is forced to litigate just to preserve its right to compete, even the best outcome is nothing more than a Pyrrhic victory because of litigation costs, uncertainty and delay. An online broker must be able to count on MLS compliance without the need to resort to expensive litigation.

Accordingly, notwithstanding the general nondiscrimination principles included in the Proposed Final Judgment, the Department should confirm that MLSs are not permitted to engage in particular anticompetitive practices, as follows:

A. *MLSs are not permitted to discriminate against Internet-based residential real estate brokers ("online brokers") and their customers by updating the MLS data feed provided to online brokers less frequently than the databases made available to other persons or entities (e.g., traditional bricks-and-mortar brokers, websites offered by the MLS to the public, websites offered by other brokers, Realtor.com, etc.).*

This is a common and extremely important form of MLS discrimination against online brokers and their customers. Customers want to work with a broker who can provide the newest listings and developments affecting existing listings, such as the announcement of a reduction in the price of a listing. Working with such a broker, the customer can be confident that he or she will be among the first to learn of new developments.

In general, MLSs update the MLS database used by bricks-and-mortar brokers continuously, so that bricks-and mortar brokers always have the most up-to-date information. However, when it comes to the VOW or other feed[11] provided to online brokers, some of the same MLSs update data only once per day.[12] Under such circumstances, a customer working with an online broker would not have access to new information readily available to customers of traditional brokers.

Discriminating by updating the MLS data feed provided to online brokers less frequently than the databases made available to other persons or entities is not explicitly addressed in the Modified VOW Policy. However, this practice "unreasonably disadvantages or unreasonably discriminates against a Broker in the use of a VOW," in violation of the general nondiscrimination principles.

[11] In many markets, including markets where there is no VOW feed, online brokers are relegated to an IDX advertising feed.

[12] San Antonio, Ann Arbor and Portland, Maine currently update their VOW feeds only once per day.

B. *MLSs are not permitted to discriminate against online brokers by abusing the rule that prohibits any VOW fee in excess of the "reasonably estimated actual cost" of providing the VOW feed by allocating the cost of facilities used for other purposes exclusively or disproportionately to the VOW feed.*

Although the Proposed Final Judgment prohibits NAR from adopting or enforcing any rule that imposes fees on online brokers in excess of the "reasonably estimated actual costs" of providing MLS data to a VOW,[13] that term is not defined in the settlement. The absence of a definition creates a danger of abuse. For example, a MLS could (a) hire a non-technical staff member to look for violations of MLS rules by online brokers (but not traditional brokers) to use as a pretext for expelling online brokers, and (b) inflate the fee charged for a VOW feed to pay for the discriminatory surveillance. In fact, there are MLSs that charge exorbitant fees for the feeds provided to online brokers, whether viewed in absolute terms or by comparison to fees charged by other MLSs (which may themselves be excessive).[14]

Short of litigation, online brokers do not have any way to make the MLSs accountable for such exorbitant fees. The MLS simply declares, "these are our reasonable costs," and otherwise ignores any objections. The settlement agreement endorses the principle of "reasonably estimated actual costs" but does not explicitly include any more specific reference points for preventing violations.

The general nondiscrimination principles dictate that an MLS cannot allocate the cost of facilities (or staff time) used for other purposes exclusively or disproportionately to the VOW feed. For example, if the MLS uses the same server to provide an IDX feed and/or a feed to Realtor.com that it uses to provide the VOW feed, the MLS cannot treat the entire cost of the server as a "reasonably estimated actual cost" of providing the VOW feed. Similarly, the MLS cannot inflate the purported cost of providing the VOW feed by purchasing unnecessary equipment or engaging in other inefficient practices.

C. *MLSs are not permitted to discriminate against online brokers and their customers by prohibiting an online broker from downloading and receiving all listings, including "do not display" listings, where the online broker is able and willing to comply with an instruction not to display "do not display" listings.*

Appendix A of the Proposed Final Judgment provides a form a seller can use to (a) prevent his or her property from being displayed on the internet or (b)

[13] 73 Fed. Reg. at 47618.

[14] For example, the MLS in Denver charges $1,000 per month (plus a $5,000 set up fee) for the feed made available to populate VOWs.

prevent the address of his or her property to be displayed on the internet. All brokers, including online brokers, are permitted to provide these listings to their customers via e-mail, fax or other delivery mechanisms. Section II (5)(A).

Under existing practice, MLSs that provide a VOW feed include all listings in the VOW feed along with instructions as to which listings cannot be displayed. This practice is both nondiscriminatory and efficient. It is nondiscriminatory because the MLS includes all listings on the data feeds made available to traditional brokers. The current practice is efficient because the online broker (a) can display typical unrestricted listings on its website, (b) receives notice of ***all*** listing information of interest to its buyers and (c) can inexpensively deliver "do not display" listings to home buyers electronically, via e-mail, as permitted under the settlement.

Section III(2) of the Modified VOW Policy confirms an online broker's right to download and receive information about all listings. Thus, Section III(2) confirms an online broker's right to receive "do not display" listings.

One passage in the Modified VOW Policy, read in isolation, could conceivably be read to authorize a MLS to withhold "do not display" listings from online brokers even if the online broker is willing and able to comply with an instruction not to display such listings.[15] Section III(4) states:

> If an MLS provides a VOW-specific feed, that feed must include all of the non-confidential data included in the feed described in paragraph 2 except for listings or property addresses of sellers who have elected not to have their listings or addresses displayed on the internet.

It is our understanding that Section III(4) merely contemplates that there may be online brokers who would prefer a feed that does not include "do not display" listings so they are not burdened with complying with "do not display" instructions. Thus, Section III(4) does not purport to undermine the nondiscrimination principles set forth in Section III(2). To avoid any misunderstanding, however, the Department should confirm that as long as an online broker is ready and willing to comply with "do not display" instructions, the online broker is entitled to download and receive "do not display" listings.

[15] If a MLS were to withhold "do not display" listings from an online broker ready and willing to comply with "do not display" instructions, the online broker would not be able to use the VOW feed to learn about new "do not display" listings or to distribute e-mails about those listings. In fact, practically speaking, the online broker would not be able to use ***any*** method to inform its customers about "do not display" listings.

D. *MLSs are not permitted to discriminate against online brokers and their customers by prohibiting home buyers from sharing (via e-mail, fax or other means of electronic communication) listings they see on a VOW with their friends, family members, financial advisors, lenders or other persons assisting the buyer in connection with the purchase of a home.*

Home buyers look to family members, friends, financial advisors and lenders for advice and support regarding their decision to purchase a home. Accordingly, whether they are customers of traditional or online brokers, home buyers routinely share individual listings, either in-person or electronically (e.g., by e-mail). They may also save individual listings, either by keeping paper copies of listings or electronically. *See* Competitive Impact Statement, 73 Fed. Reg. at 47626-27 ("Many VOW brokers also allow customers to maintain a personal portfolio of properties they are monitoring, with the VOWs automatically updating those listings as their price or status changes".)

Unfortunately, portions of the Modified VOW Rules that are intended to prohibit persons from misusing access to steal and/or sell the MLS database for commercial gain are written so broadly that a MLS seeking to restrain competition from online brokers could argue that the rules prevent a home buyer shopping on a VOW from e-mailing an individual listing to his mother or to the lender arranging his financing. *See*, e.g., Proposed Final Judgment, Exhibit A, II(2)(c)(iv), 73 Fed. Reg. at 47620 (Home buyer required to agree that he or she "will not copy, redistribute, or retransmit any of the data or information provided"). The Department should confirm that, notwithstanding the breadth of such language, customers of online brokers are free to share listings electronically with friends, family members, financial advisors, lenders or other persons assisting the buyer in connection with the purchase of a home.

E. *MLSs are not permitted to discriminate against online brokers and their customers by creating and enforcing "knowledge" requirements for online brokers that are not evenhandedly applied to and enforced upon traditional brokers.*

The Modified VOW Rules create a vague requirement that a Participant in a MLS (or a non-principal broker or sales licensee licensed with the Participant) "must be willing and able to respond knowledgeably to inquiries from Registrants about properties within the market area served by that Participant and displayed on the VOW."[16] The Modified VOW Rules do not explain what it means to be "able to respond knowledgeably." Furthermore, the rules do not provide any mechanism to ensure that the standard applied to online brokers is evenhandedly applied to and enforced upon traditional brokers.

[16] Fed. Reg. at 47620-21.

The reality is that any broker's knowledge about properties in a MLS will vary according to the location of a property. MLSs cover large areas that may include numerous counties, cities, neighborhoods and blocks. Some MLSs include more than 100,000 listings at any given time. No broker, traditional or online, is going to be an expert regarding every MLS listing in every community.

In commenting on the settlement, the General Counsel of the National Association of Realtors® recently suggested that this requirement must be read in light of the reality that a broker cannot be expected to have the answer to every question:

> I would think that brokers and associates know when they get inquiries from consumers, you can't always be expected to have the answer right there. In many instances, you may know the answer but in some instances, you may actually have to say, "I'll find that information out and I'll get back to you." That would be responding knowledgeably.

Laurene K. Janik, General Counsel, National Association of Realtors®, Webinar, June 16, 2008.

Unfortunately, the Modified VOW Rules themselves do not elaborate on the phrase "able to respond knowledgeably" so as to ensure a construction grounded in the reality of how brokers respond to inquiries from customers. In light of the history of MLS discrimination against online brokers, there is a danger that a MLS could (a) exploit the vagueness of this language to enforce a stringent knowledge requirement that does not reflect how any brokers actually do business, and (b) selectively enforce that requirement exclusively against online brokers. In so doing, the MLS could drive online brokers out of the market under the guise of "merely enforcing" the Modified VOW Rules.

The Department should guard against the dangers posed by this vague requirement by confirming that it must be read in light of the general nondiscrimination principles, which prevent MLSs from creating and enforcing "knowledge" requirements for online brokers that are not evenhandedly applied to and enforced upon traditional brokers.

F. *MLSs are not permitted to discriminate against online brokers and their customers by imposing limits on the number of listings a Registrant may view on a VOW that are "unreasonable" because they subject online brokers to an arbitrary disadvantage as compared to other websites displaying the same MLS listings.*

The Modified VOW Policy provides that an MLS may limit the number of listings that Registrants may view, retrieve or download from a VOW in response to an inquiry to a "reasonable" number.[17] However, the Modified VOW Policy does not define "reasonable" or provide guidance as to how to evaluate the reasonableness of any particular limitation.

This vagueness creates a very real danger that a MLS could use an arbitrary limitation on the number of listings that can be viewed or retrieved on a VOW to discourage consumers from using the VOW. For example, MLSs frequently display listings on their own public websites where they seek to attract prospective home buyers who might otherwise look for listings on a VOW. The MLS can "load the deck" in its favor by permitting consumers to view an unlimited number of listings on its own website while imposing the minimum 100 listing limit[18] on VOWs. Such a disparity naturally drives the consumer to the website where the consumer can view the greater number of listings.

Although the Modified VOW Policy does include a modest "equivalent requirement" condition on MLSs that impose such a numerical limitation, that condition is ineffectual because it applies only to requirements "imposed on Participants' use of MLS listing data in providing brokerage services via all other delivery mechanisms."[19] Consequently, this condition would not prevent MLSs from exempting MLS websites, IDX sites and other non-brokerage websites from limitations imposed on VOWs, thereby focusing the anticompetitive harm on VOWs alone.[20]

III. The Department's Confirmation That These Anticompetitive Practices Are Prohibited Is Necessary to Establish that the Settlement Is "In the Public Interest"

The Clayton Act, as amended by the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). The statute directs the court to consider, among other things, whether the terms of the final judgment are ambiguous:

1. the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief

[17] *Id.* at 47622. The Modified VOW Policy also provides that "in no event may the limit be fewer than 100 listings or 5% of the listings in the MLS, whichever is less." *Id.* at 47623.
[18] *See* note 17.
[19] *Id.* at 47622.
[20] Furthermore, notwithstanding the "equivalent requirement" condition, VOWs would likely be alone in their opposition to such limitations because traditional bricks-and-mortar brokers, who are theoretically subject to the same rule, do not rely on the online display of listings to consumers. Thus, such traditional brokers would not care about a rule limiting the number of listings that can be viewed to the 100 listing minimum.

sought, anticipated effects of alternative remedies actually considered, ***whether its terms are ambiguous***, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

2. the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint, including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A), (B) (emphasis added).

The portion of the Tunney Act directing Courts to consider whether the terms of a settlement are ambiguous was added by legislation enacted in 2004 to strengthen the role of the Courts in scrutinizing consent decrees negotiated by the Department of Justice. The amendments accomplished this objective by: (1) including a clear statement of congressional findings and purposes expressly overruling a lax standard of review used in recent D.C. Circuit decisions;[21] (2) requiring, rather than permitting, judicial review of a list of enumerated factors to determine whether a consent decree is in the public interest;[22] and (3) enhancing the list of factors that the court currently had to review to include, among other things, whether the terms of the settlement are ambiguous.[23]

The portion of the legislation directing courts to consider whether the terms of a settlement are ambiguous reflects a recognition that ambiguity can undermine the effectiveness of a settlement by creating loopholes that open the door to a resumption of anticompetitive practices. As one Senator explained, "[w]hile complete precision when dealing with future conduct may be impossible to achieve, an overly ambiguous decree is incapable of being enforced and is therefore ineffective."[24]

The Department commenced this lawsuit to challenge NAR and MLS policies that discriminate against online brokers and to end the harm caused by anticompetitive practices implemented under those policies. A consent judgment is not "in the public interest" if it includes ambiguities that open the door for a continuation of the anticompetitive practices this lawsuit was intended to stop. Consequently, under the "public interest" standard, it is essential that the Department confirm that the anticompetitive practices identified above are prohibited.

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[21] The congressional findings expressly state that for a court to limit its review of antitrust consent judgments to the lesser standard of determining whether entry of the consent judgments would make a "mockery of the judicial function" misconstrues the meaning and intent in enacting the Tunney Act. 150 Cong. Rec. S3610, S3618.

[22] The 2004 amendment modified the law by stating that, in determining whether the consent judgment was in the public interest, the court "shall," instead of "may," look at a number of enumerated factors bearing on the competitive impact of the settlement. *Id.*

[23] *Id.*

[24] *Id.* at S3618 (Remarks of Senator Kohl).

Respectfully submitted,

LEONARD, STREET AND DEINARD

William L. Greene
Counsel for Home Buyers Marketing II, Inc.

June 27, 2008

John R. Read, Chief
Litigation III Section - Antitrust Division
U.S. Department of Justice
450 Fifth Street, NW
Washington, DC 20530

Re: United States of America v. National Association of Realtors

Comment on Proposed Final Judgment

Dear Mr. Read,

I am writing to you as President of the National Association of Exclusive Buyer Agents (NAEBA), a national trade association of real estate licensees who represent buyers only and who never list property for sale or represent sellers. While I commend you for your efforts on behalf of the nation's consumers to address the some of the anti-competitive practices in the real estate marketplace today, I am compelled to comment on two very critical items contained in the Proposed Final Judgment which we have identified as being potentially damaging to both consumers and competition in the real estate industry."

We are deeply concerned by the definition of "MLS Participant" as contained in Exhibit B to the Proposed Final Judgment. In our opinion, this entire case shall have been for naught if this definition is incorporated in the Final Judgment.

As buyers' brokers, we offer consumers who are interested in purchasing a home a choice to be represented by an agent who owes them the fiduciary duties of obedience, loyalty, confidentiality, disclosure, accounting and reasonable care, rather than by a salesperson who represents the seller. We also offer consumers the ability to negotiate their own compensation agreement with us, their buyer broker, rather than simply accepting whatever commission happens to be offered to a cooperating broker through the MLS.

Our understanding is that the definition of MLS Participant as proposed in Exhibit B to the final judgment includes broker members who actually "offer or accept cooperation and compensation". We believe that NAR's previous definition of MLS Participant required only

that a broker member be "capable of offering and accepting cooperation and compensation". We seriously question the rationale underlying this proposed change. As proposed, we believe that an attempt could be made to force buyer agents to accept the compensation offered by other MLS Participants if they wish to display other participants' listings on their VOWs. We would consider any such attempt to be anti-competitive, anti-consumer, and not in the public interest. Such action would also constitute interference with the existing contractual relationships we have with our buying clients.

In some MLS systems across the country, MLS participants have offered cooperating buyer brokers 0% as compensation. Under the definition of MLS Participant as contained in Exhibit B, it could be argued that a buyer agent must accept nothing as compensation, or whatever other arbitrary amount agreed to by a seller and their broker, in order to display MLS listings on their VOW. Such outrageous and anti-competitive behavior should be proscribed, which the current definition of MLS Participant as contained in Exhibit B does not specifically do.

Only by leveling the playing field and allowing buyers to hire their own agents to represent them according to their own terms, will the United States real estate market be truly competitive. To allow listing brokers to continue to dictate commission terms to buyer brokers under threat of anti-competitive sanctions is to continue to perpetuate the anachronistic MLS policies that have stifled innovation and competition in the United States real estate market. We would strongly urge the United States to insist upon a definition of an MLS Participant that would include MLS broker members who are capable of either offering and/or accepting cooperation or compensation.

In Exhibit A we are also extremely concerned about the potential limitation an MLS system may place on our VOWs' individual property listing displays that would require the listing firms' and individual listing agents' names as part of that display. As independent businesses, our members are very concerned that such a requirement undermines the value and benefit of having a VOW. If we must also essentially advertise the competition in the process of promoting our services to our customers and clients than the purpose of this case to break down the barriers to innovation and competition has not been served. We believe such a policy to be anti-competitive, anti-consumer, and not in the public interest. We would strongly urge the United States to insist that a potential requirement that individual property listing displays could require the listing firms' and individual listing agents' names as part of that display be stricken from this Settlement.

Thank you for your consideration and for your efforts to increase competition in the United States real estate market.

Very truly yours,

Barry L. Nystedt

Barry L. Nystedt
2008 President, NAEBA

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June 9, 2008

John R. Read, Chief
Litigation III Section - Antitrust Division
U.S. Department of Justice
450 Fifth Street, NW
Washington, DC 20530

Re: United States of America v. National Association of Realtors
Comment of Proposed Final Judgment

Dear Mr. Read,

As both a member of the National Association of Realtors (NAR) and the National Association of Exclusive Buyer Agents (NAEBA)(real estate licensees who represent buyers only and who never list property for sale or represent sellers), I am writing to comment on the Proposed Final Judgment which has been circulated for comment.

I am deeply concerned by the definition of "MLS Participant" as contained in Exhibit B to the Proposed Final Judgment. In my opinion, this entire case shall have been for naught if this definition is incorporated in the Final Judgment.

As a buyer's broker, I offer consumers who are interested in purchasing a home a choice to be represented by an agent who owes them the fiduciary duties of obedience, loyalty, confidentiality, accounting and reasonable care, rather than by a salesperson who represents the seller. I also offer consumers the ability to negotiate their own compensation agreement with me, their buyer broker, rather than simply accepting whatever commission happens to be offered to a cooperating buyer broker through the MLS.

In my MLS, there are MLS participants who offer cooperating buyer brokers 0% as compensation. Under the definition of MLS Participant as contained in Exhibit B, can I be required to accept nothing as compensation, or whatever other arbitrary amount agreed to by a seller and their broker, in order to display MLS listings on my VOW? Is it in the public interest for the United States to be a party to such outrageous and/or anti-competitive behavior by allowing the current definition of MLS Participant as contained in Exhibit B to stand?

My understanding is that the definition of MLS Participant as proposed in Exhibit B to the final judgment includes broker members who actually "offer or accept cooperation and compensation". I believe that NAR's previous definition of MLS Participant required only that a

broker member be "capable of offering and accepting cooperation and compensation". I seriously question the rationale underlying this proposed change. As proposed, I believe that I can be forced to accept the compensation offered by other MLS Participants if I wish to display other participants listings on my VOW. I believe such a policy to be anti-competitive, anti-consumer, and not in the public interest.

Only by leveling the playing field, and allowing buyers to hire their own agents to represent them according to their own terms, will the United States real estate market be truly competitive. To allow listing brokers to continue to dictate commission terms to buyer brokers under threat of anti-competitive sanctions is to continue to perpetuate the anachronistic MLS policies which have stifled innovation and competition in the United States real estate market. I would strongly urge the United States to insist upon a definition of MLS Participant which would include MLS broker members who are capable of either offering and/or accepting cooperation or compensation.

Thank you for your consideration and for your efforts to increase competition in the United States real estate market.

Very truly yours,

Stefan J. Scholl

August 4, 2008

John R. Read
Chief, Litigation III Section
Antitrust Division
U.S. Department of Justice
450 5th Street NW #4000
Washington DC 20530

We OBJECT to the Proposed Final Judgment of United States (DOJ) v. National Association of Realtors® (NAR) as written. Specifically, Paragraph 3 is not only irrelevant but also contrary to the rest of the document, and should be stricken.

MLS4owners.com is a licensed real estate brokerage in the state of Washington and a member of the National Association of REALTORS®. Our company is a flat-fee, limited-service brokerage using an exclusive agency agreement in which our home selling customers set the level of compensation they're willing to pay a selling broker/agent. We have an eight-year track record of success with customers (more than $800 million in sales), multiple-listing services (no disciplinary actions since inception despite serving more than 4,000 Washington families in five different multiple listing services), Realtor® Associations (no disciplinary actions) and the Department of Licensing (no disciplinary actions and two clean audits). Within the "non-traditional" real estate industry, we have served more homesellers than any brokerage in the state of Washington. Our broker is a member of the Northwest Multiple Listing Service By-Laws Committee and US Congressman Adam Smith's Technology Advisory Council, and served on the Washington State Department of Licensing Task Force that recently reviewed and suggested updates to the real estate licensing law.

Paragraph 3 of the Proposed Final Judgment reads, "Whereas, the United States does not allege that Defendant's Internet Data Exchange (IDX) Policy in its current form violates the antitrust laws." To the contrary, the IDX policy and the VOW policy are two sides of the same coin. This document explains in detail our belief that the Final Judgment would be significantly weakened by the inclusion of paragraph 3, and has already been violated by NAR's recent amendment of Section 18.2.4 of the NAR MLS Policy Handbook.

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1. **IDX Policy not the subject of study.** To our knowledge, the IDX Policy was NOT the subject of the DOJ's pre-complaint investigation, complaint, amended complaint or discovery. There is no basis for Paragraph 3's inclusion.

2. **Paragraph not Necessary to Effectuate Settlement**. Paragraph 3 is not necessary to effectuate the parties' settlement relating to VOWs. Why would an affirmation of the IDX policy be included at all, much less placed at the beginning of the judgment?

3. **Paragraph 3 may not be true.** To our knowledge, DOJ has not recently investigated the IDX policy. How can DOJ essentially affirm a detailed policy without an investigation?

4. **DOJ's Announced Intentions are in Conflict with NAR's Intentions.** According to the DOJ press release regarding the settlement, "NAR will enact a new policy that guarantees that Internet-based brokerage companies will not be treated differently than traditional brokers." Further, Point 1 of the Amended Complaint states, **"The United States brings this action to enjoin the defendant a national association of real estate brokers—from maintaining or enforcing policies that restrain competition from brokers who use the Internet to more efficiently and cost effectively serve home sellers and buyers, and from adopting other related anticompetitive rules."** We believe, based on their words and deeds, that NAR KNOWS that the Proposed Final Judgment does not meet these objectives. This document clearly explains the problem and proposed resolution.

5. **VOW Policy Harmed Buyers.** The crux of the VOW dispute was whether multiple listing services (MLSs) could have policies allowing member brokers to withhold their real estate listings from display on the websites of specifically selected competing brokers. DOJ contended that "traditional" brokers have tried and would try to exclude non-traditional brokers from the marketplace by restricting them from displaying the entire available inventory. This hinders those brokers from attracting buyers to whom they could provide services in the **PURCHASE** of residential real estate. For the purposes of this discussion,

licensees who provide services to buyers are known as "selling brokers", and those who provide services to sellers are known as "listing brokers".

6. **IDX Policy Will Harm Sellers.** The IDX policy covers, among other things, whether brokers can selectively exclude listings from their own websites based on which brokerage lists the property. By discriminatorily excluding the listings of another broker from their websites, traditional brokers hinder other brokers from attracting property owners to whom they could provide services in the SALE of their real estate.

   According to a 2006 NAR Study, "listing on the Internet" is the #1 marketing tool used by its members. The same study says that 87% of buyers who use the Internet to search for homes also use a real estate agent in their purchase. As stated in the Amended Complaint, "By virtue of industry-wide participation and control over a critically important input, the MLS (a joint venture of competing brokers) has market power in almost every relevant market." By denying non-traditional brokerages equal access to Internet advertising , NAR-affiliated MLSs can use that market power to stunt the growth of those brokerages and harm the sellers who wish to use them.

7. **How IDX Works.** Historically, brokers have had a choice about whether to display the listings of other brokers on their websites. Brokers typically displayed either all of the relevant listings of other brokers, or none of the listings of other brokers. The relevancy of a listing was based on its physical qualities such as whether it was in the broker's geographic market, or was for the type of property in which the broker specialized (such as waterfront, condominiums, multi-family or other physical characteristics). This business decision was also based on a number of issues including whether the broker wanted to emphasize his or her own listings (in which case only those listings would be displayed), or whether the broker wanted to attract as many potential buyer clients as possible (in which case all of the listings of all the brokers were displayed in hopes of being selected to represent the buyer in their purchase).

8. **NAR Research On How IDX Affects Buyers and Sellers.** At least 80% of home buyers use the Internet in their home searches. According to the 2006 National Association of Realtors® Profile of Home Buyers and Sellers (Page 34, Exhibit 3-4) the figure was 80%, up from 71% in 2003. Based on continuing growth in the use of the Internet, one would expect that today more than 80% of home buyers use the Internet in their home searches. The vast majority of those buyers hire an NAR member to assist with the purchase. Further, the NAR Study (Page 38, Exhibit 3-11) states that 24% of buyers found the home they purchased on the Internet, up from 2% in 1997. Clearly, any home that is excluded from Internet display is at a disadvantage, based on NAR's own research. When sellers are choosing their listing brokerage, they want to know that their home will be exposed through all methods available to other sellers.

They will be unlikely to choose a broker whose listings are blocked from Internet display, effectively limiting their free choice.

9. **NAR's MLS Policy Handbook Section 18.2.4.** With MLS Policy Handbook Section 18.2.4 (amended November 2006, after DOJ filed its compliant), NAR seeks to enable MLS members to deny the display of listings based on the "type of listing (e.g. exclusive right-to-sell, or exclusive agency), or the level of service being provided by the listing firm." This is in conflict with Paragraph 1 of DOJ's Amended Complaint, which says the United States brings this action to enjoin the defendant "from maintaining or enforcing policies that restrain competition from brokers who use the Internet to more efficiently and cost effectively serve home sellers and buyers, and from adopting other anticompetitive rules."

10. **Difference between Exclusive Right-To-Sell and Exclusive Agency.** A typical "Exclusive Right to Sell" Agreement says that the listing broker gets paid a commission regardless of how the home sells. In an "Exclusive Agency" agreement, the seller lists with a brokerage and also retains the right to sell the property commission-free to an unrepresented buyer. Both of these types of agreements are in wide use. Our customers in the state of Washington who use Exclusive Agency have closed more than $800 million in sales. More than 300 different real estate brokerages have represented buyers in these sales, and they have earned at least $15 million in commissions. The former president of the Northwest Multiple Listing Service (NWMLS – one of the largest multiple listing services in the country, it is not REALTOR®-owned) has said, "Anyone who believes that the Exclusive Agency agreement affects the marketability of a listing has a fundamental misunderstanding of the form and its role in current real estate practice."

11. **What is "Level of Service?"** The "level of service provided by the listing firm" varies for every agent in every brokerage in the country, yet Section 18.2.4 assumes there is no difference within firms. There are many theories and practices in the use of open houses, signage, keyboxes, newspaper advertising, internet promotion, hours of service, and the nature and frequency of communication. This section of the IDX policy is clearly not intended to block the listings of agents within major traditional brokerages who offer a menu of services or have a variety of property marketing strategies. Instead, it will be used to block the listings of non-traditional brokerages such as MLS4owners.com.

12. **NAR's Response to Complaint about Section 18.2.4.** Laurene K. Janik, General Counsel of the National Association of Realtors®, has defended 18.2.4 by saying to us that brokers may not want to advertise Exclusive Agency listings or other listings for which the listing broker is offering limited service because, "the broker does not want to assume the additional liability and workload that comes from completing the entire transaction with no assistance from the listing broker." This is a specious claim. While state laws may vary, in Washington the "selling licensee does not have any more duties to the seller in a

limited service listing than in other listings where the seller is fully represented", according to NWMLS Legal Bulletin 169. Legal Bulletin 169 also states that limited service listings are lawful in Washington under the Agency Reform Act (RCW Chapter 18.86) and the rules and regulations created by the Department of Licensing. RCW 18.86.020 states that a licensee who performs real estate brokerage services for a buyer is a buyer's agent unless the licensee has entered in a written agency agreement with the seller. RCW 18.86.060 states, "a licensee may act as a dual agent only with the written consent of both parties to the transaction." Finally, the legal counsel for the Washington Association of REALTORS® (WAR) addressed this question on WAR's Legal Hotline: "If seller asks selling agent to explain the terms of the purchase agreement, is it the selling agent's job to do that?" She answered: "It is never the job of any real estate licensee to explain the terms of the purchase agreement to either party. This answer is true regardless of agency representation. To explain the terms of a purchase agreement to a party is to practice law." Buyer agents should not be attempting to provide real estate advice to sellers or to provide legal advice to any party, and in our state they cannot create dual agency without the written consent of both parties. Rather than simply recommending that its members adhere to the real estate laws of the states in which it operates, NAR has attempted through 18.2.4 to stifle competition, limit consumer choice and increase the cost of real estate services.

13. **Explanation of Proposed Final Judgment is in conflict with Section 18.2.4.** The Explanation of Proposed Final Judgment (Pages 36116-36117 of Federal Register / Vol. 73, No. 123) states, "The proposed Final Judgment also broadly prohibits NAR from adopting any other rules that impede the operation of VOWs or that discriminate against VOW brokers in the operation of their VOWs." In essence, NAR has agreed to forbid members from withholding their MLS listings from virtual office websites maintained by its members. However, Section 18.2.4 enables NAR members to selectively and broadly BAN from their websites the listings of VOW brokers if those brokers offer exclusive agency listings or a menu of services. As a result, those brokers will be damaged in their ability to attract new listings. Section 18.2.4 enables brokers to deny website display of listings based solely on the characteristics of the listing brokerage rather than the characteristics of the real estate.

14. **Modified VOW Policy is in Conflict with Section 18.2.4.** The "Policy Governing Use of MLS Data in Connection With Internet Brokerage Services Offered by MLS Participants" (Page 36110 of Federal Register / Vol. 73, No. 123, Paragraph II.5.h) states, "VOW may exclude listings from display based only on objective criteria, including, but not limited to, factors such as geography, list price, type of property, cooperative compensation offered by listing broker, or whether the listing broker is a Realtor®". One would therefore infer that VOWs are prohibited from excluding listings from display based on vague level-of-service criteria. Yet the IDX Policy adds the type-of-listing and level-of-service restrictions, which have nothing to do with the real estate being marketed or the

Realtor's® ability to earn a commission. This is in conflict with Paragraph IV-E of the Proposed Final Judgment, which mandates that "NAR shall not adopt, maintain, or enforce any Rule, or enter into any agreement or practice, that directly or indirectly ...is inconsistent with the Modified VOW Policy."

15. **Statement of MLS Policy is Conflict with Section 18.2.4.** The Definition of MLS "Participant" (Page 36112 of Federal Register / Vol. 73, No. 123, Exhibit B – Model MLS Rules – Section 3 –Note) says, "Nor is it intended to permit an MLS to deny participation based on the level of service provided by the Participant or potential Participant as long as the level of service satisfies state law." However, Section 18.2.4 effectively limits participation based on those very factors. We and other Internet-based brokerage companies can join multiple listing services, and we satisfy all state laws, yet the IDX Policy seeks to limit our participation in the marketplace by enabling our listings to be banished from display on the websites of other MLS participants.

16. **Opt-out Policy has Proven Anticompetitive Results.** Paragraph 34 of the Amended Complaint and Section II.C.2 of the Competitive Impact Statement show what happened in markets in which NAR's member boards implemented the Initial VOW Policy. Brokers withheld their listings from VOW sites, and "in one such instance an innovative broker discontinued operation of his Web site because all of his competitor brokers had opted out, making him unable to effectively serve his customers through operation of his site." Paragraph 7 further states the "working group that formulated defendant's Initial VOW Policy understood that the opt-out right was fundamentally anticompetitive and harmful to consumers." If NAR knew the VOW Policy was fundamentally anti-competitive, why did they respond to DOJ's Antitrust Complaint with a replacement policy that is just as anticompetitive?

17. **NAR Does Not Intend to Change its Practices.** Rather than pledging to clean up its act in the wake of settlement, NAR is claiming victory and spinning DOJ's enforcement action as pointless. In an interview with the New York Times published 28 May 2008, NAR General Counsel Laurie Janik said "This was a five-year education of the Department of Justice, unfortunately, and the real estate industry had to pay for that education." She also stated that settlement would have no real impact on home buyers or sellers. "I don't think they'll see anything different," she said. "This lawsuit never had anything to do with commission rates, or discount brokerages." On 28 May 2008, NAR issued through its website Realtor.org an announcement of its "favorable settlement with the U.S. Department of Justice", noting that "the revised policy comes at a time when brokers appear to be moving away from the VOW business model. "The response to VOWs hasn't been great because consumers can find sites throughout the Internet on which to gather information without having to register their name and contact information," says Mark Lesswing, NAR's chief technology officer." The chair of NAR's Professional Standards Committee says, "People are losing their homes, and here we've been dealing with a lawsuit about a technology the

industry had already moved past." (REALTOR® Magazine, July 2008, Page 10) Exactly! Consumers use broker IDX sites, and NAR seeks to simply transfer its anticompetitive policies from VOW to IDX. The affirmation of the IDX Policy in the Proposed Final Judgment undermines everything DOJ has worked for since 2003.

18. **Local Realtor® Associations Bound by NAR MLS Policy.** Some MLSs appear to be relying on NAR advice to delay adoption of new IDX and VOW rules until the DOJ matter has been settled. We are members of 4 Realtor®-owned MLSs. One of these, the Tri-City Association of Realtors® (TCAR), adopted Section 18.2.4. When we expressed our concern to the TCAR, they referred the matter to NAR. General Counsel Janik wrote to us that she was responding because the Tri-City Association was relying on a policy developed by NAR. TCAR's Executive VP told us there was nothing they could change at the local level because they were bound by the NAR MLS Policy handbook. Tri-City MLS told us they will lose their Errors and Omissions Insurance if they deviate from the NAR handbook. The limitations of 18.2.4 are not designed to reasonably protect the integrity of TCAR or NAT; nor are they narrowly tailored to accomplish any legitimate ends. These limitations serve no purpose except to drive certain competitors from the market. The only thing these limitations do is empower members to wrongfully conspire to discriminate against their competitors, which in our opinion is a clear violation of the Sherman Antitrust Act.

19. **Effect of Implementation of NAR Policy.** We understand that this case is not about whether individual market actors are restrained but instead whether competition is restrained (Page 36113 of Federal Register / Vol. 73, No. 123, Competitive Impact Statement-I-Motion to Dismiss). We see how competition is restrained, because we experience it every day. Under implementation of 18.2.4, we would be precluded from the market by any member(s) who didn't like us personally and/or our business model. Any broker doing so in the Tri-City real estate market or any other would be doing so not for any legitimate reason of their customers or clients; but instead would be doing so for the illegal purpose of limiting their competition.

20. **NAR-controlled MLS v. Broker-controlled MLS.** Of the five MLSs in which we participate, the largest by far is the Northwest Multiple Listing Service (NWMLS), which is owned by the member brokers instead of the local Realtor® associations. NWMLS serves most of Washington including the Greater Seattle area, and it is not bound by NAR's anticompetitive mandates. The NWMLS is committed to equal access for all brokers who comply with state licensing law, without discrimination against any legal business model. As a result, competition is thriving, consumers have many choices, and western Washington has become the birthplace and incubator of a variety of non-traditional business models. There are also many licensees offering outstanding traditional real estate services.

21. **Why Would An NAR Member Object To A Pro-NAR Settlement?**
We support most of what NAR does, particularly in member education and its advocacy on housing issues. However, we disagree with NAR's efforts to suppress competition through the pattern of behavior described in this document and the Amended Complaint. We believe in the value of full service representation for those who want it (both buyers and sellers). We also believe consumers should have choices about the services they want and the nature of the fees they will pay, and there are many good options available. NAR MLS Policy Handbook Section 18.2.4 is an effort to block those options, and American consumers will be hurt if the Proposed Final Judgment affirmation of the IDX Policy is allowed to stand. Section 18.2.4 seeks to cripple the marketing efforts of non-traditional real estate brokers to attract SELLERS, just as the original VOW Policy sought to cripple the efforts of non-traditional real estate brokers to attract BUYERS. We have attempted to work this issue inside the organization at the national and regional levels, and have been rebuffed. If this issue is allowed to slide now, it will continue to be battled for years to come. This is a cat and mouse game at taxpayer expense and it is time for it to stop.

In summary, NAR MLS Policy Handbook Section 18.2.4 is just one reason the objectionable sentence of Paragraph 3 should not be included in the final judgment. The Paragraph is not necessary and is counter-productive to the VOW Policy settlement. Paragraph IV-E of the Proposed Final Judgment mandates that "NAR shall not adopt, maintain, or enforce any Rule, or enter into any agreement or practice, that directly or indirectly ...is inconsistent with the Modified VOW Policy."

We urge the Court not to adopt paragraph 3 of the Proposed Settlement and to support the Department of Justice's effort to prevent NAR from using the aggregated power of the MLS to discriminate against a particular method of competition.

Respectfully submitted,

MLS4owners.com, Inc.

I O C

June 23, 2008

John R. Read
Chief, Litigation III Section,
Antitrust Division, U.S.
Department of Justice
450 Fifth Street, NW,
Washington, DC 20530

Certified Mail

Ref: Comments Regarding:
JUSTICE DEPARTMENT ANNOUNCES SETTLEMENT WITH THE NATIONAL ASSOCIATION OF REALTORS

Dear Mr. Read:

I have review some of the seventy three (73) pages of the COMPETITION IN THE REAL ESTATE BROKERAGE INDUSTRY, hereinafter called, Report .

My belief is that on page six (6) of the Report it states" Brokers and agents (hereinafter," brokers") is misleading to the general public and therefore give the general public a false sense of security.

That would be like saying (Lawyers and paria a legal, hereinafter called attorneys).

Regarding "listings"; "Whose listing is it? All listings belong to the designated broker. (Remember above the report said Brokers and agents (hereinafter, "brokers")) The listings are not the affiliated licensee's (agents) listings! According to the Nebraska law and probably other States the listings remain with the designated Broker even though the affiliated licensee may transfer away from the designated broker.

When the Consumer hires a person to sell their property they call a Company Sales person which in most cases is a "licensed person with a state" who gathers listings for a Company Broker known as a designated Company Broker. This the Consumer is not aware of as to who controls the listing after the salesperson (agent) signs for the Company. The above is much the same for the Buyer's or Transaction (agent) - not Broker.

The NAR with its' MLS does lock out all new start up real estate companies from providing low cost services to the general public by not making available access keys to show an MLS houses for sale - unless that or all startups join the NAR and MLS first.

A private survey was conducted by me in the late 1980's and it revealed that the general consumer or public did not know that "All Licensees are not Realtors but that all Realtors are Licensees".

The NAR with its MLS has created an organizational monopoly to control the Real Estate Industry of selling home.

When certain Licensee cause harm to the general public or consumer the general public or consumer is never aware of the Companies practices that lead the Licensee to conduct themselves as they have. Most states licensing laws shelter Companies and their designated Brokers from the (agent) Licensee who failed to provide competitive services to the public or individual consumer.

I have attached the Nebraska Real Estate commission's Comments for review dated Summer 2008.

Should you have any questions I can be contacted at the above address and number.

Respectfully yours,

IOC® Realty Specialist Inc.

Bernard M. Tompkins
Broker

Nebraska Real Estate Commission

COMMISSION COMMENT

Summer 2008

What Can I Do . . . ?

[Editor's note: In the last issue, Spring 2008, of the Commission Comment *an article entitled "License Transfer From Broker to Broker Process" defined when a transfer is complete. This information is pertinent to the following article. Past issues of the* Commission Comment *may be accessed on our website homepage at: www.nrec.state.ne.us.]*

Due to a recent disciplinary hearing and the fact that we receive inquires on this issue throughout the year, the Commission determined it would be an opportune time to remind real estate licensees of the appropriate manner in which to handle listings and the listing process at, or about, the time of transferring a license from one broker to another.

Whose listing is it? All listings belong to the designated broker. They are not the affiliated licensee's listings! By law, the listings remain with the designated broker, even though the affiliated licensee transfers away from the designated broker, unless the seller and the designated broker terminate the listing agreement by mutual agreement.

Commission Meeting Schedule

June 26-27 . . . . . .Lincoln
August 28-29 . . . . . .Lincoln
September 26 . . . . . .Lincoln

On The Inside:

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Considerations When Operating As a Team. . . . . .page 4
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Who's Looking At Your Client Files? . . . . . .page 6

Affiliated licensees, when confronted with this situation, often indicate that the sellers want them to continue to handle the sale of the property and ask what they can do. There are two provisions of the License Act which affect what the affiliated licensee can do.

The following two sections of the License Act set out actions, which if taken by a licensee, would be violations of the License Act and could result in disciplinary action:

- NEB. REV. STAT. § 81-885.24 (14) – Negotiating a sale, exchange, listing, or lease of real estate directly with an owner or lessor if he or she knows that such owner has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or negotiating directly with an owner to withdraw from or break such a listing contract for the purpose of substituting, in lieu thereof, a new listing contract; and
- NEB. REV. STAT. § 81-885.24 (15) - Discussing or soliciting a discussion of, with an owner of a property which is exclusively listed with another broker, the terms upon which the broker would accept a future listing upon the expiration of the present listing unless the owner initiates the discussion.

Licensees ask, "Can I tell the sellers of the properties I have listed that I am transferring?" The answer is yes. But the licensee must be careful not to violate the law by trying to talk the seller into, or assisting the seller in, cancelling the listing and then listing with the licensee's new broker. Dependant on the conversation, either one, or both, of the License Act provisions set out above could be violated in attempting to assist the seller at this point in time. Do not do anything which could be construed as an attempt to get the seller to terminate the listing.

It is best to limit the discussion with the seller to the fact that you are transferring to a new broker and wish the seller well. Most, if not all, designated brokers have a policy of how a listing will be handled when the licensee servicing the listing leaves. **A licensee should confirm with his or her designated broker what the broker's policy is regarding this issue.** The transferring licensee could inform the seller of that policy. If the licensee is asked any questions regarding cancelling or "transferring" the listing with the licensee to the new broker, the licensee should refer them to the designated broker or the appropriate designee of the broker and NOTHING MORE. It is not unheard of that a transferring licensee will go beyond this advice and travel down the "slippery slope" of giving too much advice. And in so doing, breaches one, or both, of the License Act provisions set out above.

The transferring licensee should not make any assumptions. If asked if the listing can be cancelled or if the transferring licensee can take the seller with him or her, the transferring licensee should refer the seller to the designated broker or appropriate designee of the broker.

Can a licensee when he or she knows he or she will be transferring to a new broker, give potential seller-clients the option of listing with the current broker or the broker to whom the licensee is transferring? The answer is NO. The transferring licensee is still under the supervision of the current broker and all his or her allegiance is to that current broker. Any actions which could be interpreted as representing the desig-

(Continued on page 7)

Nebraska Real Estate Commission

COMMISSION COMMENT

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Director's Desk

Recently, I was asked what happens when the listing agent is out-of-town and there is another affiliated licensee "covering" for the out-of-town licensee and an offer is received on the listed property? Can the "covering" licensee present the offer to the seller?

In this scenario, the designated broker's agency policy was that only the affiliated licensee acquiring the listing on behalf of the designated broker was representing the seller and all other affiliated licensees were limited buyer's agents on the property. This designated broker was using the appointment authority set forth in the Agency Relationships statute, specifically Neb. Rev. Stat. § 76-2427.

The broker, in the situation described, has some options. The designated broker could act as a limited seller's agent, and present the offer. The designated broker could appoint the "covering" licensee as a limited seller's agent and have the "covering" licensee present the offer. The designated broker could also appoint any other affiliated licensee to be a limited seller's agent and present the offer. Appropriate agency disclosures would need to be made to the seller dependent on the decision made.

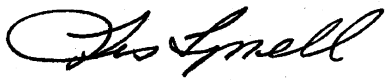
Whichever licensee becomes the limited seller's agent and presents the offer, that licensee will remain a limited seller's agent for the duration of the listing. If, during the period of time the property remains listed with the designated broker, a buyer, who the "appointed" licensee represents as a limited buyer's agent, becomes interested in the property, the "appointed" licensee would become a limited dual agent and would need to make all applicable disclosures and act in the appropriate manner.

FORMS FORMAT CHANGES

In the "Ask the Commission" session at the recent Nebraska Realtors Association meeting, a licensee asked if we would be able to put the forms that were available to download from the Nebraska Real Estate Commission's website into a PDF format rather than the html format in which they appeared. One benefit of having the forms in a PDF format would be that the pages could be viewed as they are laid out for printing. Another benefit would be that the forms could be viewed and printed by virtually anyone, regardless of software or operating system used on their computer. I would like to report, as a result of that request, all downloadable forms on the Commission's website are now in PDF format. The forms require a PDF viewer such as Adobe Acrobat Reader. The Acrobat Reader software can be downloaded for free from Adobe's website at www.adobe.com/acrobat. You can also access Adobe Acrobat Reader through a link which is available on the homepage of the Nebraska Real Estate Commission's website at www.nrec.state.ne.us.

NEW E-MAIL ADDRESSES

Beginning June 13, 2008, Commission staff will have new e-mail addresses. The new e-mail addresses are reflected in the Communications Guide on page 3. While the old e-mail addresses will continue to be functional for some time, we encourage you to make note of these new addresses and start using them today!



MEET THE REAL ESTATE COMMISSION STAFF

The Real Estate Commission Staff is here to serve the public and the licensee population. It is our goal to be helpful and forthright in a courteous and professional manner. We hope that when you contact our office, you always receive useful, accurate information and/or are referred to the proper authority.

Following is a communication resource to assist you when contacting our office. If the indicated person is unavailable to take your call, please share the purpose for the call and your call will be routed to someone else who can help you.

We take pride in having a skilled staff, if you have comments or suggestions as to how we may better serve you, please contact our office.

COMMUNICATIONS GUIDE

Ask for person indicated if you have questions in the following areas.

Commission Meeting Information ..... *Monica Rut* monica.rut@nebraska.gov

Complaint Procedures ..... *Terry Mayrose* terry.mayrose@nebraska.gov

Continuing Education History or Inquiries ..... *Melanie Patrick-Heather* melanie.patrick-heather@nebraska.gov

Curriculum Design (Education & Instructor Approval) ..... *Teresa Hoffman* teresa.hoffman@nebraska.gov

Errors and Omissions Insurance Inquiries ..... *Teresa Hoffman* teresa.hoffman@nebraska.gov

Financial Officer ..... *Rebecca Hallgren* rebecca.hallgren@nebraska.gov

License Applications Packet Requests ..... *General Staff*

License Applications Process ..... *Marilyn Masters* marilyn.masters@nebraska.gov

Licensing and Education Requirements ..... *Teresa Hoffman* teresa.hoffman@nebraska.gov

New Licenses in Process ..... *Marilyn Masters* marilyn.masters@nebraska.gov

Specialized Registrations ..... *Monica Rut* monica.rut@nebraska.gov

Transfer of License ..... *Tawny Snider* tawny.snider@nebraska.gov

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Disciplinary Actions Taken by the Real Estate Commission

(Does Not Include Cases on Appeal)

2007-030 James L. Murphy vs Jeffrey Nelson Searcy, Salesperson and Mary C. Searcy, Salesperson. Stipulation and Consent Order. ***Jeffrey Nelson Searcy:*** License Censured; plus an additional six (6) hours of continuing education with three (3) hours in the area of license law and three (3) hours in the area of agency to be completed by September 3, 2008. [Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence to act as a salesperson because he allowed Mary C. Searcy to participate in the pre-listing discussion during which time he failed to disclose to Murphy that Mary C. Searcy and other members of the "Searcy Team" would not be acting as limited Seller's Agents and representing Murphy in the transaction but instead would be acting as limited Buyer's Agents, as Mary C. Searcy did.] ***Mary C. Searcy:*** License Censured; plus an additional six (6) hours of continuing education with three (3) hours in the are of license law and three (3) hours in the area of agency to be completed by September 3, 2008. [Violated Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence to act as a salesperson because she failed to disclose to Murphy that she and other members of the "Searcy Team" would not be limited Seller's Agents and would not be representing Murphy in the transaction, but instead would be acting as limited Buyer's Agents in the event a suitable buyer was located by her or any other "Searcy Team" member.] March 7, 2008

2007-034 Geri Tanderup vs Marlene K. Jussel, Broker. Stipulation and Consent Order. License suspended for a period of one (1) year commencing on March 6, 2008, continuing through March 5, 2009, with the entire suspension period served on probation; plus an additional six (6) hours of continuing education with three (3) hours in the area of license law and three (3) hours in the area of contracts to be completed by September 2, 2008. [Violated Neb. Rev. Stat. § 81-885.24 (12) Offering real estate for sale or lease without the knowledge and consent of the owner or his or her authorized agent or on terms other than those authorized by the owner or his or her authorized agent; and Neb. Rev. Stat. § 81-885.24 (29) Demonstrating negligence, incompetency, or unworthiness to act as an associate broker. Because Jussel failed to have Geri Tanderup sign the Listing Agreement and offered the real estate for sale without the knowledge and consent of one of the owners.]

March 6, 2008

2007-012 Commission vs Kevin Dean Irish, Broker. Hearing held March 6, 2008. License suspended for two (2) years, with the entire suspension period stayed and served on probation to commence April 18, 2008, and continue through April 17, 2010. Kevin Dean Irish must abstain from alcohol; attend Alcoholics Anonymous meetings on a regular basis and provide documentary proof of such regular attendance on at least a monthly basis to the Commission; obtain a sponsor and provide documentary proof of such sponsorship to the Commission; and if charged with another criminal offense during the two (2) year period, Irish must report such charge to the Commission within seven (7) days of such charge. [Violated Neb. Rev. Stat. § 81-885.24 (29) by demonstrating unworthiness to act as a broker for having been convicted of four (4) Driving Under the Influence charges and for failing to report the Driving Under the Influence conviction relating to the June 2005 incident to the Nebraska Real Estate Commission on his real estate renewal application for 2006.]

March 6, 2008

2007-011 Kathryn Adkisson and Linda Vogt vs Michael Ray Holroyd, Broker. Stipulation and Consent Order. License suspended for two (2) years with the entire suspension period stayed and served on probation to commence on a mutually acceptable date within 30 days from the date of receipt of the Order; plus an additional twelve (12) hours of continuing education with three (3) hours in the area of agency, three (3) hours in the area of contracts, three (3) hours in the area of license law and three (3) hours in the area

(Continued on page 8)

Considerations When Operating As A "TEAM" In Real Estate

Operating as a "team" can lead to problems for licensees when working with the public in a real estate transaction. This article is intended to point out areas where problems can arise and to, hopefully, give guidance to licensees who are working as part of a "team" so that situations do not occur which may result in disciplinary actions.

What is a "team"?

The term "team" is not defined in the License Act. Licenses are issued, under the Act, only to individuals. Licenses are not issued to "teams". The "team" concept is no more than a marketing device. Over the years, "teams" of two or more individual licensees, working under the supervision of the same designated broker, joining together to offer licensed real estate services to the public on behalf of that designated broker, have become more common. Historically, a common configuration of a "team" consisted of a husband and wife. In some instances adult children have been added to the "team", as have siblings of either or both spouses. More recently, two or more licensees, none of whom are related, have joined together to offer licensed real estate services to the public. There is nothing illegal or unethical in forming a "team" for such purposes. A "team", as used in this article, should not be confused with a real estate firm which has been formed by a designated broker under the License Act.

Most "teams" have a "team" leader. It must be understood that this "'team' leader" is not the equivalent of the designated broker for the real estate company. The "'team' leader", if there is one, and all licensed members of the "team" are affiliated licensees of the designated broker for the real estate firm. The "team" is under the supervision, and must abide by all policies, of the designated broker, just like all other affiliated licensees conducting licensed activities under the designated broker. Any unlicensed assistants, who may assist licensed "team" members, are also subject to the supervision and policies of the designated broker, just like other unlicensed persons employed by the real estate firm.

Advertising

A "team" must advertise, just as an individual affiliated licensee, in the name under which the designated broker conducts business. Advertising is conducted under the direct supervision of the broker. When advertising a "team" on a sign, in an advertisement, on a business card or any other means of communication to the public, it must be clear to the public which real estate company/broker the "team" is representing. Advertising which is misleading or inaccurate or which would be confusing to the public in this area could lead to disciplinary action being initiated against members of the team and their designated broker.

Brokerage Relationships Issues

[Note: The information presented in the "Brokerage Relationship Issues" section of this article only applies to real estate firms where the designated broker utilizes "designated agency", i.e. not all affiliated licensees of the broker have the same ageney relationship with all buyers, tenants, sellers and landlords as they would in firms which do not utilize designated agency. In real estate firms which do not utilize "designated agency", all affiliated licensees in the firm have the same ageny relationship with all the clients of the designated broker.] Another area which can lead to problems for the members of the "team", as well as the designated broker, is how the services of the "team" are advertised in pamphlets, brochures, etc. and in person by the "team" members. A "team" advertises that, "The 'team' will work for you if you hire us to sell or lease your property or assist you in buying or renting a property." Such a statement may lead members of the public to believe that all members of the "team" would be working for the consumer in an agency-client capacity, if the consumer decided to be represented by the "team".

If only certain members of the "team" will be representing consumers, who are offered brokerage services, that should be explained in all written materials and again emphasized at the initial meeting with the consumer. It should also be included in any written agreements. For example, the listing agreement should set out which licensee or licensees will be specifically representing the consumer, as known at the time. These names must also be set forth on the "Acknowledgment of Disclosure" page of the "Brokerage Relationships in Real Estate Transactions" brochure.

It is extremely important that both the consumer(s) and the licensee(s) involved know who is representing the consumer. The licensee(s), specifically representing the consumer, needs to know so that confidential information is not disclosed to members of the "team", and others, who are not representing the consumer or may represent the other party to a possible transaction. An example of when this would be an issue includes routine matters, such as attendance at a listing presentation or other situations at which licensees not representing the consumer would normally not be in attendance. Specifically, a seller should be made aware if the licensee who arrives at the listing presentation with the listing agent, simply to measure the house, will or will not be representing the consumer. The consumer needs to know so that he or she does not discuss confidential information in front of a licensee he or she thinks is representing him or her when, actually, the licensee may already, or may in the future, represent a different party to a possible transaction. ***Every effort should be made so that licensees, who are members of a "team", do not leave the impression that the entire "team" is representing the consumer when, in fact, that is not the case.***

There may be occasions when the "identified" limited agent(s) of the client(s) is/are unavailable, perhaps out-of-town or ill and: the buyer or tenant wants to look at a specific property or properties that has/have become available; or the buyer or tenant want to make an offer or enter into a lease immediately; or another licensee presents an offer for consideration which expires prior to the return of the identified agent(s); or her similar situations. In the situation where

(Continued on page 5)

(Continued from page 4)

Operating A Team . . . (Cont'd)

only a certain member or certain members of a "team" is/are representing a client, and it becomes necessary that another member of the "team", not representing the client, needs to become a limited agent for the client, certain actions need to be taken. In the case where a written buyer or tenant agency agreement, a written seller or landlord agency agreement (normally the agency relationship is established in the listing or management agreement), or a written dual agency has been entered into with the client(s), the name of the "team" member who needs to become a limited agent of the client(s) should be added to the agreement. (Usually, the listing/management agreement of designated brokers utilizing "designated agency" give the broker the authority to appoint additional affiliated licensees as limited agents of the client.) If the appointment authority is applicable, the client should be timely notified, in writing, that the new "team" member is representing the client. Notification to the client could also be done by having the client sign a new "Acknowledgement of Disclosure" page with the new "team" member's name and the appropriate blanks checked.

In the case where a "team" member or certain "team" members is/are representing a buyer or tenant under the statutory limited buyer/tenant agency provision and a new "team" member must become a limited agent for that buyer or tenant, the new "team" member must complete the "Acknowledgement of Disclosure" page appropriately and have the buyer(s) or tenant(s) sign the "Disclosure" prior to performing any duties on behalf of the buyer or tenant.

Shadowing or Mentoring Programs

Although not exactly the same, licensees taking part in mentoring or "shadowing" training programs also need to use caution that appropriate disclosures are made regarding the licensees involved. Consumers, whose transactions are the focus of these programs, need to have their confidential information and best interests protected. It is important that those licensees who are involved in these programs clearly disclose their agency relationship to the consumer at the time of meeting with the consumer. It is recommended that the trainee and the trainer/shadower/mentor establish the identical agency relationship with the consumer, in order to allow the consumer-client to speak freely and provide the most true-to-life situation for a trainee. The same considerations would apply to peer review situations.

Licensees who are considering the formation of a "team" should discuss the matter with their designated broker prior to formation of the "team". The designated broker may have certain restrictions or additional conditions regarding operating as a "team". ■

Required Nonresident Class Becomes a Pre-License Requirement

(Effective July 18, 2008)

New legislation has passed that will change provisions of the Nebraska Real Estate License Act. The changes to Nebraska Revised Statutes § 81-885.17 institute a pre-license education requirement for all those seeking licensure in the State of Nebraska through recognition of a current license from another jurisdiction. **This requirement applies only to those seeking a nonresident license based upon their license in their jurisdiction of residence OR those who are moving or have recently moved to Nebraska and are seeking licensure based upon their license in their jurisdiction of immediate preceding residence.** The new language requires these applicants to complete a three-clock hour course in license law and agency.

Applications through license recognition received **on or after** July 18, 2008, must provide adequate proof of completion of the three-clock hour class approved by the Commission specific to the Nebraska Real Estate License Act and Nebraska Revised Statutes sections 76-2401 to 76-2430 **prior to the issuance date** of the license.

~~Nonresident applications received before~~ July 18, 2008, ~~must comply with the~~ existing law and, therefore, must provide adequate proof of completion of a three-clock hour class approved by the Commission specific to the Nebraska Real Estate License Act and Nebraska Revised Statutes sections 76-2401 to 76-2430 **within 90 days after the issuance date** of the nonresident license. Failure to meet this deadline will result in the license being placed on inactive status immediately and the licensee will be required to show cause why the license should not be revoked. Those who are moving or have recently moved to Nebraska and who, **before** July 18, 2008, apply for licensure based on their license in their jurisdiction of immediate preceding residence do not need to complete the class at all.

The providers and courses which meet the provisions in Neb. Rev. Stat. § 81-885.17 are:

Randall School of Real Estate 11224 Elm St Omaha, NE 68144 Phone (402) 333-3004	0604R (Live Classroom) Questions & Answers: A License Law and Agency Overview 3 clock hours
	0604R (Correspondence) Questions & Answers: A License Law and Agency Overview 3 clock hours
Northeast Community College Box 469, 801 E. Benjamin Ave Norfolk, NE 68702-0469 Phone (402) 844-7292 Phone (800) 348-9033	0604R (Live Classroom) Nebraska Real Estate License Law & Agency Relationship Law 3 clock hours

Do You Know Who's Looking at Your Client Files?

[Editor's note: This article is reprinted, with permission, from the Spring 2008 ALO/Real Estate Intelligence Report.]

Brokers who wonder what the next big headache in real estate will be may not have to look far to find the answer. In fact, it may be lurking in the file drawers where they keep their closed transactions.

With identity theft all over the headlines and bad guys increasingly finding ingenious ways of coming up with names, addresses, and bank account, Social Security and credit card numbers, the truth is that a lot of sensitive data is routinely being stored in real estate offices and it wouldn't take a computer mastermind to extract it.

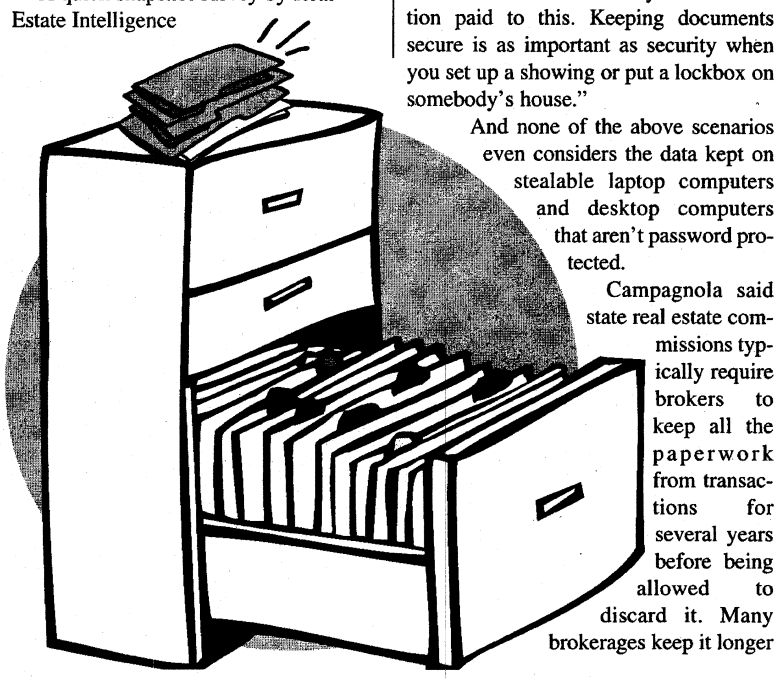
In Florida last year, a rash of identity thefts was traced back to a man who worked nights as a janitor at a real estate office. He used his spare time to comb through files that sometimes were left sitting on agents' desks.

More recently, authorities in the Midwest found thousands of transaction records from a defunct mortgage broker unceremoniously discarded in a dumpster. No effort had been made to shred sensitive client information.

A quick snapshot survey by Real Estate Intelligence Report found brokerages keep files:

- In unlocked file drawers "in the basement."
- "In boxes on the floor of the (unlocked) storage room" until they are moved upstairs.
- "In folders on (open) shelves in the conference room."

And then there are those records – who knows how many – that are kept in the trunks of agents' cars or stacked on desks in their home offices.



ARELLO aware

Debbie Campagnola, CEO of the Association of Real Estate License Law Officials (ARELLO), says she is personally aware of many offices where transaction documents are just stacked in boxes in a corner.

"Documents aren't usually very well protected," she says. "I imagine there are many brokerages that don't even have a policy with respect to privacy. A lot of brokers have mortgage brokers sitting in their offices. A lot of agents are doing loan originations. They're collecting Social Security numbers and bank account numbers."

"There hasn't been very much attention paid to this. Keeping documents secure is as important as security when you set up a showing or put a lockbox on somebody's house."

And none of the above scenarios even considers the data kept on stealable laptop computers and desktop computers that aren't password protected.

Campagnola said state real estate commissions typically require brokers to keep all the paperwork from transactions for several years before being allowed to discard it. Many brokerages keep it longer than necessary "just to be on the safe side."

In some cases, supervising brokers may not even know what documents are held in transaction folders and even sales associates may not know what they've got as they sweep all the pieces of paper off the closing table and into a file when the deal is done.

"That's just not adequate," says Brian Lapidus, COO of the global security firm Kroll International headquartered in New York. "That doesn't even look at the problem from an Internet security viewpoint."

"The idea of agents and mortgage brokers keeping data in their cars as they move from place to place is frightening," he said.

"From an IT standpoint, we worry about people who have stored information electronically on unsecured WiFi networks that can be easily accessed. (Stealing) paper documents is even easier."

What can happen

And what can thieves – either the common variety or the electronic version – do once they have real estate client information?

"If you have a name, an address and a Social Security number, the prospects are endless," Lapidus said.

"Someone can open credit cards in (your client's) name and run up the charges. They can take out loans and second mortgages. With enough information, they could even sell your home out from under you."

Credit card companies historically have written off bad debts once a claim has been submitted, but that doesn't resolve the issue of destroyed credit and the months, and sometimes years, it can take for individuals to restore their good credit, to say nothing of their reputations.

And consumers increasingly are not being very forgiving of companies that lose their data. Earlier this year when the Hannaford Brothers and Sweetbay grocery groups lost track of 4.7 million customer credit card numbers – resulting

(Continued on page 7)

(Continued from page 6)

Lookiing at Client Files . . . (Cont'd)

in an estimated 1,800 cases of fraud – irate consumers filed a class action lawsuit against the supermarkets.

"I'd think that sort of publicity would be terrible for a real estate company," Lapidus said. "Real estate agents build their relationships on trust. If you lose a client's data, how do they ever work with you again? Or your company?"

The security expert says keeping private information secure is becoming an ever greater challenge but there are things that can be done.

First, he says, "don't collect the information you don't really need. A lot of businesses collect data because they think they need it. A lot of times they don't."

And second, "get rid of anything you don't need after the transaction is done. If you're a real estate agent, you don't need a lot of information after the deal is closed. You don't need to keep bank statements, tax forms and Social Security numbers. Get rid of them."

A decent shredder costs less than $50.

Lapidus also says hiring brokers need to be careful about who they bring into their offices as employees – whether as agents, clerical staff or even cleanup crews.

"Do background checks," he said. "Do your due diligence. Make sure your employees are who they say they are. And make sure everyone knows the office policy and what you expect from them. Make sure they understand what your procedures are for handling documents."

Real estate educators also need to join in this battle.

"Agents should be getting training about what kind of data is sensitive and what isn't," Lapidus said.

Finally, he said, brokers need to have a policy in place in case there is a data breach.

"You need to know what to do; how to handle it," he said. "What is your procedure going to be?"

A company's ability to guard information could even be a sales tool, Lapidus said. "When you're marketing yourself and differentiating yourself, this could be one way to do it. You can show your clients you're aware that problems exist and you're doing what you can to prevent it." ■

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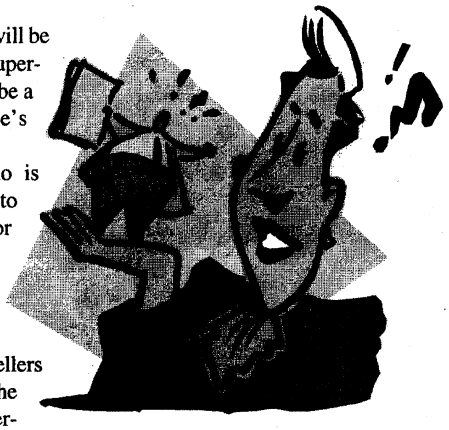
What Can I Do . . . (Cont'd)



nated broker to whom the licensee will be transferring, while still under the supervision of the current broker, would be a serious violation of the licensee's duties and responsibilities.

Can an affiliated licensee, who is transferring, refer potential clients to the designated broker to whom he or she is transferring while the licensee is still under the supervision of the current broker so that the licensee can service the listings after the transfer? NO! These sellers would need to be listed with the current broker either by the transferring licensee or another licensee affiliated with the current broker. Referring them to the broker to whom the licensee is transferring without the current broker's knowledge would be a serious violation of the licensee's duties and responsibilities. Usually, brokers have definite policies regarding referrals and affiliated licensees must adhere to those policies. Remember referrals and the resulting fees are between the designated brokers not between affiliated licensees and other licensees. *(See, Neb. Rev. Stat. § 81-885.24 (8) and Title 299, Chapter 2, Section 010.)*

Another question often asked by transferring licensees is - "A listing will be closing shortly after I transfer to the new broker, can I attend closing with the sellers since I was there when they entered into the contract?" Not without the written consent of the transferred licensee's designated broker at the time of closing. Yet another related question is - "One of my listed sellers is in the middle of negotiations on the sale of their home, can I continue to negotiate on their behalf even after I transfer?" Not without the written consent of the new, transferred to designated broker. In both of these situations, the written consent to represent the previous broker is required under Neb. Rev. Stat. § 81-885.24 (7) and Title 299, Chapter 2, Section 010 of the Commission's Rules and Regulations. The previous designated broker would also have to agree, since it is that designated broker's listing that is closing or is in the process of negotiations, respectively. It can be readily assumed, in both of these situations, the previous designated broker probably appointed another affiliated licensee to represent the sellers after the transferring licensee left.

Another question that is asked by transferring licensees is - "Can I be paid a commission for any listings which are under contract and will close after I transfer and for any other licensed activity I conducted before I transferred from that broker?" The Real Estate Commission does not get involved in commission "splits", but there is nothing in the License Act or Rules and Regulations administered by the Commission which would prohibit payment by the previous broker to the transferred licensee for licensed activity conducted by the licensee while under the supervision of the previous broker. The payment can be paid directly to the transferred licensee by the previous broker, since the payment is for licensed activity conducted while under the supervision of that broker. The payment would not need to go through the broker to whom the licensee has transferred. That being said, the truly controlling document to determine if, how and how much will be paid in this situation is the independent contractor agreement between the designated broker and the transferred licensee when he or she was affiliated with that designated broker.

What about written buyer agency agreements? These written agreements are between the buyer and the designated broker and are to be handled in the same manner as listing agreements when an affiliated licensee is transferring to a new designated broker. ■

(Continued from page 3)

Disciplinary Action (Cont'd)

of ethics, to be completed and proof of completion submitted to the Commission by October 1, 2008. [Violated Neb. Rev. Stat. § 81-885.24 (3) Failing to account for and remit any money coming into his or her possession belonging to others, for failing to transmit January 2007 rents to the Corporation's new property manager; and Neb. Rev. Stat. § 81-885.24 (29) demonstrating negligence, incompetency, or unworthiness to act as a broker, by overcharging and duplicating charges to the Corporation for hall cleaning; for failing to stop the lawn mowing service; for failing to obtain prior authorization from a member of the Corporation for an expense over $1,000.00; for failing to ensure tenants properly transferred utilities into their name; for allowing tenants to remain in a property without paying monthly rent; for improperly charging a tenant late fees; and for failing to transmit January 2007 rents to the Corporation's new property manager.]

April 4, 2008

2007-036 David L. and Shelley M. Pokorny vs James Wilbur Muller, Salesperson. Stipulation and Consent Order. License Censured; plus an additional six (6) hours of continuing education with three (3) hours in the area of agency and three (3) hours in the area of license law to be completed by October 1, 2008. [Violated Neb. Rev. Stat. § 76-2418 (1) A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations: (b) To exercise reasonable skill and care for the client and (c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity and Neb. Rev. Stat. § 81-885.24 (29) demonstrating negligence to act as a broker, associate broker, or salesperson. Muller failed to advise the client to have a whole-house inspection.]

April 4, 2008

Wednesday, July 02, 2008

John R. Read
Chief, Litigation III Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW; Suite 4000
Washington, DC 20530

Wednesday, July 02, 2008

Reference:
UNITED STATES OF AMERICA, Plaintiff, v. NATIONAL ASSOCIATION OF REALTORS® Defendant. Civil Action No. 05 C 5140. Judge Kennelly 06/12/2008

Mr. Read,

In addition to what is proposed, please consider all opinion herein that the United States of America require Defendant to agree to certain procedures and prohibitions outlined herein for the purposes of:

1. preventing the loss of competition, and
2. better serving the public interest (i.e. improving liquidity of market for buyers and sellers alike).

Wall Street does a pretty good job of providing liquidity for both buyers and sellers of stock. Improvements to this "stock market" are made all the time and it's a wonder how efficiently buyers and sellers are matched in terms of free flow of information, speed, cost and trust. And. It's a testament to competition that allows for positive change. In the last 20 years the stock market has had tremendous advancements including:

1. stock discounters, which have saved consumers millions of dollars,
2. decimalization (stocks no longer trade in eighths) which has saved consumers millions of dollars, and
3. installation of circuit breaker curbs and collars, which has provided order and reduced risk.

The US residential real estate market is in the "Dark Ages" by comparison. This is a great time to consider how the National Association of Realtors® can lend a hand to better facilitate competition, transactional liquidity, free flow of information, reduced cost and improved public trust.

There are three National Association of Realtors® areas of opportunity to specifically facilitate competition, transactional liquidity, free flow of information, reduced cost and improved public trust, as follow:

1. **Referrals.** "Consumers" generally don't have professional agency/fiduciary representation in securing a loan/mortgage. Realtors who have "earned" the trust of the Consumer, via agency contract, perform as fiduciaries and are required to behave as such. However, Realtor-fiduciaries often violate their fiduciary obligations by introducing their client-Consumer, or referring them, to mortgage lenders who have no fiduciary obligation to the client-Consumer. In this regard, it is common industry practice that Realtors breach their fiduciary obligations. Industry-wide Realtor referral practices need change to protect public interest. Reform will improve trust, reduce cost, increase competition, and improve liquidity. The National Association of Realtors® has an opportunity here for positive change that's a real significant win for all related parties.

2. **Listing Exposure**. Home sellers need maximum exposure of their properties to get best pricing. Home buyers need maximum information and need to review the universe of alternative purchase opportunities for best decision-making. Realtors who have "earned" the trust of the Consumer, via agency contract, perform as fiduciaries and are required to behave as such. However, Realtor-fiduciaries violate their client-Consumer's trust by, willfully and as required by their association, not permitting maximum exposure of the client-Consumers' properties for sale. Also, as a result of Realtor association restrictions, Realtors do not maximize information for and exposure to home buyers. Generally unbeknownst to the Consumer, Realtors claim sale listing data as intellectual property or proprietary information. The data is restricted and conditioned and it limits property exposure. This can be of significant detriment to both buyers and sellers. Generally unbeknownst to the Consumer, Realtors, as required by their association, forbid the open and free sharing of information concerning homes listed for sale. Generally unbeknownst to the Consumer, Realtors, as required by their association, forbid other Realtors open and free sharing and use of information regarding homes available for sale to prospective buyers.

   Realtor listing agents, traditionally have a fiduciary/agency responsibility to the seller-owner. Realtors breach their fiduciary obligation and violate seller-owner trust when they willfully fail to maximize the property exposure and provide open and free information and use to the market. In this regard the common practice, limiting property exposure and limiting open and free information use to the market, violates trust, causes illiquidity and increases cost to Consumers. It also dampens competition. The National Association of Realtors® has an opportunity here for positive change that's a real significant win for all related parties.

   Example: Realtor lists a property and then tells seller "Oh by the way, my 1,000,000+ Realtor associates and I... we've agreed as an association to not maximize the exposure of your property." Not good.

   For comparison... imagine... a stock market where shares of a company were listed for sale but the listing information was not exposed openly and freely to the market. Not good.

3. **Realtor.com public listings.** An overwhelming number of the Realtor.com listings, guestimate 95% or more, do not show the address of the property for sale. This has many negative effects for Consumers. Translated to the stock market, it would be like finding out shares of stock in a company were available for sale but crucial information is missing and you would have to call a professional to get the data... and that professional, in concert with a professional association, designed the system where you would have to correspond with an associate to get the basic information and expose yourself to solicitation and expense by the association. That's not how the stock market works and it's not how the residential real estate market should work.

Taken together, the three primary negative behaviors above obstruct innovative brokers' and lender's and related parties ability to provide services and better deliver, transactional liquidity, free flow of information, reduced cost and improved public trust. Let's not deter, delay, or prevent change so that benefits can be realized and the National Association of Realtors® strengthened.

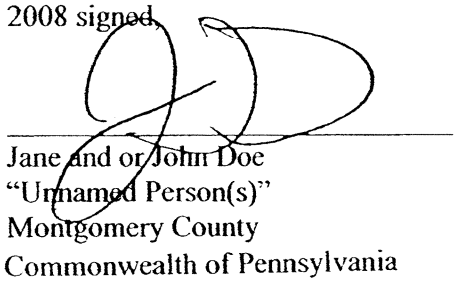
Specific procedures and prohibitions have not been provided herein based on time limitations but the concepts for change are as follow:

- Eliminate financial referrals. Or. Permit referrals but, provide notice to Consumers that lenders traditionally hold no fiduciary obligations to Consumers and that by referral, the referring party, exposes the Consumer to consequences that may be severely detrimental to the Consumer's financial wellbeing and the referring party disclaims any fiduciary obligations regarding the financial welfare of the Consumer with regard to the loan/mortgage.

- As a default listing matter defined in the listing agreement and as policy by the association, allow listings to be published freely and openly and information used freely and shared by others, unless opted out by seller, and along with all notices and consequences provided to seller regarding the benefits of maximum exposure.

- As a default listing matter defined in the listing agreement and as policy by the association, require that the property address be part of all Realtor.com listings, unless opted out by seller, and along with all notices and consequences to seller regarding the benefits of publishing the property address on Realtor.com.

In effort to avoid any possible retaliation, we present this to you Wednesday, July 02, 2008 signed,



Jane and or John Doe
"Unnamed Person(s)"
Montgomery County
Commonwealth of Pennsylvania

John R. Read, Chief,
Litigation III Section, Antitrust Division,
U.S. Department of Justice,
450 Fifth Street NW.,
Washington, DC 20530.

Via: *John.Read@USDOJ.gov*; cc: *David.Kullly@USDOJ.gov*

RE: Proposed Final Judgment U.S. v NAR Civil Action No. 05 C 5140

Dear Mr. Read:

I respectfully request that in addition to the protection provided to VOW's in the proposed judgment that the Judgment be expanded such that any information a broker is allowed to publish in the mass media also be publishable to the Internet without qualification. It appears the proposed judgment will protect the large VOW's new and creative practices in an effort to provide the consumer with more choices and potentially better and/or cheaper services. Unfortunately, the proposed judgment doesn't appear to protect the creative practices of sole proprietors and small independent brokerages that also utilize the Internet.

In many markets, these small brokerages provide service to consumers for 50+% of the transaction sides. These small brokerages often develop unique market services that utilize the Internet and benefit the consumer with an even wider choice of different, better and/or cheaper services. Technological and data feed costs required to establish and then operate a password protected VOW can be shared by each transaction. For large VOW brokerages addressed in this proposed judgment, these costs become insignificant. But for a sole proprietor and small brokerages, these same costs on a per transaction basis are significant and become prohibitively expensive. Consequently, most small brokerages do not and cannot operate a cost effective password protected VOW.

MLSlistings Inc., allows their subscribers to freely publish the median Sold Price in newspapers, but prohibits publication of that same information on the Internet. MLSlistings Inc.'s restriction has no MLS business reason and artificially restricts MLSlistings Inc's subscribers and consumers from fully benefiting from the use of the Internet. MLSlistings Inc.'s Internet restriction only applies to non-VOW sites that don't have a bulk download agreement.

I investigated the costs of providing a password protected VOW site and found them not economical. Subsequently, I decided to make some of my basic market information available via my public (non-password protected) web page. This allowed anyone to freely benefit from this market information and insight. I chose to reserve more frequent updates and additional information for people that find my public information useful and are willing to develop an agency relationship. This had worked well for me and the consumers without the need of a VOW.

This changed in early May 2008 when MLSlistings Inc, using MLS Rules that become effective on April 30, 2008 started citing me with violating the new MLS Rules. The new MLS Rules allow me to continue to provide the same market information (such as the County median sold price) to anyone that walks into my office. I can also email or fax this information to whoever I chose. I can even publish this market information in the mass media including the San Jose Mercury News. This market information is also available to any web savvy consumer via the MLS's own non-restricted public web site. Clearly, anyone without qualification has access to this market information. However, MLSlistings Inc claims the new MLS Rules specifically prohibit a subscriber from publishing this same market information on the Internet if the web page is accessible to public without any qualification and without a costly download agreement. NAR approved MLSlistings Inc.'s new MLS Rules that includes this restraint of trade provision that clearly favors large brokerages.

The amount of data needed using the 2000 methodology is equivalent to only eight current agent full listings. For an MLS, which restricts subscribers to 500 matching listings and currently has 19,500 active listings, to consider the data equivalent to 8 listings to require a bulk download agreement is ridiculous. Having learned a different methodology in 2000, the amount of data needed now is significantly less. Adding to the absurdity of this arbitrary rule, the data used to determine the market information isn't even in the bulk download data set.

I'm requesting the current proposed judgment be expanded such that any information a broker is allowed to publish in the mass media can also be published to the Internet without qualification. This would be similar to IDX/BLE that allows any brokerage to display certain basic listing information to the public without qualification. Basically, MLS rules shouldn't favor any particular type or size brokerage.

Should you have any questions, I can be reached at *icare_dou@yahoo.com*.

[FR Doc. E8–25989 Filed 11–3–08; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Production of Seven Satellite/Internet Broadcasts

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY 2009 for a cooperative agreement to fund the production of seven satellite/Internet broadcasts. Five of the proposed satellite programs are nationwide satellite/Internet broadcasts (three and four hours each). One of the programs is eight-hours in length and is for site coordinators as a precursor to a 32-hour program. Another is a satellite/Internet Training Program which will be sixteen hours in length (four hours each day, Monday through Thursday). There will be a total of 39 hours of broadcast time in FY 2009.

DATES: Applications must be received by 4 p.m. (EST) on Friday, November 21, 2008.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Faxed applications will not be accepted. Electronic applications can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: All technical and/or programmatic questions concerning this announcement should be directed to Ed Wolahan, Corrections Program Specialist, at 791 Chambers Road, Aurora, CO 80011, or by calling 800–995–6429, ext. 4419, or by e-mail at *ewolahan@bop.gov.*

SUPPLEMENTARY INFORMATION:

Background: Satellite/Internet Broadcasting is defined as a training/education process transpiring between trainers/teachers at one location and participants/students at other locations via technology. NIC is using satellite broadcasting and the Internet to economically reach more criminal justice staff in federal, state and local agencies. Another strong benefit of satellite delivery is its ability to broadcast programs conducted by experts in the correctional field, thus reaching the entire audience at the same time with exactly the same information.

In addition, NIC is creating stand-alone training programs on DVDs from its edited 3 and 32-hour satellite/Internet training programs that will be disseminated through its Information Center.

Purpose: The purpose of funding this initiative is to produce seven satellite/Internet broadcasts, disseminating current information to the criminal justice community. Five will be three-hours in length, one will be eight-hours in length, and one will be sixteen-hours in length.

Scope of Work: To address the scope of work for this project, the following will be needed:

Producer Consultation and Creative Services: The producer will: Consult and collaborate with NIC's Distance Learning Administrator (Executive Producer) on program design, program coordination, design of field segments and content development; work with each consultant/trainer to develop their modules for delivery using the satellite/Internet format and/or the teleconference format; help develop scripts, graphic design, production elements and rehearsals for each module of the site coordinators' training and the satellite/Internet training programs; and use their expertise in designing creative ways to deliver satellite teleconferencing.

The producer will also be responsible for attending planning meetings and assisting in the videotaping of testimonials at conferences.

Pre-Production Video: The producer will supervise the production of vignettes to be used in each of the satellite/Internet broadcasts, as well as each DVD production. NIC presenters (content experts) will draft outlines of the scripts for each vignette. From the outlines, scripts will be developed by the producer (script writing expert) and approved by NIC's Distance Learning Administrator. Professional actors will play the parts designated by the script. Story boards for each production will be written by NIC's Distance Learning Administrator. A total of between 18 and 25 vignettes will be created under this cooperative agreement.

The producer will supervise camera and audio crews to capture testimonials from leaders in the criminal justice field at designated conferences. (There will be four such conferences in 2009.) The producer will coordinate all planning of the production and post-production for each of the seven satellite/Internet broadcasts.

Video Production: Video production for each teleconference will consist of videotaping content-related events in the field, editing existing video, and videotaping experts for testimonial presentations. It will also include voice-over, audio and music if necessary, for each video. Blank tapes and narration for field shooting will be purchased for each site. The format for all field shooting will be either Beta Cam, DVD Pro Digital and/or Mini DVD.

Post Production (Studio): Innovative and thought-provoking opening sequences will be produced for each teleconference. In addition, graphics will be utilized to enhance the learning in each module. The producer will coordinate art direction, lighting, set design, and furniture for all teleconference segments. (Set design should change periodically throughout the award period). The set will be customized to each topic. The producer will organize and supervise the complete production crew on rehearsal and production days, per the schedules below. This will also include the production of DVD's for each broadcast and the editing necessary for a final and approved cut.

Production: The production group will set up and maintain studio lighting, adjust audio, and have a complete production crew for the days and hours set by the Distance Learning Administrator. A production crew shall include the following: Director, Audio Operator, Video Operator, Character Generator Operator, Floor Director, Four (4) Camera Operators, Teleprompter Operator, On-Line Internet Coordinator, Make-Up Artist (production time only), and Interactive Assistance Personnel (fax, e-mail, and telephone). Each production shall also have closed captioning for all programs.

After each production, the studio will provide 12 VHS or DVD copies to NIC and the Master on Beta Cam and DVD. The DVD will have a splash page that will break down each module, each day, and the vignettes that have been produced for each program.

For each three-hour program, NIC will receive one DVD with splash page. For the eight-hour program, NIC will receive two DVD's and, for the sixteen-hour program, four DVD's will be provided, with splash page on each. Each DVD will be edited to provide the necessary content under the direction of the Distance Learning Administrator.

Transmission: The producer will: Purchase satellite uplink time that will include the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States; acquire downlink transponder time for KU–Band; purchase Internet streaming of 200 simultaneous feeds for each program; and be able to provide closed captioning on the Internet feed.

Equipment: Applicants must have a minimum of the following equipment: Broadcast Studio of approximately 2,000 square feet, with an area for a studio audience of between 15 and 20 people; four Digital Studio Cameras (one of which must be an overhead camera with robotic control); Chroma Key: at least one wall with chroma key capability, along with a digital ultimate keying system; a tape operation facility providing playback/record in various formats, including DV, Betacam, Betacam SP, SVHS, VHS, U–Matic ¾ & SP; Advit or comparable editing bay; three-dimensional animation with computer graphics; Internet streaming capacity for several hundred simultaneous downloads in both G2 Real Player and Microsoft Media Player-Capture Closed Captioning; ability to archive four selected satellite/Internet broadcasts from FY 2008 and all seven broadcasts from FY 2009; Computer Teleprompter for at least three studio cameras; Interruptible Fold Back (IFB) or In Ear Monitor (IEM) for all presenters and the moderator during the three hour programs and an (IFB) for each presenter during the eight-hour and sixteen-hour programs; individual control from control room to the Distance Learning Administrator; wireless microphones for each presenter during the three, eight, and sixteen-hour programs; microphones for the studio audience at each round table (should be able to pick up audio during the training program); Satellite Uplink and Transponder: KU–Band Digital with the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States; and Portable Field Equipment—Digital Video Cameras with recording decks, portable lighting kits, microphones (both hand-held and lapel), field monitors, audio mixers, and camera tripods.

Personnel: Applicants must have a minimum of the following qualified personnel: Producer/Director; Script Writer; Set Designer; Lighting Designer; Audio Operator; Graphics Operator; Graphics Artist; Floor Manager; Studio Camera Operators (4); Tape Operator; Location Camera Operator; Teleprompter Operator; Clerical/Administrative Support; Makeup Artist (as needed during production); Closed Caption Operator (as needed during production);

Application Requirements: Applications should be concisely written, typed double spaced and reference the project by the ''NIC Application Number'' and Title in this announcement. The package must include: a cover letter that identifies the audit agency responsible for the

applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.*, July 1 through June 30); a program narrative in response to the statement of work and a budget narrative explaining projected costs. The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf.*)

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there needs to be an original and six copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicants' best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. The final budget and award amount will be negotiated between NIC and the successful applicant. Funds may only be used for the activities that are linked to the desired outcome of the project.

This project will be a collaborative venture with the NIC Academy Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subjected to an NIC three to five member review panel.

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CRR can be done online at the CRR Web site: *http://www.crr.gov.* A CRR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One (1).

NIC Application Number: 09A54. This number should appear as a reference line in your cover letter, in box 4a of Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Morris Thigpen,

Director, National Institute of Corrections.

[FR Doc. E8–26241 Filed 11–3–08; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Collection of Information; Comment Request

ACTION: Notice of an Opportunity for Public Comment

ACTION: Notice; correction.

SUMMARY: The Department of Labor, Office of the Secretary published a notice in the **Federal Register**. Proposed Collection of Information; Comment Request. The Department is issuing a correction of the comment date as this should have been published as a 60 day notice.

Correction

This is to correct the comment date in the **Federal Register** of October 20, 2008, Vol. 73, No. 203 on page 62319, in section marked Dates, to read:

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before December 19, 2008.

Signed at Washington, DC, this 29th day of October 2008.

Edward C. Hugler,

Deputy Assistant Secretary for Administration and Management.

[FR Doc. E8–26226 Filed 11–3–08; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0048]

The Asbestos in Shipyards Standard; Extension of the Office of Management and Budget's 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 in the Asbestos in Shipyards Standard (29 CFR 1915.1001).

DATES: Comments must be submitted (postmarked, sent, or received) by January 5, 2009.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal e-Rulemaking 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, Docket No. OSHA–2008–0048, 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–2008–0048). 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 Todd Owen at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 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 (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 OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH 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 information collection requirements specified in the Asbestos in Shipyards Standard protect employees from the adverse health effects that may result from occupational exposure to asbestos. The major information collection requirements in the Standard include:

- Implementing an exposure monitoring program that informs employees of their exposure-monitoring results;
- At multi-employer worksites, notification of other on-site employers by employers establishing regulated areas for the type of work performed with asbestos-containing materials (ACMs) and/or presumed asbestos-containing materials (PACMs), the requirements that pertain to regulated areas and the measures the employers can use to protect their employees from asbestos overexposure;
- Developing specific information and training programs for employees;
- Providing medical surveillance for employees potentially exposed to ACMs and/or PACMs, including administering an employee medical questionnaire, providing information to the examining physician, and providing the physician's written opinion to the employee; and
- Maintaining records of objective data used for exposure determinations, employee exposure monitoring and medical surveillance records, training records, the record (i.e., information, data, and analyses) used to demonstrate that PACM does not contain asbestos, and notifications made and received by building/facility owners regarding the content of ACMs and PACMs.

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 Asbestos in Shipyards Standard (29 CFR 1915.1001). The Agency is requesting an increase in its current burden hour total from 1,426 hours to 1,621 for a total increase of 195 hours. The adjustment is primarily the result of an increase in the number of shipyards that may have employees exposed to asbestos. 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 a currently approved collection.

Title: Asbestos in Shipyards Standard (29 CFR 1915.1001).

OMB Number: 1218–0195.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Average Time Per Response: Varies from 5 minutes (.08 hour) to provide information to the examining physician to 1.83 hours to develop alternative control methods.

Estimated Total Burden Hours: 1,621.

Estimated Cost (Operation and Maintenance): $37,798.

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–2008–0048). 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 October 29, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–26210 Filed 11–3–08; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2008–0416]

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 August 1, 2008 (73 FR 45083).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 396, ''Certification of Medical Examination by Facility Licensee''.

3. *Current OMB approval number:* 3150–0024.

4. *The form number if applicable:* NRC Form 396.

5. *How often the collection is required:* Upon application for an initial operator license, every six years for the renewal of operator or senior operator license, and upon notice of disability.

6. *Who will be required or asked to report:* Facility licensees who are tasked with certifying the medical fitness of an applicant or licensee.

7. *An estimate of the number of annual responses:* 1,290.

8. *The estimated number of annual respondents:* 137.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 793 (323 hours for reporting [.25 hours per response], and 470 hours for recordkeeping [3.4 hours per recordkeeper].

10. *Abstract:* NRC Form 396 is used to transmit information to the NRC regarding the medical condition of applicants for initial operator licenses or renewal of operator licenses and for the maintenance of medical records for all licensed operators. The information is used to determine whether the physical condition and general health of applicants for operator licensees is such that the applicant would not be expected to cause operational errors and endanger public health and safety.

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 World Wide 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 December 4, 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 (3150–0024), 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 Gregory Trussell (301) 415–6445.

Dated at Rockville, Maryland, this 23rd day of October 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–26216 Filed 11–3–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 9, 2008 to October 22, 2008. The last biweekly notice was published on October 21, 2008 (73 FR 370501).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be

considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently. Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D44, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E–Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate).

Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No.1, DeWitt County, Illinois

Date of amendment request: September 2, 2008.

Description of amendment request: The proposed amendment would relocated surveillance requirement (SR) 3.8.3.6 from the technical specifications (TSs) to a licensee-controlled document. SR 3.8.3.6 requires the emergency diesel generator fuel oil storage tanks to be drained, sediment removed, and cleaned on a 10-year interval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The FOSTs [fuel oil storage tanks] provide the storage for the DG [diesel generator] DG fuel oil, assuring an adequate volume is available for each DG to operate for seven days in the event of a loss of offsite power concurrent with a loss of coolant accident. The relocation of the SR to drain and clean the FOSTs to a licensee-controlled document will not impact any of the previously analyzed accidents. Sediment in the tank, or failure to perform this SR, does not necessarily result in an inoperable storage tank. Fuel oil quantity and quality are assured by other TS SRs that remain unchanged.

These SRs help ensure tank sediment is minimized and ensure that any degradation of the tank wall surface that results in a fuel oil volume reduction is detected and corrected in a timely manner. Future changes to the licensee-controlled document will be evaluated pursuant to the requirements of 10 CFR 50.59, ''Changes, tests, and experiments,'' to ensure that such changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration or the manner in which the plant is operated and maintained. The proposed change does not adversely affect the ability of structures, systems or components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits.

The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposure.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change does not involve the addition or modification of any plant equipment. Also, the proposed change will not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. The requirements retained in the TS continue to require testing of the diesel fuel oil to ensure the proper functioning of the DGs. The proposed TS change does not create any new credible failure mechanisms, malfunctions or accident initiators.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter or exceed a design basis or safety limit. The requirements retained in the TS continue to require testing of the diesel fuel oil to ensure the DGs are able to perform their intended function.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and TN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: August 29, 2008.

Description of amendment request: The amendments would modify Technical Specification (TS) 5.6.5, Core Operating Limits Report (COLR), by updating TS 5.6.5b to reflect the current analytical methods used to determine the core operating limits in Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3. The proposed amendment is an administrative change and all of the analytical methods have been previously reviewed and approved by the Nuclear Regulatory Commission (NRC).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the list of methodologies used at PVNGS [PVNGS, Units 1, 2, and 3] to determine the various COLR limits is an administrative change which updates the list in the TS to include NRC reviewed and approved COLR methodologies for PVNGS. It does not add or modify any previously used methodologies; it updates the list to include those already approved for use. This change does not make any physical changes to any structure, system or component, and it does not affect any design basis accident evaluation.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the list of methodologies used at PVNGS to determine the various COLR limits is an administrative change which updates the list in the TS to include all of the NRC reviewed and approved COLR methodologies for PVNGS. This change does not create any new failure modes or affect the interaction between any structure, system or component.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the list of methodologies used at PVNGS to determine the various COLR limits is an administrative change which updates the list in the TS to include all of the NRC reviewed and approved COLR methodologies for PVNGS. This change does not modify any margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: August 29, 2008.

Description of amendments request: The amendment would revise Calvert Cliffs Nuclear Power Plant (CCNPP) Operating License Nos. DPR–53 and DPR–69 and Technical Specifications (TSs) by increasing the licensed core power of CCNPP, Unit Nos. 1 and 2 by 1.38 percent to 2737 MWt. The power uprate amendment request is based on the use of the Caldon Leading Edge Flow Measurement (LEFM) CheckPlus system for more accurate determination of main feedwater flow and the associated determination of reactor power through the performance of the power calorimetric calculation currently required by CCNPP TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

In support of this measurement uncertainty recapture (MUR) power uprate, a comprehensive evaluation was performed for Nuclear Steam Supply System (NSSS), balance of plant systems and components, and analyses that could be affected by this change. A power calorimetric uncertainty calculation was performed, and the impact of increasing plant power by 1.38 percent on the plant's design and licensing basis was evaluated. The result of these evaluations is that structures, systems, and components required to mitigate transients will continue to be capable of performing their design function at an uprated core power of 2737 MWt. In addition, an evaluation of the accident analyses demonstrates that applicable analysis acceptance criteria continue to be met. No accident initiators are affected by this uprate and no challenges to any plant safety barriers are created by this change. Therefore, operation of the facility in accordance with the proposed change will not involve a significant increase in the probability of an accident previously evaluated.

The proposed change does not affect the radiological release paths, the frequency of release, or the source-term for release for any accidents previously evaluated in the Updated Final Safety Analysis Report. Structures, systems, and components required to mitigate transients remain capable of performing their design functions, and thus were found acceptable. The reduced uncertainty in the feedwater flow input to the power calorimetric measurement ensures that

applicable accident analyses acceptance criteria continue to be met in support of operation at a core power of 2737 MWt. Analyses performed to assess the effects of mass and energy remain valid. The source-terms used to assess radiological consequences have been reviewed and determined to bound operation at the uprated condition. Therefore, operation of the facility in accordance with the proposed change will not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or single-failures are introduced as a result of the proposed changes. The installation of the Caldon LEFM CheckPlus feedwater flow instrumentation system has been analyzed, and failures of this system will have no adverse effect on any safety-related system or any structures, systems, and components required for transient mitigation. All structures, systems and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system.

This change does not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than was previously evaluated. Operating at a core power level of 2737 MWt does not create any new accident initiators or precursors. The reduced uncertainty in the feedwater flow input to the power calorimetric measurement ensures that applicable accident analyses acceptance criteria continue to be met to support operation at a core power of 2737 MWt. Credible malfunctions continue to be bounded by the current accident analysis of record or evaluations that demonstrate that applicable acceptance criteria continue to be met.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The margins of safety associated with the MUR power uprate are those pertaining to core power. This includes those associated with the fuel cladding, Reactor Coolant System pressure boundary, and containment barriers. A comprehensive engineering review was performed to evaluate the 1.38 percent increase in the licensed core power from 2700 MWt to 2737 MWt. The 1.38 percent increase required that revised NSSS design thermal and hydraulic parameters be established, which then served as the basis for all of the NSSS analyses and evaluations. This engineering review concluded that no design modifications are required to accommodate the revised NSSS design conditions. The NSSS components were evaluated and it was concluded that the NSSS components have sufficient margin to accommodate the 1.38 percent power uprate. The NSSS accident analyses were evaluated for the 1.38 percent power uprate. In all cases, the evaluations demonstrate that the applicable analyses acceptance criteria continue to be met. As a result, the margins of safety continue to be bounded by the current analyses of record for this change.

Therefore, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

NRC Branch Chief: Mark G. Kowal.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station, Kewaunee County, Wisconsin

Date of amendment request: September 11, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specifications, extending the 15-year interval between containment Type A tests specified by Specification 4.4.a, ''Integrated Leak Rate Test,'' by 6 months. The current Type A test interval expires at the end of April 2009. The proposed amendment would extend this interval, on a one-time basis, to October 2009 to coincide with completion of the next scheduled refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability or consequences of accidents previously evaluated in the Updated Safety Analysis Report are unaffected by this proposed change. There is no change to any equipment response or accident mitigation scenario, and this change results in no additional challenges to fission product barrier integrity. The proposed change does not alter the design, configuration, operation, or function of any plant system, structure, or component. As a result, the probabilities of previously evaluated accidents are unaffected. The proposed extension to the Type A test interval does not involve a significant increase in consequences because, as discussed in NUREG–1493, Performance Based Containment Leak Rate Test Program, Type B and C tests identify the vast majority (approximately 97 percent) of all potential leakage paths. Further, Type A tests identify only a few potential leakage paths that cannot be identified through Type B and C testing, and leaks found by Type A testing have been only marginally greater than existing requirements. The frequency and methods of performance of Type B and Type C testing are unaffected by this proposed change. In addition, periodic inspections of containment required by the ASME [American Society of Mechanical Engineers] code and the maintenance rule, which are capable of detecting any significant degradation, are unaffected by the proposed change.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. The proposed change does not install or remove any plant equipment. The proposed change does not alter the design, physical configuration, or mode of operation of any plant structure, system, or component. No physical changes are being made to the plant, so no new accident causal mechanisms are being introduced. The proposed change only changes the frequency of performing the next Type A test; the Type A test implementation and acceptance criteria are unchanged. Type B and Type C testing frequency and method of performance are not affected by this proposed change.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no affect on the availability, operability, or performance of the safety-related systems and components. The proposed change does not alter the design, configuration, operation, or function of any plant system, structure, or component. The ability of operable structures, systems, and components to perform their designated safety function is unaffected by this proposed change. NUREG–

1493 concluded that reducing the frequency of Type A tests to one-in-20 years resulted in an imperceptible increase in risk. Type B and Type C testing frequency and method of performance are unaffected by this proposed change. Also, [other] inspections of containment required by the ASME code and the maintenance rule [will] provide reasonable assurance that containment will not degrade in a manner that is only detectable by Type A testing. In addition, the inherent risk of an additional plant shutdown would be eliminated by the proposed amendment, further ensuring no significant reduction in safety margin.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Counsel for Dominion Energy Kewaunee, Inc., 120 Tredegar Street, Richmond, VA 23219.

NRC Branch Chief: Lois M. James.

Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: July 28, 2008.

Description of amendment request: The proposed amendment would: (1) Delete Technical Specification (TS) surveillance requirement (SR) 3.1.3.2 and revise SR 3.1.3.3, (2) remove reference to SR 3.1.3.2 from Required Action A.2 of TS 3.1.3, ''Control Rod OPERABILITY,'' (3) clarify the requirement to fully insert all insertable rods for the limiting condition for operation (LCO) in TS 3.3.1.2, required Action E.2, ''Source Range Monitoring Instrumentation,'' and (4) revise Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test interval extension.

The NRC staff issued a notice of opportunity to comment in the **Federal Register** on August 16, 2007 (72 FR 46103), on possible amendments to revise the plant-specific TSs, modify TS control rod SR testing frequency, clarify TS control insertion requirements, and clarify SR frequency discussions, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on November 13, 2007 (72 FR 63935). The licensee affirmed the applicability of the model NSHC determination in its application dated July 28, 2008.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change generically implements TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency and SRM [Source Range Monitor] Insert Control Rod Action.'' TSTF–475, Revision 1 modifies NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) STS. The changes: (1) revise TS testing frequency for surveillance requirement (SR) 3.1.3.2 in TS 3.1.3, ''Control Rod OPERABILITY,'' (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, ''Source Range Monitoring Instrumentation'' (NUREG–1434 only), and (3) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. The consequences of an accident after adopting TSTF–475, Revision 1 are no different than the consequences of an accident prior to adoption. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

TSTF–475, Revision 1 will: (1) Revise the TS SR 3.1.3.2 frequency in TS 3.1.3, ''Control Rod OPERABILITY,'' (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, ''Source Range Monitoring Instrumentation,'' and (3) revise Example 1.4–3 in Section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension. The GE [General Electric] Nuclear Energy Report, ''CRD [Control Rod Drive] Notching Surveillance Testing for Limerick Generating Station,'' dated November 2006, concludes that extending the control rod notch test interval from weekly to monthly is not expected to impact the reliability of the scram system and that the analysis supports the decision to change the surveillance frequency. Therefore, the proposed changes in TSTF–475, Revision 1 are acceptable and do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis adopted by the licensee and, based upon this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: July 21, 2008.

Description of amendment request: The proposed amendment would support a proposed change to the in-service inspection program that is based on topical report WCAP–16168–NP–A, Revision 2, ''Risk-Informed Extension of the Reactor Vessel In-Service Inspection Interval.'' In the referenced safety evaluation of the topical report, the NRC required licensees to amend their licenses to require that the information and analyses requested in Section (e) of the final 10 CFR 50.61a (or the proposed 10 CFR 50.61a, given in 72 FR 56275 prior to issuance of the final 10 CFR 50.61a) be submitted for NRC staff review and approval within one year of completing the required reactor vessel weld inspection. Entergy Nuclear Operations, Inc., proposes to add a new license condition to provide this information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment changes the renewed facility operating license by adding a license condition to require that the

information and analyses requested in Section (e) of the final 10 CFR 50.61a (or the proposed 10 CFR 50.61a, given in 72 FR 56275 prior to issuance of the final 10 CFR 50.61a) will be submitted for NRC staff review and approval within one year of completing the required reactor vessel weld inspection. The proposed amendment does not involve operation of the required structures, systems or components (SSCs) in a manner or configuration different from those previously recognized or evaluated.

The proposed changes are administrative and have no impact on plant operation or equipment.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license amendment does not involve a physical alteration of any SSC or change the way any SSC is operated. The proposed license amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated.

The proposed changes are administrative and have no impact on plant operation or equipment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are administrative and have no impact on plant operation or equipment or on any margin of safety.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Lois M. James.

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 28, 2008.

Description of amendment request: The proposed amendment would change Technical Specifications (TS) Administrative Controls section 5 to incorporate NRC-approved Technical Specification Task Force (TSTF) Improved Technical Specification (ITS) TSTF–363, ''Revise Topical Report references in ITS 5.6.5, [Core Operating Limits Report] COLR,'' revision 0. ENO also proposes to make an administrative change to the plant staff qualifications section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative or provide clarification only.

The proposed changes do not have any impact on the integrity of any plant system, structure, or component (SSC) that initiates an analyzed event. The proposed changes will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Thus, the probability of any accident previously evaluated is not significantly increased.

The proposed changes do not affect the ability to mitigate previously evaluated accidents, and do not affect radiological assumptions used in the evaluations. The proposed changes do not change or alter the design criteria for the systems or components used to mitigate the consequences of any design-basis accident. The proposed amendment does not involve operation of the required SSCs in a manner or configuration different from those previously recognized or evaluated. Thus, the radiological consequences of any accident previously evaluated are not increased.

Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment does not involve a physical alteration of any SSC or a change in the way any SSC is operated. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the changes being requested.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The amendment does not involve a significant reduction in a margin of safety. The proposed amendment does not affect any margin of safety. The proposed amendment does not involve any physical changes to the plant or manner in which the plant is operated.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Lois M. James.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: September 30, 2008.

Description of amendment request: The proposed amendment would revise the Facility Operating License and Technical Specification Section 4.0 by changing the names of the licensees to Enexus Nuclear Pilgrim LLC and EquaGen Nuclear LLC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed amendment would only change the names of the licensees and reflect the referenced NRC Order requirements. Principal management and operational staffing for the restructured organization remain largely unchanged. The proposed changes do not: (a) Involve a significant increase in the probability or consequences of an accident previously evaluated; (b) create the possibility of a new or different kind of accident from any accident previously evaluated; or (c) involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400

Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: September 4, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) Section 5.1, ''Site,'' to remove the restriction on the sale and lease of site property and replace the restriction with a requirement to retain complete authority to determine and maintain sufficient control of all activities, including the authority to exclude or remove personnel and property, within the minimum exclusion area as described in 10 CFR 100.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The change does not impact the function of any structure, system or component that affects the probability of an accident or that supports mitigation or consequences of an accident previously evaluated. The proposed change establishes requirements for sale or lease of property within the exclusion area. Additionally, ENO [Entergy Nuclear Operations, Inc.] will retain authority to determine all activities within the exclusion area and to remove personnel and property from the area as necessary to ensure the regulatory exposure limits are met.

The proposed change does not affect reactor operations or accident analysis and there is no change to the radiological consequences of a previously analyzed accident. The operability requirements for accident mitigation systems remain consistent with the licensing and design basis. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed change does not involve any physical alteration of plant equipment and does not change the method by which any safety-related system performs its function. The proposed change establishes requirements for sale or lease of property within the exclusion area. Any additional activities performed within the exclusion area will be reviewed by ENO and verified to not represent a new hazard or that they have been accommodated in the plant licensing and design basis. As such, no new or different types of equipment will be installed or operated without additional review and approval by ENO. Operation of existing installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. These changes do not change any existing design or operational requirements, and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. As such, there are no changes being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: September 22, 2008.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) to remove the requirement to perform quarterly closure time testing of the Main Steam Isolation Valves (MSIVs) by deleting TS Surveillance Requirement 4.7.D.1.c. Operability testing of the MSIVs will continue to be required by the Vermont Yankee Inservice Test Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station (VY) in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change deletes the specific surveillance requirement to exercise the MSIVs once per quarter from the TS. Following implementation of the proposed change, the VY TS still will require operability testing of the MSIVs by reference to the VY IST program. The quarterly exercise involves a timed full stroke closure of each individual MSIV and subsequent reopening to the full open position. Details of MSIV testing requirements will continue to be contained in the VY IST program. The MSIV closure time setpoint values related to the safety functions of the MSIVs will continue to be contained in the VY UFSAR [Updated Final Safety Analysis Report] and the VY TRM [Technical Requirements Manual]. Changes to the VY UFSAR and TRM are evaluated per the requirements of 10 CFR 50.59. These controls are adequate to ensure the required inservice testing is performed to verify the MSIVs are operable and capable of performing their safety functions. The proposed amendment introduces no new equipment or changes to how equipment is operated. Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station (VY) in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment deletes the specific surveillance requirement to exercise the MSIVs once per quarter from the TS. Following implementation of the proposed change, the VY TS still will require operability testing of the MSIVs by reference to the VY IST program. The quarterly exercise involves a timed full stroke closure of each individual MSIV and subsequent reopening to the full open position. The proposed amendment does not change the design or function of any component or system. No new modes of failure or initiating events are being introduced. Therefore, operation of VY in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Vermont Yankee Nuclear Power Station (VY) in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed amendment deletes the specific surveillance requirement to exercise the MSIVs once per quarter from the TS. Following implementation of the proposed change, the VY TS still will require operability testing of the MSIVs by reference to the VY IST program. The quarterly exercise involves a timed full stroke closure of each individual MSIV and subsequent reopening to the full open position. The proposed amendment does not change the design or function of any component or system. The proposed amendment does not involve any safety limits or safety settings. The ability of the MSIVs to perform their safety function will continue to be tested in

accordance with the IST Program, through TS SR 4.7.D.1.b.

Since the proposed controls are adequate to ensure the required inservice testing is performed, there will still be high assurance that the components are operable and capable of performing their respective safety functions, and that the systems will respond as designed to mitigate the subject events. Therefore, operation of VY in accordance with the proposed amendment will not involve a significant reduction in [a] margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: September 30, 2008.

Description of amendment request: The proposed amendment would revise the Facility Operating License and Technical Specification Section 5.0 by changing the names of the licensees to EquaGen Nuclear LLC and Enexus Nuclear Vermont Yankee LLC, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed amendment would only change the names of the licensees and reflect the referenced NRC Order requirements; principal management and operational staffing for the restructured organization remain largely unchanged. The proposed changes do not: (a) Involve a significant increase in the probability or consequences of an accident previously evaluated; (b) create the possibility of a new or different kind of accident from any accident previously evaluated; or (c) involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 400 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment requests: July 21, 2008.

Description of amendment request: The proposed change allows a delay time for entering a supported system Technical Specification (TS) when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed consistent with the program in place for complying with the requirements of 10 CFR 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.8 is added to the TS to provide this allowance and define the requirements and limitations for its use.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–372, Revision 4. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on November 24, 2004 (69 FR 68412), on possible amendments concerning TSTF–372, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252).

Basis for proposed no significant hazards consideration determination: Entergy Operations, Inc. (Entergy) has reviewed the proposed NSHC determination published in the **Federal Register** as part of the CLIIP. Entergy has concluded that the proposed NSHC determination presented in the **Federal Register** notice is applicable to Arkansas Nuclear One, Unit 2 and is presented below:

Criterion 1: The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO 3.0.8 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in Regulatory Guide 1.177. A bounding risk assessment was performed to justify the proposed TS changes. The proposed LCO 3.0.8 defines limitations on the use of the provision and includes a requirement for the licensee to assess and manage the risk associated with operation with an inoperable snubber. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: July 30, 2008, as supplemented on October 2, 2008.

Description of amendment request: Entergy Operations Inc. (the licensee) proposes to modify the technical specifications (TS) 3.6.6, ''Spray Additive System.'' Specifically, this amendment proposes to revise the Sodium Hydroxide (NaOH) tank concentration stated in TS 3.6.6.3 from between 5.0 percent and 16.5 percent to between 6.0 percent and 8.5 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There are no changes to the design or operation of the plant that could affect system, component, or accident functions as a result of changing the sodium hydroxide (NaOH) tank solution concentration limits. In addition, the dose reduction provided by maintaining the sump pH above 7.0 is retained, and therefore, dose consequences resulting from iodine dissolution remain unchanged. The proposed change simply imposes more restrictive operating conditions than are within the current TS limits. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed change. Structures, systems, and components previously required for mitigation of an accident remain capable of fulfilling their intended design function with this change to the TS. The proposed change has no new adverse effects on safety-related systems or components and does not challenge the performance or integrity of safety-related systems. The proposed change simply imposes more restrictive operating conditions that are within the current TS limits. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change imposes more restrictive operating conditions that are within the current TS limits. Revising the NaOH tank solution concentration limits reduces the amount of chemical precipitates formed under post-loss-of-coolant accident conditions. The margin of safety related to ensuring that the sump pH remains above 7.0 is not reduced. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: August 21, 2008.

Description of amendment request: Entergy Operations Inc. (the licensee) proposes a one-time amendment for next containment integrated leakage rate test (ILRT) or Type A test at the Arkansas Nuclear One, Unit No. 2 (ANO–2). The ILRT is required by Technical Specification (TS) 6.5.16, ''Containment Leakage Rate Testing Program,'' to be performed every ten-years. The amendment would permit the existing ILRT frequency to be extended from 120 months (10 years) to approximately 135 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed exemption involves a one-time extension to the current interval for Type A containment testing. The current test interval of 120 months (10 years) would be extended on a one-time basis to no longer than approximately 135 months from the last Type A test. The proposed extension does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the reactor containment itself and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident. Therefore, this proposed extension does not involve a significant increase in the probability of an accident previously evaluated nor does it create the possibility of a new or different kind of accident.

This proposed extension is for the Type A containment leak rate tests only. The Type B and C containment leak rate tests will continue to be performed at the frequency currently required by the ANO–2 TS. As documented in NUREG 1493, Type B and C tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. ANO–2's Type A test history supports this conclusion.

The integrity of the reactor containment is subject to two types of failure mechanisms which can be categorized as (1) activity based and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as configuration management and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the containment itself combined with the containment inspections performed in accordance with ASME, Section XI, the Maintenance Rule, and Licensing commitments serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by a Type A test. Based on the above, the proposed extension does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revision to the TS involves a one-time extension to the current interval for Type A containment testing. The reactor containment and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. The proposed TS change does not involve a physical change to the plant or the manner in which the plant is operated or controlled. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the TS involves a one-time extension to the current interval for Type A containment testing. The proposed TS change does not involve a physical

change to the plant or a change in the manner in which the plant is operated or controlled. The specific requirements and conditions of the Primary Containment leak Rate Testing Program, as defined in the TS, exist to ensure that the degree of reactor containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained. The proposed change involves only the extension of the interval between Type A containment leak rate tests. The proposed surveillance interval extension is bounded by the 15 month extension currently authorized within NEI 94–01, Revision 0. Type B and C containment leak rate tests will continue to be performed at the frequency currently required by TS. Industry experience supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME, Section XI and the Maintenance Rule serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety that is in plant safety analysis is maintained. The design, operation, testing methods and acceptance criteria for Type A, B, and C containment leakage tests specified in applicable codes and standards will continue to be met, with the acceptance of this proposed change, since these are not affected by changes to the Type A test interval. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Council—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: July 21, 2008.

Description of amendment requests: The proposed amendments would modify the Technical Specification (TS) by adding Limiting Condition for Operation (LCO) 3.0.8 on the inoperability of snubbers using the Consolidated Line Item Improvement Process (CLIIP). The proposed amendments would also make conforming changes to TS LCO 3.0.1. This request is consistent with NRC-approved Industry/Technical Specification Task Force (TSTF) Traveler No. 372, Revision 4, ''Addition of LCO 3.0.8, Inoperability of Snubbers.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on November 24, 2004 (69 FR 68412), on possible amendments concerning TSTF–372, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on May 4, 2005 (70 FR 23252).

Basis for proposed no significant hazards consideration determination: Entergy Operations, Inc. (Entergy) has reviewed the proposed NSHC determination published in the **Federal Register** as part of the CLIIP. Entergy has affirmed the applicability of the following NSHC for Arkansas Nuclear One, Unit 1 in its application and as published in the **Federal Register**.

Criterion 1: The Proposed Changes Do Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed changes allow a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on allowance provided by proposed LCO 3.0.8 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.8. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: The Proposed Changes Do Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering a supported system TS when inoperability is due solely to inoperable snubbers, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, these changes do not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3: The Proposed Changes Do Not Involve a Significant Reduction in the Margin of Safety

The proposed changes allow a delay time for entering a supported system TS when the inoperability is due solely to an inoperable snubber, if risk is assessed and managed. The postulated seismic event requiring snubbers is a low-probability occurrence and the overall TS system safety function would still be available for the vast majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in NRC Regulatory Guide 1.177. A bounding risk assessment was performed to justify the proposed TS changes. The application of LCO 3.0.8 is predicated upon the licensee's performance of a risk assessment and management of plant risk [which is required by the proposed TS 3.0.8]. The net change to the margin of safety is insignificant. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael Markley.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 17, 2008.

Description of amendment request: The proposed change will revise the Operating License to modify Note 2 of Waterford 3 Technical Specification Table 4.3–1. The licensee stated that the proposed change will result in the addition of conservatism to Core Protection Calculator (CPC) power indications when calibrations are required in certain conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will redefine the tolerance band allowed for the Reactor Protection System (RPS) linear power, Core Protection Calculator (CPC) ΔT [Delta Temperature] power, and CPC neutron flux power signals, and clarify the intent of the calibration requirements for CPC power indications when at less than 15% [percent] power, and specify that adjustment limits are percentages of RATED THERMAL POWER instead of percentages of current power. Redefining the tolerance band is in conformance with the safety analysis. The consequences of an accident will be in conformance with the safety analysis.

Clarifying the intent of there being no calibration requirements for CPC power indications when at less than 15% power is essentially editorial. At this low power level, CPC calculations compensate for any potential de-calibration. Specifying that adjustment limits are percentages of RATED THERMAL POWER instead of percentages of current power is essentially editorial. This change is made to avoid confusion in interpreting the requirements. This amendment request does not change the design, analysis or operation of any plant systems or components.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to Technical Specification power calibration tolerance limits is in conformance with the safety analysis. This amendment request does not change the design, analysis or operation of any plant systems or components. CPC's cannot cause an accident, and this change will not create the possibility of a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to Technical Specification power calibration tolerance limits is in conformance with the safety analysis. This proposed change maintains the margin of safety for design basis events. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 17, 2008.

Description of amendment request: Entergy has proposed to add a license condition on the extension of the reactor vessel inservice inspection interval. This proposed license condition is the result of a condition in the Nuclear Regulatory Commission (NRC) safety evaluation, issued by letter dated May 8, 2008, on topical report WCAP–16168–NP–A, Revision 2, ''Risk-Informed Extension of the Reactor Vessel In-Service Inspection [ISI] Interval,'' dated June 8, 2008. The ISI interval extension part of a relief request is being separately evaluated by NRC and independent of this amendment request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will revise the license to require the submission of information and analyses to the NRC following completion of each ASME Code, Section XI, Category B–A and B–D reactor vessel weld inspection. The extension of the ISI interval from 10 to 20 years is being evaluated as part of the relief request independent from this license change. Submission of the information and analyses are administrative in nature and has no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of any SSC or change the way any SSC is operated. The proposed addition of the license condition has no impact on any plant configurations or on system performance that is relied upon to mitigate the consequences of an accident. The license condition is administrative in nature and does not result in a change to the physical plant or to the modes of operation defined in the facility license. Entergy has demonstrated that the Limitations and Conditions associated with the NRC SE will be met.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The addition of the license condition is administrative in nature and has no impact on plant operation or equipment or on any margin of safety. The license condition to submit information and analyses is an administrative tool to assure the NRC has the ability to independently review information developed by the Licensee.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: June 27, 2007, as supplemented on September 4, 2008.

Description of amendment request: The proposed amendment request dated June 27, 2008, would revise Technical Specifications (TS) Surveillance Requirements 3.8.1.2, 8, 12, 13, 16, and 19, changing the steady state frequency and voltage of all diesel generators (DGs) from the currently allowed frequency range of 59.4–61.2 Hz to 59.4–60.5 Hz (i.e., a decrease of the upper limit, resulting in narrowing of the current range). The licensee stated that the current frequency range is nonconservative and could result in undesirable effects such as centrifugal charging pump motor brake horsepower exceeding its nameplate maximum horsepower, and overloading the DGs. The Commission previously noticed this proposed amendment request on August 14, 2007 (72 FR 45458).

The scope of the June 27, 2008, proposed amendment request was expanded as described in a supplemental letter dated September 4, 2008. The expanded scope would revise (1) TS Surveillance Requirements 3.8.1.8, 13, 16, and 22, changing the minimum voltage and frequency that

the DGs must achieve within 10 seconds after starting from ≥ 3740 Volts (V) to ≥ 3910 V and ≥ 58.8 Hz to ≥ 59.4 Hz, respectively, and (2) TS Surveillance Requirement 3.8.1.10, changing the maximum DG frequency allowed to occur within 2 seconds following a load rejection of the single largest post-accident load from ≤ 61.2 Hz to ≤ 60.5 Hz. The changes proposed by the supplement indirectly affect TS 3.8.2.1 which requires that TS Surveillance Requirements 3.8.1.8, 10, and 16 be met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration. The NRC staff has performed its own analysis, which is presented below:

(1) Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The more restrictive transient voltage and frequency limits ensures that the equipment powered from the DGs will function as designed to mitigate an accident as described in the Update Final Safety Analysis Report (UFSAR). The DGs and the equipment they power are part of the systems required to mitigate accidents; no accident analyzed in the UFSAR is initiated by mitigation equipment. Therefore, the proposed change to the allowed frequency range of the DGs will not have any impact on the probability of an accident previously evaluated. Furthermore, other than requiring more restrictive transient voltage and frequency limits of DGs, there is no other design or operational change. Therefore, the proposed change does not increase the probability of malfunction of the DGs or the equipment they power.

The more restrictive DG transient voltage and frequency limits will ensure that the equipment powered by the DGs will perform as originally designed and analyzed to mitigate the consequences of any accident described in the UFSAR. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated in the UFSAR.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There is no design change associated with the proposed amendment. Making an existing DG requirement more restrictive alone will not alter plant configuration because no new or different type of equipment will be installed, and because no methods governing plant operation will be changed. The proposed change to transient voltage and frequency limits will not have any effect on the assumptions of accident scenarios previously made in the UFSAR. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Despite the proposed change to the DG transient voltage and frequency limits, the DGs and equipment powered by the DGs will continue to perform as originally designed, and originally analyzed in the UFSAR. There is no associated change to the methods and assumptions used to analyze DG performance. The proposed change will maintain the required function of the DGs and the equipment powered by the DGs to ensure that operation of structures, systems, or components is as currently set forth in the UFSAR. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on its own analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: James M. Petro, Jr., One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: Lois M. James.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 2, 2008.

Description of amendment request: The proposed amendment would correct several typographical errors and make administrative clarifications to the Technical Specifications (TS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes correct typographical and administrative errors, or make clarifications that more accurately reflect TS requirements. Administrative and editorial changes such as these are not an initiator of any accident previously evaluated. As a result, the probability of an accident previously evaluated is not affected. The consequences of an accident with the incorporation of these administrative and editorial changes are no different than the consequences of the same accident without these changes. As a result, the consequences of an accident previously evaluated are not affected by these changes.

The proposed changes do not alter or prevent the ability of structures, systems, and components from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated.

Further, the proposed changes do not increase the types or amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with the safety analysis assumptions and resultant consequences. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed changes do not alter any assumptions made in the safety analysis. Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes consist of administrative and editorial changes to correct typographical or administrative errors and oversights or clarify the meaning of the TS. The changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by these changes. The proposed changes will not result in plant operation in a configuration outside of the design basis. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: September 18, 2008.

Description of amendment request: The proposed amendment would revise technical specification (TS) 3.8.7,

''Inverters—Operating.'' The current TS requires one inverter for each of the four channels. The proposed amendment would revise TS 3.8.7 to require two inverters for each of the four channels.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed revisions to WBN's Vital AC [alternating current] Power System do not alter the safety functions of the Vital Inverters or the Unit 1 and Unit 2 120V [volt] AC Vital Instrument Power Boards. The initial conditions for the DBAs [design-basis accidents] defined in the WBN UFSAR [Updated Final Safety Analysis Report] assume the ESF [engineered safety feature] systems are operable. The vital inverters are designed to provide the required capacity, capability, redundancy, and reliability to ensure the availability of necessary power to vital instrumentation so that the fuel, reactor coolant system, and containment design limits are not exceeded. Separating the Unit 2 loads from the Unit 1 inverters does not alter the accident analyses. Design calculations document that the inverters have adequate capacity to support the loads required for Unit 1 operation and no changes are proposed that will impact the separation of the Vital AC Power System.

The inverters and the associated 120V AC Vital Instrument Power Boards are utilized to support instrumentation that monitor critical plant parameters to aid in the detection of accidents and to support the mitigation of accidents, but are not considered to be an initiator of design basis accidents. Based on this and the preceding information, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

When implemented, the proposed TS amendment will allow the Unit 2 Vital Instrument Power Boards to receive their UPS [uninterruptible power supply] power from new Unit 2 inverters. Calculations have verified that the loads will not affect the ability of the inverters to perform their intended safety functions. In addition, the inverters and the 120V AC Vital Instrument Power Boards are not considered to be an initiator of a DBA. These components provide power to instrumentation that supports the identification and mitigation of accidents as well as system control functions during normal plant operations. The functions of the inverters are not altered by the proposed TS change and will not create the possibility of a new or different accident. Further, the separation of the Unit 2 loads from the Unit 1 inverters is the principal change to the inverter system, and this change is bounded by previously evaluated accident analyses. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The plant setpoints and limits that are utilized to ensure safe operation and detect accident conditions are not impacted by the proposed TS amendment. The inverters and the 120V Vital Instrument Power Boards will continue to provide reliable power to safety-related instrumentation for the identification and mitigation of accidents and to support plant operation. Therefore, the margin of safety is not reduced.

Based on the above, TVA concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Tennessee Valley Authority (TVA), Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: September 18, 2008.

Description of amendment request: The proposed amendment would revise technical specification (TS) Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation,'' to modify Mode 1 and 2 Applicability for Function 6.e, and would revise limiting condition for operation (LCO) 3.3.2, Condition J.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The design basis events which impose [auxiliary feedwater] AFW safety function requirements are loss of normal main feedwater, main feed line or main steam line break, loss of offsite power (LOOP), and small break loss of coolant accident. These design bases event evaluations assume actuation of the AFW due to LOOP signal, low-low steam generator level or a safety injection signal. The anticipatory AFW auto-start signals from the turbine driven main feedwater (TDMFW) pumps are not credited in any design basis accidents and are, therefore, not part of the primary success path for postulated accident mitigation as defined by 10 CFR 50.36(c)(2)(ii), Criterion 3. Modifying Mode 1 and 2 Applicability for this function will not impact any previously evaluated design basis accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This TS change allows for an operational allowance during Mode 1 and 2 for placing TDMFW pumps in service or securing TDMFW pumps. This change involves an anticipatory AFW auto-start function that is not credited in the accident analysis. Since this change only affects the conditions at which this auto-start function needs to be operable and does not affect the function that actuates AFW due to loss of offsite power, low-low steam generator level or a safety injection signal, it will not be an initiator to a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This TS change involves the automatic start of the AFW pumps due to trip of both TDMFW pumps, which is not an assumed start signal for design basis events. This change does not modify any values or limits involved in a safety related function or accident analysis. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, TVA concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: September 19, 2008.

Description of amendment request: The proposed amendment would modify the WBN Final Safety Analysis Report (FSAR) by requiring an inspection of the ice condenser within 24 hours of experiencing a seismic event greater than or equal to an Operating Basis Earthquake (OBE) within the five week period after ice basket replenishment has been completed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The analyzed accidents of consideration in regard to changes potentially affecting the ice condenser are a loss of coolant accident and a steam or feedwater line break inside Containment. The ice condenser is an accident mitigator and is not postulated as being the initiator of a LOCA [loss-of-coolant accident] or HELB [high energy line break]. The ice condenser is structurally designed to withstand a Safe Shutdown Earthquake plus a Design Basis Accident and does not interconnect or interact with any systems that interconnect or interact with the Reactor Coolant, Main Steam, or Feedwater systems. Because the proposed changes do not result in, or require any physical change to the ice condenser that could introduce an interaction with the Reactor Coolant, Main Steam, or Feedwater systems, there can be no change in the probability of an accident previously evaluated.

Under the proposed change, there is some finite probability that, within 24 hours following a seismic disturbance, a LOCA or HELB in Containment could occur within five weeks of the completion of ice basket replenishment. However, several factors provide defense-in-depth and tend to mitigate the potential consequences of the proposed change.

Design basis accidents are not assumed to occur simultaneously with a seismic event. Therefore, the coincident occurrence of a LOCA or HELB with a seismic event is strictly a function of the combined probability of the occurrence of independent events, which in this case is very low. Based on the Probabilistic Risk Assessment model and seismic hazard analysis, the combined probability of occurrence of a seismic disturbance greater than or equal to an OBE during the 5 week period following ice replenishment coincident with or subsequently followed by a LOCA or HELB during the time required to perform the proposed inspection (24 hours) and if required by Technical Specifications, complete Unit shutdown (37 hours), is less than 3.7E–09 for WBN. This probability is well below the threshold that is typically considered credible.

Even if ice were to fall from ice baskets during a seismic event occurring coincident with or subsequently followed by an accident, the ice condenser would be expected to perform its intended safety function. Due to the ice servicing methodology utilized by WBN, the relatively small amount of ice that may potentially fallout from the ice baskets to the floor behind the lower inlet doors during the seismic event is such that complete blockage of flow into the ice condenser is not credible during a LOCA or HELB.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences. The ice condenser is expected to perform its intended safety function under all circumstances following a LOCA or HELB in Containment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change provides an alternate methodology to confirm the ice condenser lower inlet doors are capable of opening if a seismic event occurs within five weeks of ice basket replenishment. As previously discussed, the ice condenser is not postulated as an initiator of any design basis accident. The proposed change does not impact any plant system, structure, or component that is an accident initiator. The proposed change does not involve any hardware changes to the ice condenser or other changes that could create new accident mechanisms. Therefore, there can be no new or different accidents created from those previously identified and evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the Reactor Coolant system, and the Containment system. The performance of the fuel cladding and the Reactor Coolant system will not be impacted by the proposed change.

The requirement to inspect the ice condensers within 24 hours of experiencing seismic activity greater than or equal to an OBE during the five (5) week period following the completion of ice basket replenishment will confirm whether the ice condenser lower inlet doors are capable of opening. This inspection will either confirm that the ice condenser doors remain fully capable of performing their intended safety function under credible circumstances or that a Unit shutdown is required.

The ice condenser has reasonable assurance of performing its intended function during the highly unlikely scenario in which a postulated accident (LOCA or HELB) occurs coincident with or subsequently following a seismic event.

The proposed change affects the assumed timing of a postulated seismic and design basis accident applied to the ice condenser and provides an alternate methodology in confirming the ice condenser lower inlet doors are capable of opening. As previously discussed, the combined probability of occurrence of a LOCA or HELB and a seismic disturbance greater than or equal to an OBE during the ''period of potential exposure'' is less than 3.7E–09 for WBN. This probability is well below the threshold that is considered credible.

Therefore, the proposed change does not involve a significant reduction in the margin of safety. The WBN ice condenser will perform its intended safety function under credible circumstances.

The changes proposed in this LAR [license amendment request] do not make any physical alteration to the ice condensers, nor does it affect the required functional capability of the ice condenser in any way. The intent of the proposed change to the FSAR is to eliminate an overly restrictive waiting period prior to Unit ascent to power operations following the completion of ice basket replenishment. The required inspection of the ice condenser following a seismic event greater than or equal to an OBE will confirm whether the ice condenser lower inlet doors will continue to fully perform their safety function as assumed in the WBN safety analyses.

Thus, it can be concluded that the proposed change does not involve a significant reduction in the margin of safety.

Based on the above, TVA concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: April 2, 2008.

Description of amendment request: The proposed change revises Technical Specification (TS) Section 5.0, ''Design Features,'' to delete certain design details and descriptions included in TS 5.0 that are already contained in the Updated Final Safety Analysis Report

(UFSAR), or are redundant to existing TS requirements, and are not required to be included in the TSs pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Section 50.36(d)(4). The proposed change also revises the format of, and incorporates design descriptions into, TS 5.0 consistent with Nuclear Regulatory Commission (NRC) policy and NUREG–1431, ''Standard Technical Specifications Westinghouse Plants, Revision 3.0,'' to the extent practical. An editorial change is also proposed to address a minor TS discrepancy introduced by a previous license amendment. More specifically, the proposed change includes removing Section 5.2, ''Containment,'' from the TSs in its entirety. This section contains the minimum spray flows for the Containment Spray (CS) and Recirculation Spray (RS) Subsystems. The proposed change also removes the statement describing how draining of the spent fuel pool is prevented, and includes a statement in the TS that would limit draining the spent fuel pool below the elevation of 41 feet, 2 inches mean sea level. Additionally, the licensee proposes to incorporate the spent fuel pool storage capacity of 1044 assemblies into the TSs. This limit was previously established by Amendment Nos. 37 and 36 to Surry Power Station, Unit Nos. 1 and 2, respectively.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided its analysis of the issue of no significant hazards consideration. The NRC staff has performed its own analysis, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to Section 5.0, ''Design Features,'' removes certain details from the TSs that are not required to be maintained in the TSs by 10 CFR 50.36(d)(4), or are adequately controlled by other existing TSs, incorporates previously approved TS limits that meet the 10 CFR 50.36(d)(4) inclusion criteria, and revises the TSs for consistency with NUREG–1431. An additional change addresses a minor editorial discrepancy introduced by a previous amendment. The minimum spray flow values for the CS and RS Subsystems are removed, but operability and performance of both subsystems are adequately controlled by existing TSs ensuring they will continue to perform their design functions. The proposed changes remove the statement describing how draining of the spent fuel pool is prevented (does not meet the criteria of 10 CFR 50.36(d)(4)for inclusion in the TSs) and includes a statement in the TS that would limit draining the spent fuel pool below the elevation of 41 feet, 2 inches mean sea level (as analyzed in the UFSAR and consistent with the content and format of NUREG–1431). The proposed change incorporates the spent fuel pool storage capacity of 1044 assemblies into the TSs. This limit was evaluated in previously approved Amendment Nos. 37 and 36 to Surry Power Station, Unit Nos. 1 and 2, respectively. The proposed changes are considered administrative in nature and do not affect initiators of previously analyzed events or assumed mitigation of accident or transient events. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There is no physical alteration of the plant (no new or different type of equipment will be installed) associated with the proposed amendment. The proposed changes will not have any effect on the assumptions of accident scenarios previously made in the UFSAR. The proposed changes do not alter or prevent the ability of structures, systems, and components to perform their intended function to mitigate the consequences of an initiating event. The proposed changes are considered administrative in nature. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Response: No.

The spent fuel pool and the CS and RS Subsystems will continue to perform as designed and analyzed in the UFSAR. There is no associated change to the methods and assumptions used to analyze their performance. Their required function will be maintained as currently set forth in the UFSAR and existing TSs. The proposed changes do not result in plant operation in a configuration outside the design basis. The proposed changes do not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. The dose analysis is also not affected. The proposed changes are considered administrative in nature and do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on its own analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2 Richmond, VA 23219.

NRC Branch Chief: Melanie C. Wong.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: July 30, 2007, as supplemented on April 7 and September 8, 2008.

Description of amendment request: This amendment would modify Technical Specification 3.7.3, ''Control Room Envelope Air Conditioning (AC) System,'' by adding an Action Statement to the Limiting Conditions for Operation. The new Action Statement allows a finite time to restore one control room envelope AC subsystem to operable status and requires verification that the control room temperature remains <90 °F every 4 hours.

Date of publication of individual notice in ***Federal Register***: (73 FR 55166) September 24, 2008.

Expiration date of individual notice: November 23, 2008.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating

License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (First Floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 18, 2007, as supplemented by letter dated July 3, 2008.

Description of amendment request: The amendment changed the Oyster Creek Technical Specifications Section 4.5.M.1.e.1 regarding the mechanical snubber functional test acceptance test acceptance criteria. Specifically, the change replaced the snubber breakaway test with the drag force test.

Date of issuance: October 10, 2008.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 270.

Facility Operating License No. DPR–16: The amendment revised the License and Technical Specifications.

*Date of initial notice in **Federal Register***: June 17, 2008 (73 FR 34339). The supplement dated July 3, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 10, 2008.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: November 29, 2007.

Brief description of amendment: The amendment consists of changes to Technical Specification Section 3.6.8, ''Isolation Valve Seal Water (IVSW) System.'' The amendment revises Surveillance Requirements (SR) 3.6.8.2 and 3.6.8.6 related to IVSW tank volume and header flow rates. Specifically, the change clarifies the wording of SR 3.6.8.2, and revises SR 3.6.8.6 to provide a total flow rate limit from all four headers in place of the individual header limits.

Date of issuance: October 3, 2008.

Effective date: Effective as of the date of issuance and shall be implemented within 60 days.

Amendment No. 220.

Renewed Facility Operating License No. DPR–23: The amendment revises the technical specifications and facility operating license.

*Date of initial notice in **Federal Register***: January 15, 2008 (73 FR 2548). The Commission's related evaluation of the amendment is contained in a safety evaluation dated October 3, 2008.

No significant hazards consideration comments received: No.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602–1551.

NRC Branch Chief: Thomas H. Boyce.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: July 17, 2007, as supplemented by letters dated August 7, 2007, and September 2, 2008.

Brief description of amendment: The amendment added a new license condition (43) on the control room envelope habitability program, revised Technical Specification (TS) requirements related to the control room envelope habitability in TS 3.7.3, ''Control Room Fresh Air (CRFA) System,'' and added the new TS 5.5.13, ''Control Room Envelope Habitability Program.''

Date of issuance: October 14, 2008.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No: 178.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

*Date of initial notice in **Federal Register***: September 25, 2007 (72 FR 54473). The supplemental letters dated August 7, 2007, and September 2, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 2008.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: December 5, 2007, as supplemented by letters dated July 21 and August 28, 2008.

Brief description of amendment: The amendment changed Technical Specification (TS) 5.6.5, ''Core Operating Limits Report (COLR),'' to add a reference to an analytical method that will be used to determine core operating limits. The new reference, NEDC–33383P, ''GEXL97 Correlation Applicable to ATRIUM–10 Fuel,'' will allow the licensee to use a Global Nuclear Fuel method to determine fuel assembly critical power of AREVA ATRIUM–10 fuel. Additionally, the amendment made an administrative change to an existing reference in TS 5.6.5.

Date of issuance: October 16, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 179.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: December 31, 2007 (72 FR 74358). The supplements dated July 21 and August 8, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 2008.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendment: December 27, 2007, as supplemented by letter dated July 14, 2008.

Brief description of amendment: The amendment revised Technical Specifications (TS) Section 3.4.1, ''RCS [Reactor Coolant System] Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits,'' to increase the minimum RCS flow rate from 341,100 to 354,000 gallons per minute. The increased flow rate supports a new analysis of a large break loss-of-coolant accident (LOCA). The new analysis is performed using an NRC-approved methodology set forth in Westinghouse Topical Report WCAP–16009–P–A, ''Realistic Large-Break LOCA Evaluation Methodology Using the Automated Statistical Treatment of Uncertainty Method (ASTRUM).'' This methodology will be endorsed and reflected by a revision to TS Section 5.6.5, ''Core Operating Limits Report (COLR).''

Date of issuance: October 17, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 306.

Facility Operating License No. DPR–58: Amendment revised the Renewed Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: January 29, 2008 (73 FR 5223). The supplement dated July 14, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staffs original proposed no significant hazards consideration determination published in the **Federal Register** on January 29, 2008.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 2008.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 28, 2008, as supplemented by letters dated July 28 and September 25, 2008.

Brief description of amendments: The amendments revised (1) Action 5 in Technical Specification (TS) 3.3.1, ''Reactor Trip Instrumentation,'' for one inoperable channel of extended range neutron flux instrumentation and (2) Action c in TS 3.4.1.4.2, ''Reactor Coolant System, Cold Shutdown—Loops Not Filled.'' The amendments do not complete the Nuclear Regulatory Commission staff's review of the licensee's proposed TS changes in the application. The remaining proposed TS changes to Action 5 will be addressed in a future letter to the licensee.

Date of issuance: October 16, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days of issuance.

Amendment Nos.: Unit 1–187; Unit 2–174.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in **Federal Register**: March 25, 2008 (73 FR 15788). The supplemental letters dated July 28 and September 25, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 16, 2008.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: October 26, 2007.

Brief description of amendment: The amendment revises the Technical Specifications (TS) to adopt TS Task Force (TSTF) Change Traveler TSTF–448, Revision 3, ''Control Room Envelope Habitability.''

Date of issuance: October 8, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No.: 70.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications and License.

Date of initial notice in **Federal Register**: August 29, 2008 (73 FR 51014). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 8, 2008.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: October 24, 2007, as supplemented by letter dated August 7, 2008.

Brief description of amendment: The amendments change Technical Specifications (TSs) Limiting Condition for Operations (LCO) 3.8.7 and 3.8.9, pertaining to electrical power systems and distribution associated with the 120 Volt AC vital bus inverters. The TS changes are intended to support operability of components shared between Unit 1 and Unit 2. The proposed changes will add new Conditions, Required Action statements and Completion Times for LCO 3.8.7 and LCO 3.8.9 to address shared components.

Date of issuance: October 9, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 253, 234.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the licenses and the technical specifications.

Date of initial notice in **Federal Register**: December 18, 2007 (72 FR 71717). The supplement dated August 7, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 9, 2008.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases

for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.
2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.
3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: October 13, 2008.

Description of amendment request: The amendment revised the surveillance frequency for Technical Specification Surveillance Requirement 3.8.1.10 for the endurance test conducted every 2 years on the diesel generators.

Date of issuance: October 20, 2008.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 255.

Facility Operating License No. DPR–26: Amendment revises the Technical Specifications and License.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Public notice of the proposed amendment was published in *The Journal News* newspaper, located in Westchester County, New York on October 17 and October 18, 2008. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated October 20, 2008.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Mark G. Kowal.

Dated at Rockville, Maryland, this 24th day October 2008.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–25882 Filed 11–3–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Draft Regulatory Guide, DG–1186.

FOR FURTHER INFORMATION CONTACT: Steve Garry, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–2766 or e-mail to *Steve.Garry@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft regulatory guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide (DG), titled, ''Measuring, Evaluating, and Reporting Radioactive Materials in Liquid and Gaseous Effluents and Solid Wastes,'' is temporarily identified by its task number, DG–1186, which should be mentioned in all related correspondence.

DG–1186, which is proposed Revision 2 of Regulatory Guide 1.21, describes a method that the staff of the NRC considers acceptable for use in measuring, evaluating, and reporting on radioactivity in effluent discharges and in solid radioactive waste shipments. The regulatory guide also provides guidance on determining and reporting the public dose from nuclear power plant operations.

The regulatory basis for the radiological effluent control program is established in Title 10, Section 20.1501, ''Surveys,'' of the *Code of Federal Regulations* (10 CFR 20.1501); 10 CFR 50.36a, ''Technical Specifications on Effluents from Nuclear Power Reactors;'' and 10 CFR 20.1302, ''Compliance with Dose Limits for Individual Members of the Public.'' The 10 CFR 20.1501 regulations require that surveys be made that are reasonable under the circumstances to evaluate the magnitude and extent of radiation levels, concentrations or quantities of radioactive material, and the potential radiological hazards. The regulations at 10 CFR 50.36a require plant technical specifications with operating procedures for the control of effluents and the reporting of the quantity of each of the principal radionuclides released to unrestricted areas in liquid and gaseous effluents and other information used to estimate the maximum potential annual radiation doses to the public from effluent releases. In 10 CFR 20.1302, the NRC establishes requirements for surveys in the unrestricted and controlled areas and for radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits for individual members of the public. This regulatory guide describes methods for implementing these requirements.

II. Further Information

The NRC staff is soliciting comments on DG–1186. Comments may be accompanied by relevant information or supporting data, and should mention DG–1186 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

Personal information will not be removed from your comments. You may submit comments by any of the following methods:

1. *Mail comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. *E-mail comments to: nrcrep.resource@nrc.gov.*

3. *Hand-deliver comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

4. *Fax comments to:* Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about DG–1186 may be directed to Steve Garry at (301) 415–2766 or e-mail to *Steve.Garry@nrc.gov.*

Comments would be most helpful if received by December 30, 2008. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1186 are available through the NRC's public Web site under Draft Regulatory Guides in the ''Regulatory Guides'' collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML080660617.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 28 day of October, 2008.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–26217 Filed 11–3–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Weeks of November 3, 10, 17, 24, December 1, 8, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 3, 2008

Thursday, November 6, 2008

9:30 a.m.

Executive Branch Briefing (Closed—Ex. 1 & 9) (Tentative).

1:25 p.m.

Affirmation Session (Public Meeting) (Tentative).

a. ENTERGY NUCLEAR OPERATIONS, INC., Docket Nos. 50–247–LR and 50–286–LR, Appeal of Joint Petitioners Nancy Burton and CRORIP (Tentative).

b. AmerGen Energy Company, LLC (License Renewal for Oyster Creek Nuclear Generating Station), Docket No. 50–219–LR, Citizens' Petition for Review of LBP–08–12 (Tentative).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m.

Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson, 301 415–0202).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Friday, November 7, 2008

2 p.m.

Meeting with Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Tanny Santos, 301 415–7270).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of November 10, 2008—Tentative

There are no meetings scheduled for the week of November 10, 2008.

Week of November 17, 2008—Tentative

There are no meetings scheduled for the week of November 17, 2008.

Week of November 24, 2008—Tentative

There are no meetings scheduled for the week of November 24, 2008.

Week of December 1, 2008—Tentative

There are no meetings scheduled for the week of December 1, 2008.

Week of December 8, 2008—Tentative

Tuesday, December 9, 2008

9:30 a.m.

Briefing on Equal Employment Opportunity (EEO) Programs (Public Meeting) (Contact: Sandy Talley, 301–415–8059).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Friday, December 12, 2008

9:30 a.m.

Discussion of Management Issues (Closed—Ex. 2).

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: October 30, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–26377 Filed 10–31–08; 4:15 pm]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: M. Lamary, Group Manager, Executive Resources Services Group, Center for Human Resources, Division for Human Capital Leadership and Merit System Accountability, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between September 1, 2008, and September 30, 2008. Future notices will be published on the fourth Tuesday of each month, or as soon as possible

thereafter. A consolidated listing of all authorities as of September 30 is published each year.

Schedule A

No Schedule A appointments were approved for September 2008.

Schedule B

No Schedule B appointments were approved for September 2008.

Schedule C

The following Schedule C appointments were approved during September 2008.

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS80009 Staff Assistant to the Deputy Director for Management. Effective September 04, 2008.

BOGS80007 Confidential Assistant to the Administrator, E-Government and Information Technology. Effective September 09, 2008.

BOGS60011 Deputy General Counsel to the General Counsel. Effective September 15, 2008.

BOGS80012 Director of Communications to the Director Office of Management and Budget. Effective September 30, 2008.

Office of National Drug Control Policy

QQGS80015 Public Affairs Specialist to the Associate Director for Public Affairs. Effective September 04, 2008.

Section 213.3303 Office of Science and Technology Policy

TSGS80002 Confidential Assistant to the Director to the Chief of Staff and General Counsel. Effective September 12, 2008.

Section 213.3304 Department of State

DSGS69754 Staff Assistant to the Deputy Assistant Secretary. Effective September 15, 2008.

Section 213.3306 Department of Defense

DDGS17170 Special Assistant to the Assistant Secretary of Defense (Legislative Affairs). Effective September 05, 2008.

Section 213.3307 Department of the Army

DWGS00098 Personal and Confidential Assistant (Installations and Environment) to the Deputy Assistant Secretary of the Army for Privatization and Partnerships. Effective September 26, 2008.

Section 213.3310 Department of Justice

DJGS00381 Senior Counsel to the Director, Office of Public Affairs. Effective September 02, 2008.

DJGS00156 Counsel and Chief of Staff to the Assistant Attorney General (Legislative Affairs). Effective September 18, 2008.

DJGS00157 Counsel to the Assistant Attorney General. Effective September 23, 2008.

DJGS00096 Counsel to the Chief of Staff. Effective September 26, 2008.

Section 213.3311 Department of Homeland Security

DMGS00730 Counselor to the Deputy Secretary of the Department of Homeland Security. Effective September 04, 2008.

Section 213.3313 Department of Agriculture

DAGS00944 Staff Assistant to the Administrator. Effective September 12, 2008.

Section 213.3314 Department of Commerce

DCGS00268 Executive Assistant to the Chief of Staff. Effective September 12, 2008.

DCGS00465 Confidential Assistant to the Director, Office of White House Liaison. Effective September 12, 2008.

DCGS60393 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective September 12, 2008.

DCGS00653 Deputy Director, Office of Public Affairs to the Director of Public Affairs. Effective September 18, 2008.

DCGS60494 Press Secretary to the Director of Public Affairs. Effective September 18, 2008.

Section 213.3315 Department of Labor

DLGS60045 Staff Assistant to the Assistant Secretary for Public Affairs. Effective September 09, 2008.

Section 213.3316 Department of Health and Human Services

DHGS60529 Confidential Assistant to the Deputy Secretary, Health and Human Services. Effective September 04, 2008.

DHGS60542 Confidential Assistant to the Administrator Centers for Medicare and Medicaid Services. Effective September 18, 2008.

Section 213.3317 Department of Education

DBGS00671 Chief of Staff to the Assistant Deputy Secretary for Innovation and Improvement. Effective September 11, 2008.

Section 213.3318 Environmental Protection Agency

EPGS08008 Program Manager (Scheduling) to the Deputy Chief of Staff (Operations). Effective September 02, 2008.

EPGS07003 Deputy of Advance to the Director of Advance. Effective September 26, 2008.

Section 213.3325 United States Tax Court

JCGS60051 Chambers Administrator to the Chief Judge. Effective September 09, 2008.

Section 213.3337 General Services Administration

GSGS60127 Associate Administrator for Small Business Utilization to the Administrator. Effective September 11, 2008.

GSGS00176 Director of Intergovernmental Affairs to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective September 12, 2008.

GSGS00175 Public Affairs Advisor to the Administrator. Effective September 26, 2008.

GSGS60113 Special Assistant to the Regional Administrator Region 1 Boston. Effective September 30, 2008.

Section 213.3341 National Labor Relations Board

NLGS06872 Attorney-Adviser (Labor) (Executive Assistant to the Chairman) to the Chairman. Effective September 08, 2008.

Section 213.3348 National Aeronautics and Space Administration

NNGS01770 Congressional/Legislative Liaison Specialist to the Assistant Administrator for Legislative Affairs and Intergovernmental Affairs. Effective September 18, 2008.

NNGS00174 Congressional Relations Specialist to the Assistant Administrator for Legislative Affairs and Intergovernmental Affairs. Effective September 23, 2008.

NNGS05171 Director, Outreach and Intergovernmental Affairs Division to the Assistant Administrator for Legislative Affairs and Intergovernmental Affairs. Effective September 25, 2008.

NNGS05172 Director, Office of Communications Planning to the Chief of Strategic Communications. Effective September 26, 2008.

Section 213.3382 National Endowment for the Humanities

NHGS80077 Associate Chairman for External Affairs to the Chairman. Effective September 26, 2008.

Section 213.3384 Department of Housing and Urban Development

DUGS60036 Special Assistant to the Assistant Secretary for Community Planning and Development. Effective September 02, 2008.

DUGS60177 Deputy Assistant Secretary for Legislative Affairs to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective September 08, 2008.

DUGS60120 Media Outreach Specialist to the General Deputy Assistant Secretary for Public Affairs. Effective September 09, 2008.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–26219 Filed 11–3–08; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–3 and CP2009–4; Order No. 121]

Express Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Express Mail Contract 2 to the Competitive Product List. The Postal Service has also filed a related contract. The notice addresses procedural steps associated with these filings.

DATES: Comments are due November 5, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 24, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail Contract 2 to the Competitive Product List.[1] The Postal Service asserts that the Express Mail Contract 2 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009–3.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract is assigned Docket No. CP2009–4. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

Request. The Request incorporates (1) A redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the MCS product list; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).[2] Substantively, the Request asks the Commission to add the Express Mail Contract 2 product to the Competitive Product List. *Id.* at 1–2. The Postal Service states the services to be provided under the contract will cover their attributable costs and make a positive contribution to institutional costs. *Id.*, Attachment D. The Postal Service also asserts that the contract will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. As a result, the Request contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Express Mail Contract 2 is included with the Request. The contract is for 3 years and is to be effective the day after the Commission provides all necessary regulatory approvals. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *See id.*, Attachment to Governors' Decision and Attachment E. It notes that actual performance under this contract could vary from estimates, but concludes that the contract will remain profitable. *Id.*, Attachment to Governors' Decision.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Express Mail Contract 2, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–3 and CP2009–4 for consideration of the Request pertaining to the proposed Express Mail Contact 2 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.[3]

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020, subpart B. Comments are due no later than November 5, 2008. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–3 and CP2009–4 for consideration of the matters raised in each respective docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than November 5, 2008.

[1] Request of the United States Postal Service to Add Express Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 24, 2008 (Request). Due to issues with the filing of electronic documents under seal, the unredacted information was not filed until around 4 p.m. on October 27, 2008.

[2] Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Express Mail Service (Governors' Decision No. 08–14). The Governors' Decision includes an attachment which provides an analysis of the proposed Express Mail Contract 2. Attachment B is the redacted version of the contract. Attachment C shows the requested changes to the MCS product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

[3] Docket No. MC2009–3 is reserved for only those filings related to the proposed product and the requirements of § 3642, while Docket No. CP2009–4 is reserved for those filings specific to the contract and the requirements of § 3633.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–26261 Filed 11–3–08; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, November 13, 2008 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, November 13, 2008 will be: Formal orders of investigation; Institution and settlement of injunctive actions; Institution and settlement of administrative proceedings of an enforcement nature; Adjudicatory matters; and Other matters relating to enforcement proceedings.

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: October 30, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26276 Filed 11–3–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58873; File No. SR–NYSEArca–2008–110]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing Shares of the MacroShares $100 Oil Up Trust and the MacroShares $100 Oil Down Trust

October 28, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 15, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Act,[3] NYSE Arca, through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to list and trade under NYSE Arca Equities Rule 8.400 (''Paired Trust Shares'') shares of the MacroShares $100 Oil Up Trust (''Up Trust'') and the MacroShares $100 Oil Down Trust (''Down Trust'', and, together with the Up Trust, the ''Trusts''). The shares of the Up Trust are referred to as the Up MacroShares, and the shares of the Down Trust are referred to as the Down MacroShares (collectively, the ''Shares''). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade under NYSE Arca Equities Rule 8.400 (''Paired Trust Shares'') the Up MacroShares (symbol: UOY) and the Down MacroShares (symbol: DOY).[4] The Up MacroShares and the Down MacroShares will be offered by the Up Trust and the Down Trust, respectively, established by MACRO Securities Depositor LLC, as depositor, under the laws of the State of New York. The Trusts are not registered with the Commission as investment companies.[5] The Trusts are currently listed on NYSE Alternext US LLC (NYSE Alternext US (formerly, the American Stock Exchange LLC (''Amex'')) and are traded on the Exchange pursuant to unlisted trading privileges (''UTP'').[6] Prior to listing on the Exchange, the Trusts would be required to satisfy the applicable delisting procedures of NYSE Alternext US and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] The Commission approved trading a similar product on the Exchange pursuant to unlisted trading privileges when it approved NYSE Arca Equities Rule 8.400. *See* Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR–NYSEArca–2006–75) (approving UTP trading of Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares). The Commission also approved such product for listing and trading on the American Stock Exchange LLC. *See* Securities Exchange Act Release No. 54839 (November 29, 2006), 71 FR 70804 (December 6, 2006) (SR–Amex–2006–82) (approving listing and trading Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares).

[5] The Shares are being offered by the Trusts under the Securities Act of 1933, as amended. On April 17, 2008, the depositor filed with the Commission a Registration Statement on Form S–1 for both the Up MacroShares (File No. 333–150282–01) (''Up Trust Registration Statement'') and the Down MacroShares (File No. 333–150282–02) (''Down Trust Registration Statement'' and together with the Up Trust Registration Statement, the ''Registration Statements'').

[6] *See* Securities Exchange Act Release No. 58057 (June 30, 2008), 73 FR 38474 (July 7, 2008) (SR–Amex–2008–36) (order approving listing of the Trusts on the Amex) (''Amex Order''); Securities Exchange Act Release No. 58058 (June 30, 2008), 73 FR 38484 (July 7, 2008) (SR–NYSEArca–2008–65) (order approving trading of the Trusts on the Exchange pursuant to UTP) (''NYSE Arca Order'').

Act,[7] relating to listing the MacroShares Units on the Exchange.[8]

The Exchange represents that the Shares satisfy the requirements of Rule 8.400 and thereby qualify for listing on the Exchange. Descriptions of the Shares and of the Trusts are included in the Amex Order. The Shares are Trading Shares as defined in Rule 8.400(b)(1)(B).

The Trusts have represented to the Exchange that they are relying on the exemption provided for passive trusts under Rule 10A–3(c)(7)[9] under the Act with respect to establishment of an independent audit committee.

More information regarding the Shares, the Trusts, the Applicable Reference Price of Crude Oil, quarterly distributions, final distributions, underlying values, risks, fees and expenses, termination triggers, and creation and redemption procedures can be found in the Registration Statements and the Amex Order.[10]

Availability of Information

Intraday Indicative Values. Throughout each price determination day, NYSE Alternext US, acting as the calculation agent for each Trust, will calculate and disseminate, at least every 15 seconds during the Exchange's Core Trading Session, through the facilities of the Consolidated Tape Association (''CTA''), an estimated value (referred to as an ''Intraday Indicative Value'' or ''IIV'') for the underlying value per Share of both the Up MacroShares and the Down MacroShares. The purpose of this disclosure is to promote liquidity and intraday pricing transparency with respect to these estimated per-Share underlying values, which can be used in connection with other related market information. To enable this calculation, the NYSE Alternext US will receive real time price data from the NYMEX through two major market data vendors for the light sweet crude oil futures contract of the designated maturity that trades on the NYMEX.

Because the NYMEX market for the light sweet crude oil futures contract will be closed for portions of the Core Trading Session, the IIV calculated values will become fixed and will not be updated at such times that the NYMEX contract is not trading.[11] Conversely, at times when the light sweet crude oil futures contract of the designated maturity is trading on NYMEX, those trades will be used to update the IIV values.

Availability of Other Information and Data. At the end of each price determination day, NYSE Alternext US will also calculate the premium or discount of the midpoint of the bid/offer for the Up MacroShares at the close on the Exchange relative to the underlying value of one of those Shares for that price determination day. NYSE Alternext US will also perform the same calculation with respect to the Down MacroShares. MacroMarkets LLC (''MacroMarkets'') will then post these premiums/discounts, together with the end-of-day price information for the Shares, on its Web site at *http://www.macromarkets.com* and the Exchange will maintain a hyperlink on its Web site, *http://www.nyse.com,* to the MacroMarkets Web site. Further, MacroMarkets will post on its Web site the Applicable Reference Price of Crude Oil that was reported by NYMEX for any price determination day. The Exchange also will disseminate a variety of data with respect to the Shares on a daily basis by means of CTA and CQ High Speed Lines, including quotation and last sale data information.[12]

On each price determination day, State Street Bank and Trust Company, the trustee for the Trusts, will calculate the underlying value of the Up Trust and the Down Trust and the per-Share underlying value of one Up MacroShare and one Down MacroShare, based on the Applicable Reference Price of Crude Oil established and reported by NYMEX. The trustee will then provide such values to MacroMarkets, which will post them on its Web site, and information posted on such Web site will be made available to all market participants at the same time. All investors and market participants will have access to MacroMarkets' Web site at no charge. Information regarding secondary market prices and volume of the Shares will be broadly available on a real-time basis throughout the trading day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Rule 8.400(d)(2) sets forth circumstances under which Shares may be halted.

If the Exchange becomes aware that the underlying value per Share of each Up Share and Down Share is not disseminated to all market participants at the same time, it will halt trading in the Up MacroShares or the Down MacroShares, as the case may be, until such time as the underlying value per share is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative securities products, including Paired Trust Shares, to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules or applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

[7] 15 U.S.C. 78(*l*).

[8] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated October 16, 2008. The Exchange will seek the voluntary consent of the issuer of the MacroShares Units to be delisted from NYSE Alternext US and listed on the Exchange. The Exchange notes that its approval of the Trusts' listing applications would be required prior to listing.

[9] 17 CFR 240.10A–3(c)(7).

[10] Terms relating to the Trusts referred to, but not defined, herein are defined in the Registration Statements.

[11] The IIV calculated during the period following the daily opening of trading of the shares on the Exchange but prior to any trades taking place on the NYMEX in the relevant light sweet crude oil futures contract will be based on the final price of the futures contract on the prior trading day.

[12] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated October 21, 2008.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[13]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares, including risks inherent with trading the Shares during the Opening and Late Trading Sessions when the updated IIV is not calculated and disseminated. Specifically, the Bulletin will discuss the following: (1) What the Shares are; (2) the procedures for purchases and redemptions of Shares in MacroShares Units (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) how information regarding the IIV is disseminated; and (6) trading information.

In addition, the Bulletin will reference that the Shares are subject to various fees and expenses described in the Registration Statements. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[14] that an exchange have rules that are 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, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will allow the listing of the Trusts on the Exchange, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.400 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca-2008–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2008–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2008–110 and should be submitted on or before November 25, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission notes that it recently approved the listing and trading of the Shares on Amex,[17] now known as NYSE Alternext US, and the trading of the Shares pursuant to UTP on the Exchange.[18]

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.400. NYSE Arca represents that the Shares will conform to the existing initial and continued listing criteria under such rule.

The Commission believes that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[19] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange will disseminate a variety of data with respect to the Shares on a daily basis by means of CTA and CQ High Speed Lines, including quotation and last-sale

[13] For a list of the current members of the ISG, see *http://www.isgportal.org.*

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Amex Order, *supra,* note 6.

[18] *See* NYSE Arca Order, *supra,* note 6.

[19] 15 U.S.C. 78k–1(a)(1)(C)(iii).

data information. Throughout each price determination day, NYSE Alternext U.S. will calculate and disseminate at least every 15 seconds during the Exchange's Core Trading Session, through the facilities of the CTA, an IIV for the underlying value per Share of both the Up MacroShares and the Down MacroShares.[20]

On each price determination day, the trustee will calculate the underlying values of the Up Trust and the Down Trust, along with the per-Share underlying value of one Up MacroShare and one Down MacroShare, based on the Applicable Reference Price of Crude Oil established and reported by NYMEX. The trustee then will provide such values to MacroMarkets, which will post them on its Web site, and the information posted on such Web site will be made available to all market participants at the same time. All investors and market participants will have access to MacroMarkets' Web site at no charge.

In addition, at the end of each price determination day, NYSE Alternext U.S. will calculate the premium or discount of the midpoint of the bid/offer for the Up MacroShares at the close on the Exchange relative to the underlying value of one of those Shares for that price determination day. NYSE Alternext U.S. also will perform the same calculation with respect to the Down MacroShares. MacroMarkets will then post these premiums/discounts, together with the end-of-day price information for the Shares, on its Web site (*http://www.macromarkets.com*) and the Exchange will maintain a hyperlink on its Web site. Additionally, MacroMarkets will post on its Web site the Applicable Reference Price of Crude Oil that was reported by NYMEX for any price determination day.

Lastly, the Exchange states that information regarding secondary market prices and volume of the Shares will be broadly available on a real-time basis throughout the trading day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that NYSE Arca Equities Rule 8.400(d)(1)(ii) requires that the Exchange obtain a representation on behalf of the Trusts, prior to listing, that the underlying value per Share of each Up Trust and the Down Trust will be calculated daily and will be made available to all market participants at the same time. Moreover, NYSE Arca Equities Rule 8.400(d)(2)(ii) requires that the Exchange remove the Shares from listing if the intraday value of the Reference Price[21] is no longer calculated or available on at least a 15-second delayed basis during the time the Shares trade on the Exchange. Additionally, NYSE Arca Equities Rule 8.400(d)(2)(iii) requires the Exchange to remove the Shares from listing if the IIV is no longer made available as required. With respect to trading halts, NYSE Arca Equities Rule 8.400(d)(2) provides that, if the intraday value of the Reference Price or the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the applicable value occurs; if such interruption persists past the trading day in which it occurred, the Exchange is required to halt trading no later than the beginning of the trading following the interruption. The Exchange further represents that, if the Exchange becomes aware that the underlying value per Share of each Up Trust and Down Trust is not disseminated to all market participants at the same time, it will halt trading in the Up MacroShares or the Down MacroShares, as the case may be, until such time as the underlying value per share is available to all market participants. Further, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that make trading in the Shares inadvisable, including: (1) the extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to NYSE Arca's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Shares satisfy the requirements of NYSE Arca Equities Rule 8.400, which includes the initial and continued listing criteria for Paired Trust Shares.

(2) The Exchange's surveillance procedures are adequate to properly monitor trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules or applicable federal securities laws.

(3) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[22] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes that it has previously approved the listing and trading of the Shares on Amex[23] and believes that the Exchange's proposal to list and trade such Shares does not appear to present any novel or significant regulatory issues that should cause it to revisit that previous finding. As such, the Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such products.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NYSEArca–2008–110) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26211 Filed 11–3–08; 8:45 am]

BILLING CODE 8011–01–P

[20] *See supra* note 11 and accompanying text.

[21] *See* NYSE Arca Equities Rule 8.400(c). In the case of the Shares, the Reference Price is the Applicable Reference Price of Crude Oil.

[22] 15 U.S.C. 78s(b)(2).

[23] *See* Amex Order, *supra,* note 6. The Shares have also been approved for trading on the Exchange pursuant to UTP. *See* NYSE Arca Order, *supra,* note 6.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the next meeting of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meeting will be held on Tuesday, November 18, 2008 at 1 p.m. EST.

ADDRESSES: This meeting will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meeting of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of this meeting is to discuss following issues pertaining to the SBDC Advisory Board:
—SBA Update from AA/OSBDC
—Board Planning

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Board must contact Alanna Falcone by Friday, November 14, 2008, by fax or e-mail in order to be placed on the agenda. Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone, 202–619–1612, Fax 202–481–0134, e-mail, *alanna.falcone@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

Cherylyn H. Lebon,

Committee Management Officer.

[FR Doc. E8–26218 Filed 11–3–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6422]

Receipt of Application for a Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

The Department of State has received an application from TransCanada Keystone Pipeline, L.P. (''Keystone''), for a Presidential permit, pursuant to Executive Order 13337 of April 30, 2004, to construct, connect, operate, and maintain the Keystone XL Pipeline Project at the U.S.-Canadian border at Phillips County, Montana, for the purpose of transporting Canadian crude oil production from the Western Canadian Sedimentary Basin (''WCSB'') to existing terminals in the Texas Gulf Coast area.

Keystone is a limited liability company, organized under the laws of the State of Delaware, and owned equally by affiliates of TransCanada Corporation, a Canadian public company organized under the laws of Canada, and ConocoPhillips Company, a Delaware corporation. Keystone's primary business address is 450 1st Street, SW., Calgary, Alberta, Canada T2P 5H1. Although Keystone is seeking a permit for solely that portion of the pipeline crossing the international border (up to the first pipeline isolation valve to be located in the United States approximately 1.2 miles from the United States-Canada border), the length of the proposed new pipeline would consist in the U.S. of 1,375 miles of 36-inch diameter pipeline installed in three segments: The 850 mile-long ''Steele City'' segment from the U.S. border to Steele City, Nebraska; the 478 mile-long ''Gulf Coast'' segment from Cushing, Oklahoma to Nederland, Texas; and the 47 mile-long ''Houston Lateral'' segment from Liberty County, Texas to the Moore Junction area in Harris County, Texas. In Canada, 327 miles of 36-inch pipeline will be constructed from Hardisty, Alberta to Monchy, Saskatchewan where it will cross the U.S.-Canadian border into Phillips County, Montana.

As required by E.O. 13337, the Department of State is circulating this application to concerned federal agencies for comment. The Department anticipates that additional information concerning the Keystone XL Pipeline Project will be developed during the course of processing the permit application.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before December 4, 2008 to J. Brian Duggan, Room 4843, Office of International Energy and Commodity Policy, Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodity Policy during normal business hours.

FOR FURTHER INFORMATION CONTACT: J. Brian Duggan, Office of International Energy and Commodity Policy, Department of State, Washington, DC 20520, telephone 202–647–1291, facsimile 202–647–8758, e-mail *DugganJB@state.gov.*

Dated: October 22, 2008.

Stephen J. Gallogly,

Director, Office of International Energy and Commodity Policy, Department of State.

[FR Doc. E8–26259 Filed 11–3–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 6421]

Review of Foreign Terrorist Organization Designation for Liberation Tigers of Tamil Eelam, Also Known as LTTE, Also Known as Tamil Tigers, Also Known as Ellalan Force

Pursuant to section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)), the Department of State is undertaking a review of the designation of the above-named group as a Foreign Terrorist Organization. In making its determination, the Department of State will accept a written statement or other documentary materials submitted on behalf of the above-named organization by its representatives. Any such materials will be considered in the review process and included in the administrative record. Such materials must be submitted by November 10, 2008, to: The Coordinator for Counterterrorism, United States Department of State, 2201 C Street, NW., Washington, DC 20520.

This notice shall be published in the **Federal Register**.

Dated: October 29, 2008.

Dell L. Dailey,

Coordinator for Counterterrorism, Department of State.

[FR Doc. E8–26260 Filed 11–3–08; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection, Certain organizations may apply to perform certification functions on behalf of the FAA. The FAA uses the information gathered from Grand Canyon National Park air tour operators to monitor their compliance with the Federal regulations.

DATES: Please submit comments by January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0653.

Form(s): There are no FAA Forms associated with this collection.

Affected Public: A total of 15 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 73 minutes per response.

Estimated Annual Burden Hours: An estimated 94 hours annually.

Abstract: The FAA uses the information gathered from Grand Canyon National Park air tour operators to monitor their compliance with the Federal regulations.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

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 estimates 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.

Issued in Washington, DC, on October 27, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–26289 Filed 11–3–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974: Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Match Program.

SUMMARY: Pursuant to 5 U.S.C. section 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a computer matching program with the Internal Revenue Service (IRS). Data from the proposed match will be used to verify the earned income of nonservice-connected veterans, and those veterans who are zero percent service-connected (noncompensable), whose eligibility for VA medical care is based on their inability to defray the cost of medical care. These veterans supply household income information that includes their spouses and dependents at the time of application for VA health care benefits.

DATES: *Effective Date:* This match will start no sooner than 30 days after publication in the **Federal Register**, unless comments dictate otherwise. IRS published a notice in the **Federal Register** on August 15, 2008.

ADDRESSES: Written comments may be submitted by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VARegulations@mail.va.gov*; or, through *http://www.Regulations.gov*. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Lynne Harbin, Director, Health Eligibility Center, (404) 282–5300 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs has statutory authorization under 38 U.S.C. section 5317, 38 U.S.C. section 5106, 26 U.S.C. section 6103(l)(7)(D)(viii) and 5 U.S.C. section 552a to establish matching agreements and request and use income information from other agencies for purposes of verification of income for determining eligibility for benefits. 38 U.S.C. sections 1710(a)(2)(G), 1720(a)(3), and 1710(b) identify those veterans whose basic eligibility for medical care benefits is dependent upon their financial status. Eligibility for nonservice-connected and zero percent noncompensable service-connected veterans is determined based on the veteran's inability to defray the expenses for necessary care as defined in 38 U.S.C. section 1722. This determination can affect their responsibility to participate in the cost of their care through copayments and their assignment to an enrollment priority group.

The goal of this match is to obtain IRS earned income information data needed for the income verification process. The VA records involved in the match are ''Income Verification Records—VA (89VA16).'' The IRS records are from the Information Return Master File (IRMF) Processing File, Treasury/IRS 22.061. A copy of this notice has been sent to both Houses of Congress and OMB.

This matching agreement expires 18 months after its effective date. This match will not continue past the legislative authorized date to obtain this information.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E8–26246 Filed 11–3–08; 8:45 am]

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Amendments to New Markets Tax Credit Regulations; comments due by 11-10-08; published 8-11-08 [FR E8-18442]

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H.R. 6197/P.L. 110–448

To designate the facility of the United States Postal Service located at 7095 Highway 57 in Counce, Tennessee, as the "Pickwick Post Office Building". (Oct. 22, 2008; 122 Stat. 5013)

Last List October 23, 2008

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