AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# Federal Register

11–13–08 Thursday
Vol. 73 No. 220 Nov. 13, 2008

Pages 67099–67358

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

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

**The seal of the National Archives and Records Administration authenticates the Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

**How To Cite This Publication:** Use the volume number and the page number. Example: 73 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public subscriptions | **202–512–1806** |
| **General online information** | **202–512–1530; 1–888–293–6498** |

**Single copies/back copies:**

| | |
|---|---|
| Paper or fiche | **202–512–1800** |
| Assistance with public single copies | **1–866–512–1800 (Toll-Free)** |

**FEDERAL AGENCIES**

**Subscriptions:**

| | |
|---|---|
| Paper or fiche | **202–741–6005** |
| Assistance with Federal agency subscriptions | **202–741–6005** |

**FEDERAL REGISTER WORKSHOP**

**THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT**

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, November 18, 2008
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 73, No. 220

Thursday, November 13, 2008

**Agriculture Department**
*See* Forest Service
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67118

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Centers for Disease Control and Prevention**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67180–67181

**Centers for Medicare & Medicaid Services**
**NOTICES**
Hearings:
Reconsideration of Disapproval of Michigan State Plan Amendment, 67181–67182

**Children and Families Administration**
**NOTICES**
Funding Opportunity Announcements (Fiscal Year 2009), 67182–67184

**Coast Guard**
**RULES**
Security Zones; Escorted Vessels, Mobile, AL, Captain of the Port Zone, 67104–67107

**Commerce Department**
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67123–67124

**Defense Department**
*See* Navy Department

**Education Department**
**NOTICES**
Compliance Agreement, 67308–67347
Fund for the Improvement of Postsecondary Education (FIPSE) —Special Focus Competition; U.S.-Brazil Higher Education Consortia Program:
Inviting Applications for New Awards (Fiscal Year 2009), 67137–67140
Office of Special Education and Rehabilitative Services; List of Correspondence, 67140–67141
Transition to Teaching Grant Program, 67142–67148

**Employment and Training Administration**
**NOTICES**
Affirmative Determination Regarding Application for Reconsideration:
IAC Canton, Inc., Canton, OH, 67207
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67207–67208
Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance, 67208–67210
Revised Determination on Reconsideration:
Magna Services of America, Inc., Greenville, MI, 67210

**Energy Department**
*See* Energy Efficiency and Renewable Energy Office
*See* Federal Energy Regulatory Commission

**Energy Efficiency and Renewable Energy Office**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67148–67149
National Priority Project Designation, 67149–67150

**Environmental Protection Agency**
**RULES**
Stay of Effectiveness of Control Measure Regulating Dust Emissions at the Four Corners Power Plant; Navajo Nation, 67107–67109
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67152–67155

**Executive Office of the President**
*See* Presidential Documents
*See* Trade Representative, Office of United States

**Federal Aviation Administration**
**RULES**
Change of Controlling Agency for Restricted Areas R-6901A, R-6901B, and R-6903; Wisconsin, 67102–67103
**PROPOSED RULES**
Airworthiness Directives:
Airbus Model A310 Series Airplanes, 67110–67112
Cessna Aircraft Company Models 182Q and 182R Airplanes, 67112–67115
Filtered Flight Data; Technical Correction and extension of comment period, 67115–67117
**NOTICES**
Exemption Petitions; Summary of Petitions Received, 67247

**Federal Deposit Insurance Corporation**
**NOTICES**
Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms, 67155–67157

**Federal Election Commission**
**NOTICES**
Meetings; Sunshine Act, 67157

**Federal Energy Regulatory Commission**
**NOTICES**
Applications:
Warmsprings Irrigation District, 67151
Combined Notice of Filings, 67151–67152
Meetings:
California Independent System Operator Corporation, 67152
Redocketing Proceeding:
Electric Power Supply Association, 67152

**Federal Highway Administration**
**PROPOSED RULES**
Fair Market Value and Design-Build Amendments, 67117

**Federal Maritime Commission**
**NOTICES**
Agreements Filed, 67157–67158
Ocean Transportation Intermediary License Applicants, 67158–67159
Performance Review Board, 67159

**Federal Reserve System**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67159–67173
Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies, 67173–67174

**Federal Trade Commission**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67174–67175

**Federal Transit Administration**
**NOTICES**
National Transit Database:
Natural Disaster Adjustments for Urbanized Area Apportionments, 67247–67248

**Fish and Wildlife Service**
**NOTICES**
Kanuti National Wildlife Refuge, Fairbanks, AK, 67194–67195

**Food and Drug Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Guidance for Industry, etc., 67184–67186
Interim Safety and Risk Assessment of Melamine and Its Analogues in Food for Humans; Availability, 67186–67187
Meetings:
Anesthesiology and Respiratory Therapy Devices Panel of the Medical Devices Advisory Committee, 67187–67188
Request for Notification From Industry Organizations Interested in Participating in Selection Process, etc., 67188–67189

**Forest Service**
**NOTICES**
Environmental Impact Statements; Intent:
Black Hills National Forest, Mystic Ranger District, South Dakota, Slate Castle Project Area, 67118–67120
Land Management Plan Guidance, 67120–67123

**General Services Administration**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67175–67180

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Centers for Medicare & Medicaid Services
*See* Children and Families Administration
*See* Food and Drug Administration
*See* National Institutes of Health

**Homeland Security Department**
*See* Coast Guard
*See* U.S. Citizenship and Immigration Services
*See* U.S. Customs and Border Protection

**Indian Affairs Bureau**
**RULES**
Indian Trust Management Reform, 67256–67305

**Information Security Oversight Office**
**NOTICES**
Meetings:
Public Interest Declassification Board (PIDB), 67211

**Interior Department**
*See* Fish and Wildlife Service
*See* Indian Affairs Bureau
*See* Land Management Bureau
*See* Minerals Management Service
*See* Reclamation Bureau
**RULES**
Indian Trust Management Reform, 67256–67305

**Internal Revenue Service**
**RULES**
Payments from the Presidential Primary Matching Payment Account, 67103–67104

**International Trade Administration**
**NOTICES**
Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China:
Preliminary Results of New Shipper Review, 67124–67131
Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan:
Final Results of Reconsideration of Sunset Review, 67131–67133
Wooden Bedroom Furniture from the People's Republic of China:
Court Decision Not in Harmony With Final Results of Administrative Review, 67133–67134

**Labor Department**
*See* Employment and Training Administration

**Land Management Bureau**
**NOTICES**
Proposed Reinstatements of Terminated Oil and Gas Leases, 67195–67196
Realty Action; Non-Competitive Sale of Reversionary Interest, Portion of Recreation and Public Purposes Patent Number (50-65-0288), 67196

**Marine Mammal Commission**
**NOTICES**
Meetings; Sunshine Act, 67210

**Minerals Management Service**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67197–67200
Environmental Impact Statements; Intent:
Outer Continental Shelf (OCS), Gulf of Mexico OCS Region, Mid-Atlantic Proposed Oil and Gas Lease Sale (220), 67201–67206

**National Archives and Records Administration**
*See* Information Security Oversight Office

**National Foundation on the Arts and the Humanities**
NOTICES
Meetings:
Arts Advisory Panel, 67211
Humanities Panel, 67211–67212

**National Highway Traffic Safety Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Reports, Forms, and Record keeping Requirements, 67248–67250

**National Institutes of Health**
NOTICES
Meetings:
Eunice Kennedy Shriver National Institute of Child Health & Human Development, 67189
National Institute of Allergy and Infectious Diseases, 67189–67190
National Institute of Dental and Craniofacial Research, 67189
National Library of Medicine, 67190
Safety Symposium, 67191

**National Oceanic and Atmospheric Administration**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67134–67135
Meetings:
Atlantic Highly Migratory Species Advisory Panel, 67135
Initiation of the Monitor National Marine Sanctuary Management Plan Review, 67135–67136

**National Science Foundation**
NOTICES
Meetings:
Advisory Committee for Cyberinfrastructure, 67212

**Navy Department**
NOTICES
Exclusive Patent Licenses:
NanoDynamics, Inc.; Correction, 67136–67137

**Nuclear Regulatory Commission**
NOTICES
Environmental Assessments; Availability, etc.:
Defense Logistics Agency, Defense Nuclear Supply Center Depot; New Haven, IN, 67213–67214
Receipts and Availabilities of Applications for Combined Licenses:
PPL Bell Bend, LLC, 67214

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Postal Regulatory Commission**
RULES
Administrative Practice and Procedure, Postal Service, 67350–67352

**Presidential Documents**
ADMINISTRATIVE ORDERS
Iran; continuation of national emergency (Notice of November 10, 2008), 67355–67357

**Reclamation Bureau**
NOTICES
Intents to Prepare Environmental Impact Statements:
Minidoka Dam Spillway Replacement; Minidoka County, ID, 67206

**Securities and Exchange Commission**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67216–67218
Joint Industry Plan:
Order Approving the National Market System Plan for the Selection and Reservation of Securities Symbols Submitted by the Chicago Stock Exchange, Inc., et al, 67218–67235
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, Inc., 67235–67236
Financial Industry Regulatory Authority, Inc., 67237–67238
International Securities Exchange, LLC, 67238–67239
NASDAQ OMX PHLX, Inc., 67239–67241
New York Stock Exchange LLC, 67241–67243
NYSE Arca, Inc., 67243–67244

**Small Business Administration**
RULES
Business Loan Program Regulations:
Incorporation of London Interbank Offered Rate Base Rate and Secondary Market Pool Interest Rate Changes, 67099–67102
NOTICES
Disaster Declarations:
Illinois, 67244
Louisiana, 67244–67245
Texas, 67245

**State Department**
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67245–67246
Overseas Security Advisory Council (OSAC) Renewal, 67246

**Surface Transportation Board**
NOTICES
Acquisition and Operation Exemptions:
Sierra Northern Railway; BNSF Railway Co., 67250
Exemptions:
Boston and Maine Corp. and Springfield Terminal Railway Co., Middlesex County, MA, 67251
Meetings:
Canadian National Railway Co. and Grand Trunk Corp.; Control of EJ&E West Co., 67251–67252
Study of Competition in the Freight Railroad Industry, 67252

**Trade Representative, Office of United States**
NOTICES
WTO Dispute Settlement Proceeding Regarding United States - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China, 67214–67215

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Highway Administration
*See* Federal Transit Administration
*See* National Highway Traffic Safety Administration
*See* Surface Transportation Board

**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67246–67247

**Treasury Department**
*See* Internal Revenue Service
*See* United States Mint
**NOTICES**
Meetings:
Advisory Committee on the Ten-Year Framework for Energy and Environment Cooperation With China, 67252–67253

**U.S. Citizenship and Immigration Services**
**NOTICES**
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 67191–67194

**U.S. Customs and Border Protection**
**NOTICES**
Electronic System for Travel Authorization; Mandatory Compliance Required for Travel Under the Visa Waiver Program, 67354

**United States Mint**
**NOTICES**
Meetings:
Citizens Coinage Advisory Committee, 67253

**Separate Parts In This Issue**

**Part II**
Interior Department; Interior Department, Indian Affairs Bureau, 67256–67305

**Part III**
Education Department, 67308–67347

**Part IV**
Postal Regulatory Commission, 67350–67352

**Part V**
Homeland Security Department, U.S. Customs and Border Protection, 67354

**Part VI**
Executive Office of the President, Presidential Documents, 67355–67357

**Reader Aids**
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.


**3 CFR**

**Administrative Orders:**

Notices:

Notice of November 10, 2008 ..... 67357

**13 CFR**

120 ..... 67099

**14 CFR**

73 ..... 67102

**Proposed Rules:**

39 (2 documents) ..... 67110, 67112

121 ..... 67115

125 ..... 67115

135 ..... 67115

**23 CFR**

**Proposed Rules:**

620 ..... 67117

635 ..... 67117

636 ..... 67117

710 ..... 67117

**25 CFR**

15 ..... 67256

18 ..... 67256

179 ..... 67256

**26 CFR**

702 ..... 67103

**33 CFR**

165 ..... 67104

**39 CFR**

3020 ..... 67350

**40 CFR**

49 ..... 67107

**43 CFR**

4 ..... 67256

30 ..... 67256

# Rules and Regulations

Federal Register
Vol. 73, No. 220
Thursday, November 13, 2008

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.

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

**RIN 3245–AF83**

### Business Loan Program Regulations: Incorporation of London Interbank Offered Rate (LIBOR) Base Rate and Secondary Market Pool Interest Rate Changes

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Interim final rule.

**SUMMARY:** To address extraordinary market conditions limiting credit availability for small businesses, SBA is issuing an interim final rule to make adjustments on an emergency basis to certain of its regulations in order to make the secondary market for loans guaranteed under section 7(a) of the Small Business Act (7(a) loans) more efficient with regard to loan pricing and the formation of secondary market loan pools. Specifically, the interim final rule will permanently add an additional base rate of LIBOR for lenders to use when pricing 7(a) loans, and will allow for secondary market loan pools to be formed with weighted average coupon rates. This interim final rule is necessary to help ensure continued availability of capital to small businesses and to improve liquidity in and efficiency of the secondary market.

**DATES:** This rule is effective November 13, 2008. Comments on the interim final rule must be received on or before December 15, 2008.

**ADDRESSES:** You may submit comments, identified by RIN number 3245–AF83 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.
- *Hand Delivery/Courier:* Grady Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.

All comments will be posted on *http://www.Regulations.gov*. If you wish to include within your comment, confidential business information (CBI) as defined in the Privacy and Use Notice/User Notice at *http://www.Regulations.gov* and you do not want that information disclosed, you must submit the comment by either Mail or Hand Delivery and you must address the comment to the attention of Grady Hedgespeth, Director, Office of Financial Assistance. In the submission, you must highlight the information that you consider is CBI and explain why you believe this information should be held confidential. SBA will make a final determination, in its discretion, of whether the information is CBI and, therefore, will not be published.

**FOR FURTHER INFORMATION CONTACT:** Grady Hedgespeth, Director, Office of Financial Assistance, 202–205–7562, or *grady.hedgespeth@sba.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background Information

In October 2008, the President's Working Group on Financial Markets announced that the U.S. government would deploy all of its tools in a strategic and collaborative manner to address the current instability in the financial markets and mitigate the risks that instability poses for broader economic growth. Subsequently, the U.S. Treasury Department, the Federal Deposit Insurance Corporation, and the Federal Reserve announced actions to help protect the U.S. economy, to strengthen public confidence in our financial institutions, and to foster the robust functioning of our credit markets.

The U.S. Small Business Administration is issuing this Interim Final Rule to address the impact of the current economic situation on the Agency's lending partners and the small businesses that participate in the Agency's lending programs. The Agency is issuing these regulations with the goals of helping to ensure continued access to capital by America's small businesses and increasing the liquidity in the market for SBA-backed secondary market securities.

Under SBA's 7(a) loan guaranty program, borrowers are able to obtain partially guaranteed loans from banks, small business lending companies, credit unions, and other participating financial institutions. In order to make new loans, our lending partners must have the tools they need to be able to afford to deliver capital to small businesses. In recent months, SBA's programs have been impacted by the broader credit market disruptions. Many SBA lenders are having immediate liquidity and profitability challenges, causing small businesses to be less able to access new sources of credit. This problem has led to sharp declines in SBA guaranteed lending to small businesses and severely limited activity in buying and selling SBA loans and loan pools by secondary market investors.

For many SBA lenders, the cost of funds or internally allocated cost of funds is based partially or entirely on the London Interbank Offered Rate (LIBOR). Under SBA regulations, however, the interest rate on 7(a) loans is typically based on the Prime rate. Historically, there has been an approximate 300 basis point spread between short-term LIBOR rates and the Prime rate. In recent weeks, however, this spread has sharply declined and on some days LIBOR exceeded the Prime rate. The declining Prime and rising LIBOR rates have largely eliminated profit margins for SBA lending institutions that borrow funds at LIBOR rates and lend at Prime rates. Under these circumstances, these lenders are reducing the number of 7(a) loans they will make.

Additionally, lenders who participate in secondary market activities are impacted by the mismatch between Prime and LIBOR rates again when trying to sell loans to investors. Usually, over 40% of SBA loan guarantee dollars are sold into the secondary market, which provides a critical source of liquidity for SBA lenders, particularly non-depository lenders. Investors willing to buy SBA loans in the secondary market also frequently use LIBOR rates to make investment decisions. The mismatch between the Prime and LIBOR rates may be a limiting factor and, with the current turmoil, may limit the number of

investors willing to buy SBA loans in the secondary market. This secondary market situation reduces the demand for SBA guaranteed loans which results in lower secondary market prices and a severe lack of liquidity for lenders that typically sell their loans in the secondary market.

Due to the change in the relationship between LIBOR and Prime, many lenders today do not have access to funds at a cost that justifies originating new 7(a) loans. At the same time, under current conditions, SBA guaranteed loans cannot easily or quickly be converted to cash in the secondary market. Consequently, some lenders are facing an immediate liquidity crisis and will not be able to make loans or continue their SBA business lending without immediate action. For small businesses, this means the capital needed to start, maintain or expand operations will be more difficult to obtain.

For these reasons, SBA is proposing two regulatory changes to address problems that are impeding lending partners from originating new 7(a) loans at this time. SBA believes that adjustments to certain interest rates set out in SBA regulations for SBA guaranteed loans can help solve short and long run problems impeding small businesses from having access to capital through SBA's guaranteed loan program. These interest rate adjustments include: allowing the interest rate on 7(a) loans to be based on a LIBOR rate and allowing SBA pool assemblers to create Weighted Average Coupon (WAC) pools under SBA's Secondary Market Guarantee Program. These changes will help small businesses over the short term to manage through the current economic situation by facilitating a continued flow of capital and over the long term by structuring SBA's guaranteed loan program to include current market indices making it more attractive for lenders and secondary market investors to participate. SBA currently collects data on rates set for individual 7(a) loans. SBA will monitor the LIBOR rates offered to borrowers and compare them with Prime rates until the base rates stabilize.

Specific changes included in this interim final rule are as follows:

(1) Including the London Interbank Offered Rate (LIBOR) as an additional base interest rate by changing 13 CFR 120.214(c) to allow lenders to price 7(a) loans based on a spread over the 30 day LIBOR in addition to the currently allowable Prime rate and Optional Peg rate.

(2) Allowing Weighted Average Coupon (WAC) Pools by changing the regulations governing the allowable interest rate on a pool. SBA policy guidance is being revised to outline procedures and guidelines for these WAC pools.

## II. Section by Section Analysis

*Section 120.214.* This regulation is being revised to permit SBA lenders the flexibility to price 7(a) loans using the thirty-day (1-month) LIBOR plus 300 basis points as a base rate. Specifically, Section 120.214(c) is being amended to include the thirty-day (1-month) LIBOR rate plus 300 basis points as a base rate, in addition to the existing base rates which are the Prime rate and the SBA Optional Peg rate. For many SBA lenders, costs of funds or internal costs of funds are partially or entirely tied to LIBOR and they use this rate as a standard index for borrowing and lending. However, they are only permitted to lend at Prime rates or the Optional Peg Rate for 7(a) loans. This mismatch between funding and lending rates has become particularly acute in the current economic environment where LIBOR has increased while Prime has remained constant or declined—effectively making the cost of funding a loan higher and dramatically reducing or eliminating the profitability of making a loan. This imbalance is limiting small businesses' access to capital and the financing needed to sustain and grow their businesses.

In the short term, allowing LIBOR index flexibility will encourage lenders to continue to participate in or re-enter the SBA market. In the long term, allowing this option keeps SBA lending aligned with current market practices by expanding into a broader range of resources from the global financial marketplace, where LIBOR is a standard interest rate base. Historically, Prime and LIBOR rate shifts have moved correspondingly, with LIBOR approximately 300 basis points below Prime rates. Accordingly, the LIBOR base rate for 7(a) loans is being established as the thirty-day (1-month) LIBOR index plus 300 basis points in order to roughly equate Prime and LIBOR rates. The thirty-day (1-month) LIBOR index was selected as it historically most closely tracks Prime rates in terms of its movements and variability. SBA currently collects data on rates set for individual 7(a) loans. SBA will monitor the LIBOR rates offered to borrowers and compare them with Prime rates until the base rates stabilize. In addition, maximum interest rate spreads over the base rates will remain in place, ensuring borrowers receive reasonable rates that are largely driven by market competition.

*Sections 120.600, 120.610(e) and Section 120.611(a).* The specific changes to these sections are described in more detail below. The overall reason for the changes to these sections is to allow weighted average coupon (WAC) pools. SBA loans are usually sold in the secondary market by grouping them into pools. Currently, the interest rate on the pool is the lowest net rate of all of the loans in a given pool. WAC pools will allow loans with approximately the same net rates to be grouped together, and the interest rate on the pool will be the weighted average of the net rates of the loans in the pool. WAC pools will be easier for pool assemblers to create than traditional pools by providing additional flexibility in grouping loans into pools for sale. This flexibility will help expand the secondary market by permitting pool assemblers to create more products for investors.

*Section 120.600.* Section 120.600 is being amended to include the definitions of dollar-weighted average net rate and weighted average coupon (WAC) pool. These definitions are needed for clarity as part of incorporating WAC pools into the secondary market.

*Section 120.610(e).* This section of the regulations is being amended to allow a different interest rate for WAC pool certificates. The current regulation requires that the interest rate on a pool certificate must be equal to the lowest individual interest rate of the loans in the pool. The change will add a dollar-weighted average net rate of all the loans in the pool.

*Section 120.611(a).* This section of the regulations is being amended to add a new paragraph (7) to allow for a maximum allowable difference in the net rates on the loans in WAC pools. Specifically, paragraph (7) includes the requirement for WAC Pools to have a maximum allowable difference between the highest and lowest Net Rate on the guaranteed portions that are placed in the pool. A technical amendment is also being made to paragraphs (5) and (6) of this section to delete and re-insert the word ''and.''

## III. Justification for Publication as Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule, in accordance with the Administrative Procedure Act (APA) and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108. Section 553(b)(3)(B) of the APA provides an exception to this standard rulemaking process, however, where an agency finds good cause to adopt a rule without prior public participation. The good cause

requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

In enacting the good cause exception to standard rulemaking procedures, Congress recognized that emergency situations arise where an agency must issue a rule without public participation. The current turmoil in the financial markets is having a negative impact on the availability of financing for small businesses in two ways. The current increased cost of funds banks are facing, coupled with established rate limits for 7(a) loans, is causing costs for originating such loans to become higher, creating a situation where SBA program participation is not in a lender's financial interest. At the same time, many SBA lenders sell loans on the secondary market in order to manage their liquidity. SBA's current regulations governing base interest rates SBA lenders can charge on their SBA guaranteed loans are resulting in loans being originated at interest rates that do not make it economical to sell them on the secondary market. Without secondary market sales, many lenders are not able to fund loans. The net effect is that lenders are less and less willing to extend credit to small business borrowers at a time when it is critically needed.

Further, the secondary market for 7(a) loans is experiencing disruptions due to the current economic environment. SBA believes that the introduction of an additional base rate and the allowance of weighted average coupon pools will assist in enabling lenders to continue flows of capital to small businesses and stabilizing the secondary market. Because of the extraordinary situation in the credit markets severely limiting the availability of financing for small businesses, there is an urgent need to make the changes immediately to ensure continued access to capital for small businesses. Small businesses are responsible for approximately two-thirds of all new job creation and are essential to a stable economy.

Accordingly, SBA finds that good cause exists to publish this rule as an interim final rule in light of the urgent need. Advance solicitation of comments for this rulemaking would be impracticable and contrary to the public interest, as it would harm those small businesses that need immediate access to capital. Any such delay would be extremely prejudicial to the affected businesses.

Although this rule is being published as an interim final rule, comments are hereby solicited from interested members of the public. These comments must be received on or before December 15, 2008. SBA may then consider these comments in making any necessary revisions to these regulations.

## IV. Justification for Immediate Effective Date of Interim Final Rule

The Administrative Procedure Act requires that ''publication or service of a substantive rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). SBA finds that good cause exists to make this final rule effective the same day it is published in the **Federal Register**.

The purpose of the APA provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. For the reasons set forth above in the section on Justification for Publication as Interim Final Rule, SBA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date. SBA believes that many entities—SBA lenders and small businesses alike—will be assisted by the immediate adoption of this rule and that no delay in effective date is necessary for the public to adjust its behavior. The changes adopted in this rule extend additional choices and options to lenders and small businesses; however, current program options and practices remain available.

## V. Comments Request

SBA requests comments on all aspects of this interim final rule, including the underlying policies.

*Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)*

*Executive Order 12866:* The Office of Management and Budget (OMB) has determined that this rule constitutes a significant regulatory action under Executive Order 12866.

*Executive Order 12988:* For the purposes of Executive Order 12988, Civil Justice Reform, SBA has determined that this rule is crafted, to the extent practicable, in accordance with the standards set forth in §§ 3(a) and 3(b)(2), to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13132:* For the purposes of Executive Order 13132, the SBA determined that this rule has no federalism implications warranting preparation of a federalism assessment.

*Paperwork Reduction Act:* SBA certifies that this interim final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

*Regulatory Flexibility Act:* Because the rule is an interim final rule, there is no requirement for SBA to prepare an Initial Regulatory Flexibility Act (IRFA) analysis. The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an IRFA which describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, the RFA requires analysis of a rule only where notice and comment rulemaking are required. Rules are exempt from Administrative Procedure Act (APA) notice and comment requirements and therefore from the RFA requirements when the agency for good cause finds that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest. In this case it would be contrary to the public interest to delay the promulgation of the rule.

## List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

■ For the reasons set forth above, SBA amends 13 CFR part 120 as follows:

## PART 120—BUSINESS LOANS

■ 1. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 634(b)(7), 634(b)(14), 633(b)(3), 636(a) and (h), 650, and 696(3) and 697(a)(2).

■ 2. Amend § 120.214 by revising paragraph (c) to read as follows:

### § 120.214 What conditions apply for variable interest rates?

* * * * *

(c) *Base rate.* The base rate will be one of the following: ( i) The prime rate; (ii) the thirty-day (1-month) London Interbank Offered Rate (LIBOR) plus 3 percentage points, or (iii) the Optional Peg Rate. The prime or LIBOR rate will be that which is in effect on the first business day of the month, as printed in a national financial newspaper published each business day. SBA

publishes the Optional Peg Rate quarterly in the **Federal Register**.

* * * * *

■ 3. In § 120.600 redesignate paragraphs (c) through (j) as paragraphs (d) through (k) and add new paragraphs (c) and (l) to read as follows:

**§ 120.600 Definitions.**

* * * * *

(c) *Dollar-Weighted Average Net Rate* of a Pool is calculated by multiplying the interest rate of each loan in the Pool by the ratio of that loan's current outstanding guaranteed principal to the current outstanding guaranteed principal of all loans in the Pool, and adding the sum of the resulting products. The Dollar-Weighted Average Net Rate of a Pool will fluctuate over the life of the Pool as loan defaults, prepayments and normal loan repayments occur.

* * * * *

(l) *Weighted Average Coupon (WAC) Pool* is a Pool where the interest rate payable to the investor is equal to the Dollar-Weighted Average Net Rate of the Pool.

■ 4. Amend § 120.610 by revising paragraph (e) as follows:

**§ 120.610 Form and terms of Certificates.**

* * * * *

(e) *Interest rate on Pool Certificate.* The interest rate on a Pool Certificate will be either the lowest Net Rate of any individual guaranteed portion of a loan in the Pool or the Dollar-Weighted Average Net Rate of the Pool.

■ 5. Amend § 120.611 by revising paragraphs (a)(5) and (6) and adding new paragraph (a)(7) as follows:

**§ 120.611 Pools backing Pool Certificates.**

(a) * * *

(5) A maximum allowable difference between the remaining terms to maturity of the loans in the Pool;

(6) A minimum weighted average maturity at Pool formation; and

(7) A maximum allowable difference between the highest and lowest Net Rate on the guaranteed portions that are placed in a WAC Pool.

* * * * *

**Sandy K. Baruah,**

*Acting Administrator.*

[FR Doc. E8–26999 Filed 11–7–08; 4:15 pm]

BILLING CODE 8025–01–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 73**

**[Docket No. FAA–2008–1130; Airspace Docket No. 08–ASW–14]**

**RIN 2120–AA66**

## Change of Controlling Agency for Restricted Areas R–6901A, R–6901B, and R–6903; Wisconsin

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action changes the controlling agency of R–6901A and R–6901B, Fort McCoy, WI, from ''FAA Chicago ARTCC'' to ''FAA, Minneapolis ARTCC.'' This action also changes the controlling agency of R–6903, Sheboygan, WI, from ''FAA, Chicago ARTCC'' to ''FAA, Minneapolis ARTCC.'' The FAA is taking this action in response to a request from Minneapolis Air Route Traffic Control Center (ARTCC) to reflect an administrative change of controlling agency responsibility for the restricted areas. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted area.

**DATES:** *Effective Dates:* 0901 UTC, January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

### History

On August 18, 2008, Minneapolis ARTCC requested that the FAA change the controlling agency for R–6901A, R–6901B, and R–6903 from Chicago ARTCC to Minneapolis ARTCC. They proposed the controlling agency change request to enhance FAA service to the Volk Combat Readiness Training Center (CRTC) by establishing a single point of coordination for airspace usage. Additionally, as a single point of coordination, they could provide more accurate information to parties seeking information about the Volk airspace complex. Coordination and concurrence with the controlling agency change proposal was accomplished between the two ARTCCs and the Volk CRTC prior to this requested change being submitted by Minneapolis ARTCC.

Section 73.69 of Title 14 CFR part 73 was republished in FAA Order 7400.8P, effective February 16, 2008.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by revising the controlling agency listed for R–6901A and R–6901B, Fort McCoy, WI, and R–6903, Sheboygan, WI; transferring controlling agency responsibility for R–6901A and R–6901B from ''FAA Chicago ARTCC'' to ''FAA, Minneapolis ARTCC'' and for R–6903 from ''FAA, Chicago ARTCC'' to ''FAA, Minneapolis ARTCC.'' This is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted within the restricted area; therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it is amending the controlling agency for R–6901A and R–6901B, Fort McCoy, WI, and R–6903, Sheboygan, WI.

### Environmental Review

The FAA has determined that this action qualifies for a categorical exclusion under the National

Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' There are no extraordinary circumstances that would require additional environmental analysis.

**List of Subjects in 14 CFR Part 73**

Airspace, Prohibited areas, Restricted areas.

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

**§ 73.69 [Amended]**

■ 2. § 73.69 is amended as follows:

* * * * *

**R–6901A Fort McCoy, WI [Amended]**

Under controlling agency, remove ''FAA Chicago ARTCC'' and insert the words ''FAA, Minneapolis ARTCC.''

* * * * *

**R–6901B Fort McCoy, WI [Amended]**

Under controlling agency, remove ''FAA Chicago ARTCC'' and insert the words ''FAA, Minneapolis ARTCC.''

* * * * *

**R–6903 Sheboygan, WI [Amended]**

Under controlling agency, remove ''FAA, Chicago ARTCC'' and insert the words ''FAA, Minneapolis ARTCC.''

* * * * *

Issued in Washington, DC, on November 5, 2008.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

[FR Doc. E8–26934 Filed 11–12–08; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 702

**[TD 9432]**

**RIN 1545–BH36**

## Payments From the Presidential Primary Matching Payment Account

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations under section 9037 of the Internal Revenue Code (Code) relating to the financing of presidential primary campaigns. The regulations relate to Treasury procedures for making payments from the Presidential Primary Matching Payment Account (Primary Account) to eligible primary candidates. These regulations affect all candidates eligible to receive payments from the Primary Account.

**DATES:** *Effective Date:* These regulations are effective on November 13, 2008.

*Applicability Date:* For dates of applicability, see 702.9037–1(b) and 702.9037–2(c).

**FOR FURTHER INFORMATION CONTACT:** Karla M. Meola, (202) 622–4930 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains amendments to 26 CFR part 702 under section 9037 of the Code. On February 14, 2008, the IRS published temporary regulations (TD 9382, 2008–9 IRB 482) in the **Federal Register** (73 FR 8608). On the same date, the IRS published a notice of proposed rulemaking (REG–149475–07, 2008–9 IRB 510) in the **Federal Register** (73 FR 8632) cross-referencing the temporary regulations.

The notice of proposed rulemaking provided that, pursuant to section 9036, the Federal Election Commission (Commission) will certify to the Treasury Secretary the full amount of payments to which a candidate is entitled under section 9034. The Treasury Secretary will pay promptly, but not before the start of a Presidential election year, the amounts certified by the Commission from the Primary Account to the candidate. The notice of proposed rulemaking also authorized the Treasury Secretary to provide guidance prescribing rules and procedures for the Primary Account. Contemporaneously with the publication of the notice of proposed rulemaking, the IRS published Rev. Proc. 2008–15 (2008–9 IRB 489), which revises the procedures for making prompt payment from the Primary Account to eligible primary candidates.

The notice of proposed rulemaking invited comments and requests for a public hearing, but no comments were received and no public hearing was requested or held. Accordingly, this Treasury decision adopts the proposed regulations without modification as final regulations.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Karla M. Meola of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

**Adoption of Amendments to the Regulations**

■ Accordingly, 26 CFR part 702 is amended as follows:

## PART 702—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

■ **Paragraph 1.** The authority citation for part 702 continues to read in part as follows:

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

**§§ 702.9037–1T [Removed]**

■ **Par. 2.** Section 702.9037–1T is removed.

■ **Par. 3.** Revise § 702.9037–1 to read as follows:

**§ 702.9037–1 Transfer of amounts to the Presidential Primary Matching Payment Account.**

(a) *In general.* The Secretary will deposit amounts into the Presidential Primary Matching Payment Account (Primary Account) only to the extent that there are amounts in the Presidential Election Campaign Fund (Fund) after the transfers prescribed by § 701.9006–1(c) and (d). The Secretary will make this deposit promptly from amounts that have actually been transferred to the Fund under § 701.9006–1(a). Any amounts in the Primary Account after October 31 following a presidential election will be returned to the Fund for the purpose of making the transfers prescribed by § 701.9006–1(c), (d), and (f) for the next presidential election.

(b) *Effective/applicability date.* These regulations apply to the Primary Account on or after February 2, 1996.

**§ 702.9037–2T [Removed]**

■ **Par. 4.** Section 702.9037–2T is removed.

■ **Par. 5.** Revise § 702.9037–2 to read as follows:

**§ 702.9037–2 Payments from the Presidential Primary Matching Payment Account.**

(a) *In general.* Pursuant to section 9036, the Federal Election Commission (Commission) will certify to the Secretary the full amount of payment to which a candidate is entitled under section 9034. The Secretary will pay promptly, but not before the start of the matching payment period under section 9032(6), the amounts certified by the Commission from the Presidential Primary Matching Payment Account (Primary Account) to the candidate.

(b) *Additional guidance.* The Internal Revenue Service may publish guidance in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) prescribing additional rules and procedures for the Primary Account.

(c) *Effective/applicability date.* These regulations apply to the Primary Account on or after February 2, 1996.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: October 28, 2008.

**Eric Solomon,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E8–26639 Filed 11–12–08; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2008–1013]**

**RIN 1625–AA87**

## Security Zones; Escorted Vessels, Mobile, AL, Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Coast Guard is establishing a 500-yard moving security zone around any vessel being escorted by one or more Coast Guard or other Federal, State, or local law enforcement assets on the navigable waters of the Captain of the Port Zone, Mobile, Alabama. This action is necessary to ensure the safe transit and mooring of escorted vessels as well as the safety and security of personnel and port facilities. No vessel or person is allowed inside the security zone unless authorized by the Captain of the Port or a designated representative. The Coast Guard seeks comments on this interim rule.

**DATES:** This rule is effective November 13, 2008. Comments and related material must reach the Docket Management Facility on or before December 15, 2008.

**ADDRESSES:** You may submit comments identified by docket number USCG–2008–1013 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call LT Jonathan Mangum 251–441–5940. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1013), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–1013'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and we may change this rule based on your comments.

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–1013 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or Coast Guard Sector Mobile (Waterways Management) between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES**

explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## Regulatory Information

The Coast Guard is issuing this interim 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 the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) for this regulation. Publishing a NPRM and delaying the effective date would be contrary to public interest since the security zones around escorted vessels are necessary to ensure the safe transit and mooring of the escorted vessels as well as the public. Certain vessel movements are more vulnerable to terrorist acts and it would be contrary to the public interest to publish an NPRM that would delay the effective date of this rule. Specifically, many of the escorted vessels in the Mobile COTP zone carry hazardous, sensitive, or volatile cargoes or are otherwise critical for national security. Any incident involving these escorted vessels could affect the health and safety of the public and shut down critical channels and ports that support vital maritime trade. It is imperative that these vessels be escorted by law enforcement assets to ensure that other vessels remain clear to mitigate navigation hazards and obstructions. Keeping vessels clear of the escorted vessels also reduces congestion and helps law enforcement readily identify and classify impending threats.

These hazardous, sensitive, or volatile cargoes are increasing in frequency within the navigable waters of the Captain of the Port Zone, Mobile, Alabama as maritime trade and commerce along the Gulf Coast grows. Vessels carrying these cargoes continue to arrive with only 24–36 hours advance notice. The Coast Guard and other law enforcement assets are constantly called upon to quickly mobilize to ensure that these vessels are adequately protected.

Additionally, the Coast Guard coordinates escorts for vessels in the Captain of the Port Zone Mobile, Alabama for port safety and security. Recently, recreational boaters and other small craft have endangered themselves and others by not following the verbal guidance of on-scene law enforcement officials and approaching too close to the escorted vessels.

Therefore, to ensure national security, safe boating, and to facilitate efficient maritime trade, it is imperative to create an effective security zone for all escorted vessels as soon as possible.

For the same reasons above, 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**.

## Background and Purpose

The terrorist attacks of September 11, 2001, heightened the need for development of various security measures throughout the seaports of the United States, particularly around vessels and facilities whose presence or movement creates a heightened vulnerability to terrorist acts; or those for which the consequences of terrorist acts represent a threat to national security. The President of the United States has found that the security of the United States is and continues to be endangered following the attacks of September 11 (E.O. 13273, 67 FR 56215, Sep. 3, 2002 and 73 FR 54489, Sep. 18, 2008). Additionally, national security and intelligence officials continue to warn that future terrorist attacks are likely. The ports within the Captain of the Port (COTP) Mobile frequently receive vessels that require additional security, including, but not limited to, vessels carrying sensitive Department of Defense cargoes, vessels carrying dangerous cargoes, and foreign naval vessels. The COTP has determined that these vessels have a significant vulnerability to subversive activity by other vessels or persons, or, in some cases, themselves pose a risk to a port and the public within the COTP Zone, as described in 33 CFR 3.40–10. This rule enables the COTP Mobile to provide effective port security, while minimizing the public's confusion and easing the administrative burden of implementing separate temporary security zone rules for each escorted vessel.

## Discussion of Proposed Rule

This rule establishes a security zone that prohibits persons and vessels from coming within 500 yards of all escorted vessels within the navigable waters of the COTP Mobile zone unless authorized by the Coast Guard COTP or a COTP designated representative. Persons or vessels that receive permission to enter the security zone must proceed at a minimum safe speed possible for safe navigation and must comply with all orders issued by the COTP or a designated representative.

An escorted vessel is a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets, clearly identifiable by flashing lights, vessel markings, or with agency insignia as listed below: Coast Guard surface or air asset displaying the Coast Guard insignia; Federal, State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency. An escorted vessel also includes a moored or anchored vessel that has been accompanied by one or more of these law enforcement assets to its present location that is identifiable by day boards or other visual indications such as lights or buoys when law enforcement assets are no longer on-scene.

In addition to the presence of these law enforcement assets for escorted vessels, and day boards or other visual indications such as lights or buoys for moored or anchored escorted vessels if no law enforcement assets are on-scene, a broadcast notice to mariners will advise the public that a 500-yard security zone is in effect around the escorted vessel. All local broadcasts to mariners concerning escorted vessels will normally be issued at approximately 30-minute intervals while the security zone restrictions remain in effect.

## Regulatory Analyses

We developed this interim 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.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The limited geographic area impacted by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the ports within the Captain of the Port Zone Mobile. Vessels requiring transit through the security zone also

may be permitted to do so with approval by COTP Mobile or a designated representative.

**Small Entities**

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

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 may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit in the vicinity of escorted vessels on the navigable waters of the Captain of the Port Zone, Mobile, Alabama. This rule would not have a significant impact on a substantial number of small entities because the zones are limited in size, encompassing the escorted vessel and a 500-yard radius around the vessel only. In most cases, the security zones will leave ample space for vessels to navigate around them. If not, and security conditions permit, the COTP will attempt to provide flexibility for individual vessels to transit through the zones as needed. Therefore, the zones will not significantly impact commercial and passenger vessel traffic patterns. Additionally, mariners will be given advanced notice of all security zones created under this rule via broadcast notice to mariners.

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

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under 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. An environmental analysis checklist and a categorical exclusion supporting this 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, 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. 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.836 to read as follows:

**§ 165.836 Security Zone; Escorted Vessels, Mobile, Alabama, Captain of the Port.**

(a) *Definitions*. The following definitions apply to this section:

*COTP* means Captain of the Port Mobile, AL.

*Designated representatives* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the COTP, in the enforcement of the security zone.

*Escorted vessel* means a vessel, other than a large U.S. naval vessel as defined in 33 CFR 165.2015, that is accompanied by one or more Coast Guard assets or other Federal, State or local law enforcement agency assets clearly identifiable by flashing lights, vessel markings, or with agency insignia as follows: Coast Guard surface or air asset displaying the Coast Guard insignia. State and/or local law enforcement asset displaying the applicable agency markings and/or equipment associated with the agency. *Escorted vessel* also means a moored or anchored vessel that was escorted by Coast Guard assets or other Federal, State or local law enforcement agency assets to its present location and is identifiable by the use of day boards or other visual indications such as lights or buoys when law enforcement assets are no longer on-scene.

*Minimum safe speed for navigation* means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake or surge. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed for navigation. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake or surge.

(b) *Regulated Area*. All navigable waters, as defined in 33 CFR 2.36, within the Captain of the Port Zone, Mobile, Alabama, as described in 33 CFR 3.40–10.

(c) *Security Zone*. A 500-yard security zone is established around each escorted vessel within the regulated area described in paragraph (b) of this section. This is a moving security zone when the escorted vessel is in transit and becomes a fixed zone when the escorted vessel is anchored or moored. A security zone will not extend beyond the boundary of the regulated area in this section.

(d) *Regulations*. (1) The general regulations for security zones contained in § 165.33 applies to this section.

(2) A vessel may request the permission of the COTP Mobile or a designated representative to enter the security zone described in paragraph (c) of this section. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must comply with the orders of the COTP or a designated representative.

(e) *Notice of Security Zone*. The COTP will inform the public of the existence or status of the security zones around escorted vessels in the regulated area by broadcast notices to mariners, normally issued at approximately 30-minute intervals while the security zones remains in effect. Escorted vessels will be identified by the presence of Coast Guard assets or other Federal, State or local law enforcement agency assets, or the use of day boards or other visual indications such as lights or buoys when the vessels are moored or anchored and law enforcement assets are no longer on-scene, as specified in the definition of *escorted vessel* in paragraph (a) of this section.

(f) *Contact Information*. The COTP Mobile may be reached via phone at (251) 441–6211. Any on scene Coast Guard or designated representative assets may be reached via VHF–FM channel 16.

Dated: October 7, 2008.

**E.M. Stanton,**

*Captain, U.S. Coast Guard, Captain of the Port Mobile.*

[FR Doc. E8–26900 Filed 11–12–08; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 49

**[EPA–RO9–OAR–2006–0184; FRL–8739–7]**

### Stay of Effectiveness of Control Measure Regulating Dust Emissions at the Four Corners Power Plant; Navajo Nation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to stay the effectiveness of a control measure regulating dust emissions from certain operations that we promulgated in our Federal Implementation Plan for the Four Corners Power Plant located on the Navajo Nation. The control measure would take effect on November 5, 2008. On October 1, 2007, Arizona Public Service Company filed a Petition for Review claiming, *inter alia*, that EPA had not provided an adequate explanation for promulgating the control measure. In the litigation, EPA has agreed that the control measure should be remanded and vacated. EPA needs to complete this action staying the effectiveness of the control measure until the Court rules on the Petition, including the Petitioner's and EPA's requests to remand and vacate the control measure.

**DATES:** The stay to 40 CFR 49.23(d)(3) is effective on November 13, 2008 until further notice. The EPA will publish a document in the **Federal Register** announcing that the stay is lifted.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–RO9–OAR–2006–0184. All documents in the docket are listed in the Federal Docket Management System index at *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 though *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. You can inspect a copy of the docket at our Region IX office during normal business hours by appointment. The address is: Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

**FOR FURTHER INFORMATION CONTACT:** Steve Frey, EPA Region IX, (415) 972–3990 or *frey.steve@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

## I. Overview

On May 7, 2007 (72 FR 25698), we published a Source-Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation (hereinafter ''FIP''). The operator and partial owner of the Four Corners Power Plant is the Arizona Public Service Company (''APS''). One provision of the FIP regulated dust emissions at the power plant's coal handling and storage operations, flyash handling and storage and road sweeping activities, as follows: ''Within 548 days of promulgation of this section each owner or operator shall not emit dust with an opacity greater than 20 percent from any crusher, grinding mill, screening operation, belt conveyor, or truck loading or unloading operation.'' 72 FR 25705, codified at 40 CFR 49.23(d)(3)(hereinafter ''dust control measure'').

APS filed a timely Petition for Review of the FIP challenging, *inter alia*, EPA's basis for requiring compliance with the dust control measure. *Arizona Public Service Company* v. *EPA et al.*, Case No. 07–9546, (10th Cir., Oct. 1, 2007). Sierra Club requested and was granted leave to intervene in the case. All parties have filed their briefs regarding the Petition and the Court has heard oral argument from the parties. The Court has not issued any decision in the matter.

EPA, however, has taken the position in the litigation by APS that it would be appropriate for the Court to remand and vacate the dust control measure. In its brief, EPA has advised the Court that the FIP did not contain an adequate explanation of its rationale for imposing the dust control measure. The Court has not ruled on the case. EPA, therefore, considers it appropriate to stay the effectiveness of the dust control measure pending the outcome of the litigation.

EPA believes that this rulemaking qualifies for the ''good cause'' exemption under the Administrative Procedures Act (''APA''). 5 U.S.C. 553(b)(3). EPA has determined that prior proposal and opportunity for comment are impracticable and unnecessary because the public is not likely to be particularly interested, and notice and opportunity for comment were previously provided when EPA promulgated the dust control measure. (See 72 FR at 25705 (May 7, 2007).) EPA also believes that this rulemaking qualifies for the ''good cause'' exemption to make the rule effective immediately under Section 553(d) because it is a relaxation of a restriction by staying the implementation of the dust control measure. 5 U.S.C. 553(d). EPA has also found that consistent with 5 U.S.C. 705, it is in the interest of justice to postpone the effective date of the dust control measure pending the Court's decision in *Arizona Public Service* v. *EPA*. All of the remaining provisions of the FIP remain in place and effective.

## II. Statutory and Executive Order Reviews

This action stays a federal control measure and imposes no additional requirements.

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

This action 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.

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.

This rule 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. 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 the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

This rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

This action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 1985, April 23, 1997), because it has not been determined to be economically significant as defined under Executive Order 12866 and because it does not establish an environmental standard intended to mitigate health or safety risks.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule because this action does not involve technical standards.

This rule 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).

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 to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 13, 2008. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petitions for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 49**

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 5, 2008.

**Stephen L. Johnson,**

*Administrator.*

■ 40 CFR Part 49 is amended as follows:

## PART 49—[AMENDED]

■ 1. The authority citation for part 49 continues to read as follows:

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

### § 49.23 [Amended]

■ 2. In § 49.23, paragraph (d)(3) is stayed until further notice.

[FR Doc. E8–26842 Filed 11–12–08; 8:45 am]

BILLING CODE 6560–50–P

# Proposed Rules

Federal Register

Vol. 73, No. 220

Thursday, November 13, 2008

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2008–1201; Directorate Identifier 2008–NM–007–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A310 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A310 series airplanes. The existing AD currently requires repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; repetitive inspections for fatigue cracking of frame 39, stringer 35; and corrective actions if necessary. The existing AD also provides for an optional terminating action for certain repetitive inspections, except for certain areas where corrosion was detected and reworked. This proposed AD would reduce the intervals for accomplishing repetitive inspections in a certain area. This proposed AD results from mandatory continuing airworthiness information originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are proposing this AD to detect and correct fatigue cracks and corrosion around and under the chafing plates of the wing root, which could result in reduced structural integrity of the airplane.

**DATES:** We must receive comments on this proposed AD by December 15, 2008.

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

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

For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1201; Directorate Identifier 2008–NM–007–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

On June 29, 2004, we issued AD 2004–14–06, amendment 39–13715 (69 FR 41401, July 9, 2004), for certain Airbus Model A310 series airplanes. That AD requires repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; and corrective actions, if necessary. The existing AD also provides for an optional terminating action for repetitive inspections, except for certain areas where corrosion was detected and reworked. That AD resulted from reports of the presence of corrosion under the chafing plates and around the fasteners of the wing root between fuselage frames 36 and 39. We issued that AD to detect and correct fatigue cracks and corrosion around and under the chafing plates of the wing root, which could result in reduced structural integrity of the airplane.

### Actions Since Existing AD Was Issued

Since we issued AD 2004–14–06, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has informed us that, as a result of A310 extended service goal activities, the repetitive intervals for existing repetitive inspections in a certain area, as required by AD 2004–14–06, must be reduced to adequately address the identified unsafe condition.

### Relevant Service Information

Airbus has issued Revision 06 of Service Bulletin A310–53–2069, dated May 22, 2007 (AD 2004–14–06 refers to Airbus Service Bulletin A310–53–2069, Revision 1, dated September 19, 1995, through Revision 05, dated November 12, 2002, as appropriate sources of service information for accomplishing the required inspections and corrective actions). The inspection and corrective actions procedures specified in Revision 06 are essentially identical to those specified in Revision 1 through Revision 05. Revision 06 reduces the thresholds and repetitive intervals for the inspections that are required after corrosion has been found and reworked. The new thresholds range between 70

and 28,000 flight cycles or between 250 and 103,500 flight hours, whichever occurs first, depending on the depth of the rework. The new intervals range between 70 and 17,300 flight cycles or between 250 and 63,900 flight hours, whichever occurs first. No additional work is required by Revision 06 for airplanes inspected in accordance with Revision 1 through Revision 05. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated Service Bulletin A310–53–2069, Revision 06, and issued airworthiness directive 2007–0292, dated November 27, 2007, to ensure the continued airworthiness of these airplanes in the European Union.

**FAA's Determination and Requirements of the Proposed AD**

These airplanes are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 2004–14–06 and would continue to require repetitive inspections of the fuselage skin to detect corrosion or fatigue cracking around and under the chafing plates of the wing root; repetitive inspections for fatigue cracking of frame 39, stringer 35; and corrective actions if necessary. This proposed AD also would continue to provide for an optional terminating action for certain repetitive inspections, except for certain areas where corrosion was detected and reworked. In addition, this proposed AD would reduce the intervals for accomplishing the repetitive inspections in a certain area.

**Differences Between Proposed AD and Service Bulletin**

Revision 06 of Service Bulletin A310–53–2069 specifies to contact the manufacturer for thresholds and repeat intervals for inspections under certain conditions, but this proposed AD would require those intervals be approved by the FAA or the EASA (or its delegated agent). In light of the type of inspections that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, thresholds and repetitive intervals approved by the FAA or the EASA would be acceptable for compliance with this proposed AD.

**Change to Existing AD**

This proposed AD would retain all requirements of AD 2004–14–06. Since AD 2004–14–06 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 2004–14–06 | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (a) ..... | paragraph (f). |
| paragraph (b) ..... | paragraph (g). |
| paragraph (c) ..... | paragraph (h). |
| paragraph (d) ..... | paragraph (i). |
| paragraph (e) ..... | paragraph (j). |

**Costs of Compliance**

This proposed AD would affect about 69 Model A310 series airplanes of U.S. registry.

The actions that are required by AD 2004–14–06 and retained in this proposed AD take about 68 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is $375,360, or $5,440 per airplane, per inspection cycle.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13715 (69 FR 41401, July 9, 2004) and adding the following new airworthiness directive (AD):

**Airbus:** Docket No. FAA–2008–1201; Directorate Identifier 2008–NM–007–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by December 15, 2008.

**Affected ADs**

(b) This AD supersedes AD 2004–14–06.

**Applicability**

(c) This AD applies to Airbus Model A310 series airplanes, certificated in any category,

on which Airbus Modifications 8888 and 8889 have not been accomplished.

**Unsafe Condition**

(d) This AD results from mandatory continuing airworthiness information originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to detect and correct fatigue cracks and corrosion around and under the chafing plates of the wing root, which could result in reduced structural integrity of 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.

**Requirements of AD 2004–14–06**

**Repetitive Inspections and Corrective Actions**

(f) Except as provided by paragraphs (g), (k), and (l) of this AD: Within 4 years since date of manufacture, or within 12 months after June 3, 1998 (the effective date of AD 98–09–20, amendment 39–10501), whichever occurs later, perform an inspection to detect discrepancies around and under the chafing plates of the wing root, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 05, dated November 12, 2002; Revision 04, dated November 8, 2000; Revision 03, dated October 28, 1997; Revision 2, dated September 23, 1996; or Revision 1, dated September 19, 1995. If any discrepancy is found, prior to further flight, accomplish follow-on corrective actions (i.e., removal of corrosion, corrosion protection, high frequency eddy current inspection, x-ray inspection), as applicable, in accordance with the applicable service bulletin. Repeat the inspections thereafter at the intervals specified in the applicable service bulletin. After August 13, 2004 (the effective date of AD 2004–14–06), repeat the inspections thereafter at the intervals specified in Revision 04 or Revision 05 of the service bulletin.

(g) If any discrepancy is found during any inspection required by paragraph (f) of this AD, and Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007; Revision 05, dated November 12, 2002; Revision 04, dated November 8, 2000; Revision 03, dated October 28, 1997; Revision 2, dated September 23, 1996; or Revision 1, dated September 19, 1995; as applicable; specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Where differences in the compliance times or corrective actions exist between the service bulletin and this AD, the AD prevails.

**Optional Terminating Action**

(h) Except as provided by paragraph (i) of this AD: Accomplishment of the replacement of the stainless steel chafing plates with new chafing plates made of aluminum alloy, in accordance with Airbus Service Bulletin A310–53–2070, Revision 2, dated November 8, 2000; Revision 1, dated September 23, 1996; or the original issue, dated October 3, 1994; constitutes terminating action for the repetitive inspections required by paragraph (f) of this AD.

**Continuation of Repetitive Inspections**

(i) Except as provided by paragraphs (k) and (l) of this AD: Within 30 days after August 13, 2004, do a review of the airplane maintenance records to determine if any corrosion was detected and reworked on the left and/or right side of frame 39, stringer 35, during the accomplishment of any corrective action or repair specified in paragraphs (f) or (g) of this AD. If any corrective action or repair has been accomplished in this area, perform an inspection for fatigue cracking of frame 39, stringer 35, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 05, dated November 12, 2002; or Revision 04, dated November 8, 2000. Do the initial inspection at the threshold specified in Figure 1 of the service bulletin, or within 30 days after August 13, 2004, whichever is later. Repeat the inspection thereafter at the intervals specified in Figure 1 of the service bulletin. If any discrepancy is found, prior to further flight, accomplish the applicable follow-on corrective actions, in accordance with the Accomplishment Instructions of the service bulletin.

**Submission of Information Not Required**

(j) Although the service bulletins referenced in this AD specify to submit information to the manufacturer, this AD does not include such a requirement.

**New Actions Required by This AD**

**New Service Bulletin Revision**

(k) As of the effective date of this AD, use only the Accomplishment Instructions of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007, to do the inspections and corrective actions required by paragraphs (f) and (i) of this AD.

**Repetitive Inspections at Frame FR39, Stringer 35 at Reduced Intervals**

(l) As of the effective date of this AD, if any corrosion is found at frame FR39, stringer 35, during any inspection required by this AD, do the repetitive inspections required by paragraphs (f) and (i) of this AD, as applicable, at the earlier of the times specified in paragraphs (l)(1) and (l)(2) of this AD. Repeat the inspections thereafter at intervals specified in Figure 1, Sheets 4 and 5, of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007, except as provided by paragraph (m) of this AD.

(1) At the next specified repeat interval specified in paragraph (f) of this AD.

(2) At the later of the times specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD, except as provided by paragraph (m) of this AD.

(i) At the applicable threshold specified in Figure 1, Sheets 4 and 5, of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007.

(ii) Within 900 flight cycles or 1,800 flight hours after the effective date of this AD, whichever occurs first.

(m) Where Figure 1, Sheets 4 and 5, of Airbus Service Bulletin A310–53–2069, Revision 06, dated May 22, 2007, specifies to contact Airbus, do the inspections at threshold and repeat intervals approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

**Alternative Methods of Compliance (AMOCs)**

(n) The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. 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.

**Related Information**

(o) European Aviation Safety Agency (EASA) airworthiness directive 2007–0292, dated November 27, 2007, also addresses the subject of this AD.

Issued in Renton, Washington, on November 4, 2008.

**Stephen P. Boyd,**

*Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–26914 Filed 11–12–08; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–1205; Directorate Identifier 2008–CE–062–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company Models 182Q and 182R Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 182Q and 182R airplanes that are equipped with Societé de Motorisations Aéronautiques (SMA) Aircraft Diesel Engine (ADE) Model SR305–230–1 or Model SR305–230 converted to Model SR305–230–1 installed under Supplemental Type

Certificate (STC) SA03302AT. This proposed AD would require you to remove the intercooler and the intercooler inlet and outlet hoses, install a reworked intercooler and new intercooler inlet and outlet hoses, inspect hoses and clamp torques, and repetitively inspect installation of the intercooler outlet and inlet hose assemblies for any displacement or damage of clamps or hoses, and, if necessary, replace any damaged clamps or hoses. This proposed AD results from a report of two instances of induction hose disconnection occurring while in service, resulting in a loss of turbo boost and a significant loss of engine power. We are proposing this AD to detect and correct improper intercooler outlet and intercooler inlet hose assembly installations, which could result in loss of turbo boost and a significant loss of engine power. This failure could lead to an inability to maintain constant altitude in flight.

**DATES:** We must receive comments on this proposed AD by January 12, 2009.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD:

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

For service information identified in this proposed AD, contact SMA Customer Service, 10–12 Rue Didier Daurat, 18021 Bourges, France; telephone: +33 (0) 2 48 67 56 00; *fax:* +33 (0) 2 48 50 01 41; *E-mail: customer_services@smasr.com*; *Web: http://www.smaengines.com*.

**FOR FURTHER INFORMATION CONTACT:** Don O. Young, Aerospace Engineer, ACE–118A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; *telephone:* (770) 703–6079; *fax:* (770) 703–6097.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2008–1205; Directorate Identifier 2008–CE–062–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

## Discussion

We have received a report of two instances of induction hose disconnection (due to incorrectly installed clamps securing the intercooler outlet and intercooler inlet hose assemblies) occurring while in service on the air inlet manifold circuit of Cessna Models 182Q and 182R airplanes equipped with SMA ADE Model SR305–230–1 or Model SR305–230 converted to Model SR305–230–1 installed under STC SA03302AT. This induction hose disconnection resulted in a loss of turbo boost and a significant loss of engine power.

SMA reports that these hoses and clamps are included in STC SA03302AT.

This condition, if not corrected, could result in loss of turbo boost and a significant loss of engine power. This failure could lead to an inability to maintain constant altitude in flight.

## Relevant Service Information

We have reviewed the following service information SMA SAFRAN Group Service Bulletin SB–C182–75–004, Revision No. Basic Issue, dated July 8, 2008.

The service information describes procedures for:

- Removal of intercooler SF01170004–0;
- Installation of reworked intercooler SF01170004–1;
- Removal of intercooler and turbocharger inlet and outlet hoses;
- Installation of new intercooler inlet hose SF01170083–0 and intercooler outlet hose SF01170048–0; and
- Inspection procedures for installation of the intercooler hose assemblies.

## FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to remove the intercooler and the intercooler inlet and outlet hoses, install a reworked intercooler and new intercooler inlet and outlet hoses, inspect hoses and clamp torques, and repetitively inspect installation of the intercooler outlet and inlet hose assemblies for any displacement or damage of clamps or hoses, and, if necessary, replace any damaged clamps or hoses.

## Costs of Compliance

We estimate that this proposed AD would affect 7 airplanes in the U.S. registry.

We estimate the following costs to do the proposed replacements:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 4 work-hours × $80 per hour = $320 | $3,436 | $3,756 | $26,292 |

We estimate the following costs to do any proposed inspection of the installation of the intercooler hose assembly that would be required:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 2 work-hours × $80 per hour = $160 | Not Applicable | $160 |

We have no way of determining the cost of any necessary replacement that may be required as a result of any proposed inspection.

SMA will provide warranty credit as stated in SMA SAFRAN Group Service Bulletin SB–C182–75–004, Revision No. Basic Issue, dated July 8, 2008.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

### Examining the AD Docket

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Cessna Aircraft Company:** Docket No. FAA–2008–1205; Directorate Identifier 2008–CE–062–AD.

#### Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by January 12, 2009.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Models 182Q and 182R airplanes, all serial numbers, certificated in any category, that are equipped with:

(1) Societé de Motorisations Aéronautiques (SMA) aircraft diesel engine (ADE) Model SR305–230–1 installed under Supplemental Type Certificate (STC) SA03302AT; or

(2) SMA ADE Model SR305–230 converted to Model SR305–230–1 (by incorporation of SMA Service Bulletin SB–01–76–002) installed under STC SA03302AT.

#### Unsafe Condition

(d) This AD results from a report of two instances of induction hose disconnection occurring while in service on the air inlet manifold circuit, resulting in a loss of turbo boost and a significant loss of engine power. We are issuing this AD to detect and correct improper intercooler hose assembly installation, which could result in loss of turbo boost and a significant loss of engine power. This failure could lead to an inability to maintain constant altitude in flight.

#### Compliance

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Remove part number (P/N) intercooler SF01170004–0 and install reworked intercooler SF01170004–1 and remove intercooler inlet and outlet hoses and install new intercooler inlet hose SF01170083–0 and intercooler outlet hose SF01170048–0. | Before further flight as of the effective date of this AD. | Follow SMA SAFRAN Group Service Bulletin SB–C182–75–004, Revision No. Basic Issue, dated July 8, 2008. |
| (2) Inspect intercooler inlet and outlet hoses and clamps for displacement and re-torque clamps. If you find any displacement do the displacement recovery. | Within the next 25 hours time-in-service (TIS) following installation required by paragraph (e)(1) of this AD. | Follow SMA SAFRAN Group Service Bulletin SB–C182–75–004, Revision No. Basic Issue, dated July 8, 2008. |
| (3) Inspect the installation of the intercooler outlet hose and intercooler inlet hose assembly for any displacement or damage of clamps or hoses. | Initially inspect within the next 100 hours TIS after the action required by paragraph (e)(1) of this AD or within the next 12 months after the action required by paragraph (e)(1) of this AD, whichever occurs first. Repetitively thereafter inspect at intervals not to exceed 100 hours TIS or 12 months, whichever occurs first. | Follow SMA SAFRAN Group Service Bulletin SB–C182–75–004, Revision No. Basic Issue, dated July 8, 2008. |

| Actions | Compliance | Procedures |
|---|---|---|
| (4) If, as a result of any inspection required by paragraph (e)(3) of this AD, you find any displacement or damage of clamps or hoses, replace any damaged clamps and hoses. | Before further flight, after the inspection required by paragraph (e)(3) of this AD where you found any displacement or damage of clamps or hoses. | Follow SMA SAFRAN Group Service Bulletin SB–C182–75–004, Revision No. Basic Issue, dated July 8, 2008. |
| (5) Do not install any intercooler SF01170004–0. | As of the effective date of this AD ..... | Not Applicable. |

**Special Flight Permit**

(f) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by the following conditions:

(1) Before flight, an inspection of hoses and clamps by a properly certificated mechanic reveals no damaged or disconnected hoses or clamps; and

(2) You fly by the most direct route to the site where the AD can be performed.

**Alternative Methods of Compliance (AMOCs)**

(g) The Manager, Atlanta 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*: Don O. Young, Aerospace Engineer, ACE–118A, Atlanta ACO, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; *telephone:* (770) 703–6079; *fax:* (770) 703–6097. 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.

**Related Information**

(h) To get copies of the service information referenced in this AD, contact SMA Customer Service, 10–12 Rue Didier Daurat, 18021 Bourges, France; *telephone:* +33 (0) 2 48 67 56 00; *fax:* +33 (0) 2 48 50 01 41; *E-mail: customer_services@smasr.com*; Web: *http://www.smaengines.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*.

Issued in Kansas City, Missouri, on November 6, 2008.

**James E. Jackson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8–26910 Filed 11–12–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Parts 121, 125 and 135

**[Docket No. FAA–2006–26135; Notice No. 08–08]**

**RIN 2120–AI79**

## Filtered Flight Data; Technical Correction and Extension of Comment Period

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM); correction and extension of comment period.

**SUMMARY:** The FAA is correcting an SNPRM published in the **Federal Register** on August 15, 2008, regarding filtered flight data. Questions from industry caused us to conclude that the intent expressed in the preamble is inconsistent with the proposed rule language. This document will clarify our intent and the rule language. We are also extending the comment period to allow for consideration of this clarification by all interested parties.

**DATES:** The comment period will close December 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this proposed rule contact Brian A. Verna, Avionics Systems Branch, Aircraft Certification Service, AIR–130, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 385–4643; fax (202) 385–4651; e-mail *brian.verna@faa.gov*. For legal questions concerning this proposed rule contact Karen L. Petronis, Senior Attorney for Regulations, Regulations Division, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; fax 202–267–7971; e-mail *karen.petronis@faa.gov*.

### Background

Following the publication of a supplemental notice of proposed rulemaking on filtered flight data (SNPRM; 73 FR 47857, August 15, 2008), the FAA was contacted by members of the industry seeking clarification of our intent and the scope of specific provisions. A summary of that meeting has been placed in the docket for this rule.

Issues raised at the meeting caused us to realize that the intent of the rule as stated in the preamble is inconsistent with the proposed rule text. We are restating the intent here and providing revised proposed rule text.

While this preamble discussion uses part 121 as its reference, it also applies to parts 125 and 135 and their comparable sections. During our review, we also discovered that the SNPRM change to a separate section (proposed § 121.346) caused us to inadvertently omit an applicability reference for airplanes covered under § 121.344a. We have added that reference as part of this correction.

The definition of filtering, proposed § 121.346(a), remains as it was in the SNPRM. Comments should address that section of the proposed rule as published in the SNPRM.

Proposed § 121.346(b) now states that any parameter required to be recorded may be filtered as long as the recorded signal value continues to meet the requirements of Appendix M.

Paragraph (c) contains a list of parameters that we consider critical from the standpoint of accuracy and accident investigation when complying with the required accuracy under the expanded definition of dynamic conditions in Appendix M. This list has not changed from the SNPRM. If any parameter in the paragraph (c) list is being filtered, and the filtered, recorded data do not meet Appendix M, then the certificate holder must choose one of the following courses of action:

- Remove the filtering; or
- Demonstrate by test and analysis that the original sensor signal value can be reconstructed from the recorded filtered data. If an operator attempts to show by test and analysis that the data can be reconstructed but the tests and analyses fail, or the results cannot be repeated, the filtering must be removed.

The restructured language of the rule text has obviated the need for the second list of parameters. They are

already covered by paragraph (b); they may be filtered as long as the recorded signal value meets Appendix M. We presume that these parameters are already in compliance with Appendix M since that compliance is required by the 1997 rule changes.

The compliance paragraph has been redesignated as (d), and has been changed to include the correct paragraph references; compliance time remains unchanged.

All other provisions of the proposed rule, including the definition of filtering, remain as proposed in the SNPRM published on August 15, 2008. Because of the confusion generated by the SNPRM language published in August, we are extending the comment period for the rule as corrected until December 29, 2008.

**Correction**

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. On page 47867, in the first column, remove proposed § 121.346(b) and (c) and add in their place corrected paragraphs (b), (c) and (d) to read as follows:

### § 121.346 Flight recorders—filtered data.

* * * * *

(b) An original sensor signal for any flight recorder parameter required to be recorded under § 121.344 of this part may be filtered only if the recorded signal value continues to meet the requirements of Appendix B or M of this part, as applicable.

(c) For a parameter described in § 121.344(a)(1) through (7), (9), (11) through (18), (26), (32), (42), (43), (68), (70), (77), or (88), or the corresponding parameter in Appendix B of this part, if the recorded signal value is filtered and does not meet the requirements of Appendix B or M of this part, as applicable, the certificate holder must:

(1) Remove the filtering and ensure that the recorded signal value meets the requirements of Appendix B or M of this part; or

(2) Demonstrate by test and analysis that the original sensor signal value can be reconstructed from the recorded data. This demonstration requires that:

(i) The FAA determine that the procedure submitted by the certificate holder as its compliance with paragraph (c)(2) of this section is repeatable; and

(ii) The certificate holder maintain documentation of the procedure required to reconstruct the original sensor signal value.

(d) *Compliance*. After (four years from effective date), no aircraft flight data recording system may filter any parameter listed in paragraph (c) of this section that does not meet the requirements of Appendix M or B of this part unless the certificate holder possesses test and analysis procedures that have been approved by the FAA. The procedures must be submitted to the FAA no later than the completion of the next heavy maintenance check after [six months after effective date] but not later than [two years after the effective date].

2. On page 48767 in the second column, add amendatory instruction 2a to amend section 121.344a(e) to read as follows:

2a. Amend § 121.344a by revising paragraph (e) to read as follows:

### § 121.344a Digital flight data recorders for 10–19 seat airplanes.

* * *

(e) All airplanes subject to this section are also subject to the requirements and exceptions stated in §§ 121.344(g) through (k) and 121.346 of this part.

* * * * *

## PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

3. On page 47867, in the second column, remove proposed § 125.228(b) and (c) and add in their place corrected paragraphs (b), (c) and (d) to read as follows:

### § 125.228 Flight recorders—filtered data.

* * * * *

(b) An original sensor signal for any flight recorder parameter required to be recorded under § 125.226 of this part may be filtered only if the recorded signal value continues to meet the requirements of Appendix D or E of this part, as applicable.

(c) For a parameter described in § 125.226 (a)(1) through (7), (9), (11) through (18), (26), (32), (42), (43), (68), (70), (77), or (88), or the corresponding parameter in Appendix D of this part if the recorded signal value is filtered and does not meet the requirements of Appendix D or E of this part, as applicable, the certificate holder must:

(1) Remove the filtering and ensure that the recorded signal value meets the requirements of Appendix D or E of this part; or

(2) Demonstrate by test and analysis that the original sensor signal value can be reconstructed from the recorded data. This demonstration requires that:

(i) The FAA determine that the procedure submitted by the certificate holder as its compliance with paragraph (c)(2) of this section is repeatable; and

(ii) The certificate holder maintain documentation of the procedure required to reconstruct the original sensor signal value.

(d) *Compliance*. After (four years from effective date), no aircraft flight data recording system may filter any parameter listed in paragraph (c) of this section that does not meet the requirements of Appendix D or E of this part unless the certificate holder possesses test and analysis procedures that have been approved by the FAA. The procedures must be submitted to the FAA no later than the completion of the next heavy maintenance check after [six months after effective date] but not later than [two years after the effective date].

## PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

4. On page 47868, in the first column, remove proposed § 135.156(b) and (c) and add in their place corrected paragraphs (b), (c) and (d) to read as follows:

### § 135.156 Flight recorders—filtered data.

* * * * *

(b) An original sensor signal for any flight recorder parameter required to be recorded under § 135.152 of this part may be filtered only if the recorded signal value continues to meet the requirements of Appendix F of this part, as applicable.

(c) For a parameter described in § 135.152(h)(1) through (7), (9), (11) through (18), (26), (32), (42), (43), (68), (70), (77), or (88), if the recorded signal value is filtered and does not meet the requirements of Appendix F of this part, as applicable, the certificate holder must:

(1) Remove the filtering and ensure that the recorded signal value meets the requirements of Appendix F of this part; or

(2) Demonstrate by test and analysis that the original sensor signal value can be reconstructed from the recorded data. This demonstration requires that:

(i) The FAA determine that the procedure submitted by the certificate holder as its compliance with paragraph (c)(2) of this section is repeatable; and

(ii) The certificate holder maintain documentation of the procedure required to reconstruct the original sensor signal value.

(d) *Compliance*. After (four years from effective date), no aircraft flight data recording system may filter any parameter listed in paragraph (c) of this section that does not meet the requirements of Appendix F of this part unless the certificate holder possesses test and analysis procedures that have been approved by the FAA. The procedures must be submitted to the FAA no later than the completion of the next heavy maintenance check after [six months after effective date] but not later than [two years after the effective date].

Issued in Washington, DC, on November 6, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

[FR Doc. E8–26856 Filed 11–12–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Parts 620, 635, 636, and 710

**[FHWA Docket No. FHWA–2008–0136]**

**RIN 2125–AF29**

### Fair Market Value and Design-Build Amendments

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); re-opening of comment period.

**SUMMARY:** The FHWA is re-opening the comment period for the notice of proposed rulemaking (NPRM) and request for comments, which was published on October 8, 2008, at 73 FR 58908. That NPRM proposes to amend existing regulations to clarify that fair market value must be negotiated for and received under a concession agreement, and to amend the design-build regulations to allow contracting agencies to incorporate unsuccessful proposers' ideas into a contract upon payment of a stipend.

The original comment period closed on November 7, 2008. The extension is based on the FHWA's desire to receive the fullest and most comprehensive comments possible from the broadest group of stakeholders. During the comment period, the FHWA received requests for additional time to analyze and submit comments regarding the rulemaking. The FHWA recognizes that those interested in commenting on this important program may not have had the opportunity to provide comments and that the comment period should be reopened. Therefore, the comment period is being reopened until November 21, 2008, which will provide those interested in commenting additional time to discuss, evaluate, and submit responses to the docket.

**DATES:** Comments must be received on or before November 21, 2008. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, submit comments electronically at *http://www.regulations.gov,* or fax comments to (202) 493–2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Marcus J. Lemon, Chief Counsel, Mr. Michael Harkins, Office of Chief Counsel, or Mr. Steve Rochlis, Office of Chief Counsel, (202) 366–0740, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at *www.regulations.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.access.gpo.gov/nara.*

#### Background

On October 8, 2008, the FHWA published an NPRM proposing to require State departments of transportation (DOT) and other public authorities to negotiate for and obtain fair market value as part of any concession agreement involving a facility acquired or constructed with Federal-aid highway funds; to amend FHWA regulations to permit public agencies to compete against private entities for the right to obtain a concession agreement involving such facilities; and to amend the design-build regulations to permit contracting agencies to incorporate unsuccessful offerors' ideas into a design-build contract upon the acceptance of a stipend.

The original comment period for the NPRM closes on November 7, 2008. During the comment period, the FHWA received requests for additional time to analyze and submit comments regarding the rulemaking. The FHWA recognizes that additional time will allow interested parties a broader and more comprehensive review and discussion of the proposed regulations; and then, allow the development and submission of complete responses to the docket. To allow time for interested parties to submit comprehensive comments, the comment period is being reopened until November 21, 2008.

**Authority:** Secs. 1503 and 1604 of Pub. L. 109–59, 119 Stat. 1144; Secs. 1215(b) and 1307 of Pub. L. 105–178, 112 Stat. 107; Secs. 1012(b) and 1041(a), Pub. L. 102–240, 105 Stat. 1914; 23 U.S.C. 101 (note), 107, 108, 109, 111, 112, 113, 114, 116, 119, 128, 129, 133, 142(f), 156, 166, 204, 210, 308, 315, 318 and 323; 31 U.S.C. 6505; 42 U.S.C. 2000d et seq., 3334, 4601 et seq.; 23 CFR 1.32; 49 CFR 1.48, 18.31, and parts 21 and 24;

Issued on: November 6, 2008.

**Thomas J. Madison, Jr.,**

*Federal Highway Administrator.*

[FR Doc. E8–26936 Filed 11–12–08; 8:45 am]

BILLING CODE 4910–22–P

# Notices

Federal Register

Vol. 73, No. 220

Thursday, November 13, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 7, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Rural Utility Service**

*Title:* 7 CFR 1780, Water and Waste Loan and Grant Program.

*OMB Control Number:* 0572–0121.

*Summary of Collection:* Section 306 of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926, authorizes Rural Utilities Service (RUS) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of water and waste disposal facilities primarily servicing rural residents with populations up to 10,000 residents.

*Need and Use of the Information:* Rural Development's field offices will collect information from applicants/borrowers and consultants to determine eligibility and project feasibility. The information will help to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. There are agency forms required as well as other requirements that involve certifications from the borrower, lenders, and other parties. Failure to collect proper information could result in improper determinations of eligibility, use of funds and or unsound loans.

*Description of Respondents:* State, Local or Tribal Government; Not-for-profit institutions.

*Number of Respondents:* 7,000.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Annually; Weekly.

*Total Burden Hours:* 133,309.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. E8–26937 Filed 11–12–08; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Black Hills National Forest, Mystic Ranger District, SD, Slate Castle Project Area

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Forest Service will prepare an environmental impact statement on a proposal to use multiple vegetation treatments focused on reducing the threat to ecosystem components including forest resources from an existing insect and disease epidemic (mountain pine beetle), creating a landscape condition more adapted to fire and that reduces potential for high severity wildfire near at-risk communities and in the wildland-urban interface. The proposal is being planned for the 44,500 acre Slate Castle Project Area that includes about 38,300 acres of National Forest System land and about 6,200 acres of interspersed private land. The project area generally extends from northwest of Hill City, South Dakota and east of Deerfield Lake. This project will be conducted as an authorized project under Section 102 of the Healthy Forests Restoration Act of 2003 (HFRA). Actions proposed for the Slate Castle Project Area include the following:

- Thin and harvest approximately 31,000 acres of pine stands using a variety of methods to treat mountain pine beetle (MPB) infested stands, reduce the overall density of pine trees and create a mosaic of structural stages across the landscape. Both commercial harvest and noncommercial thinning will be used to reduce the stand density, and associated fuel hazard conditions and susceptibility to mountain pine beetle infestations.
- Reduce the amount of fuels that currently exists and that created by vegetation treatment activities. Treatment could include lopping, chipping, crushing, piling and burning, and creating fuel breaks along roads and adjacent to private property, particularly those properties with houses and subdivisions. Prescribed broadcast and pile burning of up to 35,000 acres is also planned to disrupt the continuity of surface and canopy fuels, and to increase the quantity and quality of forage for big game and other wildlife resources.
- Remove conifers from hardwood stands such as aspen and birch, and restore meadows on approximately 4,400 acres to provide habitat diversity and additional wildfire protection by restoring natural fuel breaks.

**DATES:** Comments concerning the scope of the analysis would be most useful if received by 30-days following the date of this notice. The draft environmental impact statement is expected to be

available for public review by March 2009 and the final environmental impact statement is expected to be completed by July 2009.

**ADDRESSES:** Send written comments to Robert J. Thompson, District Ranger, Black Hills National Forest, Mystic Ranger District, Slate Castle Project Area, 8221 South Highway 16, Rapid City, South Dakota 57702. Telephone Number: (605) 343–1567. E-mail: *comments-rocky-mountain-black-hills-mystic@fs.fed.us* with ''Slate Castle'' as the subject. Electronic comments must be readable in Word, Rich Text or PDF formats.

**FOR FURTHER INFORMATION CONTACT:** If you have any questions or need additional information, please contact Katie Van Alstyne, Team Leader or Robert J. Thompson, District Ranger, at the Mystic Ranger District office in Rapid City at (605) 343–1567.

**SUPPLEMENTARY INFORMATION:** The actions proposed are in direct response to management direction provided by the Black Hills National Forest Land and Resource Management Plan (Forest Plan). The site specific actions are designed, based on Forest Plan Standards and Guidelines, to move existing resource conditions in the Slate Castle Project Area toward meeting Forest Plan Goals and Objectives. The project area generally extends from northwest of Hill City, South Dakota and east of Deerfield Lake. Anticipated issues include: reducing MPB infestation and risk; protecting local communities, private and public lands, infrastructure and access from severe wildfire; associated fire and fuels hazard reduction needs in the wildland-urban interface; support or opposition to forest thinning using commercial timber harvest; impacts of vegetation treatment and multiple forest uses on wildlife habitat. The range of alternatives analyzed in the EIS is expected to be consistent with Sec. 104 of HFRA.

## Purpose and Need for Action

The purpose of the Slate Castle Project is to:

- Move toward achieving desired land and resource conditions, as provided by the Forest Plan.
- Reduce the threat to ecosystem components including forest resources, from the existing insect and disease (mountain pine beetle) epidemic.
- Restore resource conditions to a healthy, resilient fire-adapted ecosystem.
- Help protect local communities and resources from catastrophic wildfire.

This project is focused on implementing management actions that move toward achieving:

- Desired conditions and objectives embodied in Goals 2, 3, 7, and 10 of the Forest Plan (as amended).
- Goals and objectives applicable to Forest Plan Management Area (MA) 2.2—Research Natural Areas (~40 acres); MA 3.7—Late Successional Forest Landscape (~460 acres); MA 5.1—Resource Production Emphasis (~23,800 acres); and MA 5.4—Big Game Winter Range Emphasis (~13,960 acres), that lie within Slate Castle Project Area, described in Chapter III of the Forest Plan (Phase II Amendment).
- Goals of the Healthy Forest Restoration Act (HFRA) of 2003 (HR 1904) and other National level initiatives and policy that provide procedural tools to hasten processes focused on reducing insects or disease on public and adjacent private lands, and reducing the probability and occurrence of severe wildfire in the fire adapted ecosystems, especially near at risk communities and in the wildland-urban interface. Moreover, it is appropriate that proposed actions be designed in consideration of the fuels hazard reduction management recommendations and guidelines provided by the Pennington County Community Wildfire Protection Plan of 2007.

## Proposed Action

Proposed actions include the following:

- Thin and harvest approximately 31,000 acres of pine stands using a variety of methods to treat MPB infested stands, reduce the overall density of pine trees and create a mosaic of structural stages across the landscape. Both commercial and non-commercial sized trees would be removed utilizing multiple contracts including stewardship, timber sale, and service contracts.
- Disrupt the continuity of surface and canopy fuels to help reduce the potential for large-scale, intense wildfire spread. Treatment could include thinning, lopping, chipping, crushing, piling, and burning; restoring natural fuel breaks by removing conifers that have encroached upon meadows and hardwood stands on approximately 4,400 acres; creating fuel breaks along roads and adjacent to private property—particularly those properties with houses and subdivisions. Prescribed broadcast and pile burning of up to 35,000 acres is also planned to reduce the natural, as well as the management-caused accumulation of fuels and to benefit big game and other wildlife resources.

## Responsible Official

Robert J. Thompson, District Ranger, Mystic Ranger District, Black Hills National Forest, 8221 South Highway 16, Rapid City, South Dakota 57702.

## Nature of Decision To Be Made

The decision to be made is whether or not to implement the proposed action or possible alternative at this time.

## Scoping Process

Comments and input regarding the proposal will be received via direct mailing from the public, other groups, and agencies during the initial public comment period in November and December 2008. If you would like to be more involved, a public meeting is scheduled for Tuesday, December 2, 2008, from 7 p.m. to 9 p.m. in the City Hall conference room in Hill City, South Dakota. Comments submitted based on this NOI will be most useful if received within 30 days from the date of this notice. Response to the draft EIS will be sought from the interested public beginning in March 2009.

## Comment Requested

This notice of intent provides information that the agency will prepare an environmental impact statement in response to public comment and feedback during the November and December 2008, scoping period. Comments received will assist the planning team to develop the mailing list for the draft EIS and help identify key issues and opportunities used to refine the proposal or possible alternative and mitigation measures. Comments on the DEIS will be requested during the 45 day comment period following the Notice of Availability, expected to be published in the **Federal Register** in March 2009 (See discussion below).

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 US. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or

dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: November 5, 2008.

**Craig Bobzien,**

*Forest Supervisor, Black Hills National Forest.*

[FR Doc. E8–26797 Filed 11–12–08; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

**RIN 0596–AC66**

### Land Management Plan Guidance

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of issuance of agency interim directive; request for comment.

**SUMMARY:** The Forest Service is issuing an interim directive revising Forest Service Handbook 1909.12, chapter 10, to guide agency employees in developing, amending, or revising land management plans for units of the National Forest System about the content of land management plans. The chapter focuses particularly on writing plan components, describing the monitoring program, and considering individual resources during the planning process. The intended effect of issuing this interim directive is to provide consistent, overall guidance to Forest Service line officers and agency employees. As an interim directive, the direction is effective immediately. Public comment is invited and will be considered in developing a final directive.

**DATES:** Interim directive number 1909.12–2008–2 is effective November 13, 2008. Comments must be received in writing by January 12, 2009.

**ADDRESSES:** Send written comments concerning this interim directive through one of the following methods: E-mail: *PlanningDirective2008@fs.fed.us.* Include ''planning directives'' in the subject line of the message. Fax: 202–205–1012. Please identify your comments by including ''planning directives'' on the cover sheet or the first page. Mail: Planning Directives; Forest Service; U.S. Department of Agriculture; Ecosystem Management Coordination; Mailstop 1104, 3rd Floor—Center Wing; Washington, DC 20250–1104. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Persons wishing to inspect the comments are encouraged to call ahead (202–205–0895) to facilitate entrance into the building.

The directive is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives or at http://www.fs.fed.us/emc/nfma/index.htm.* You may request a compact disc (CD) copy of the interim directive by contacting Regis Terney by email (*rterney@fs.fed.us*), by phone at 1–866–235–6652 or 202–205–0895, or by mail at Regis Terney; Forest Service; U.S. Department of Agriculture; Mailstop 1104, EMC, 3 Central; 1400 Independence Avenue, SW.; Washington, DC 20050–1104.

**FOR FURTHER INFORMATION CONTACT:** Regis Terney, Planning Specialist, Ecosystem Management Coordination Staff, 202–205–0895.

**SUPPLEMENTARY INFORMATION:** The Forest Service Directive System consists of the Forest Service Manual (FSM) and the Forest Service Handbook (FSH), which contain the Agency's policies, practices, and procedures and serve as the primary basis for the internal management and control of programs and administrative direction to Forest Service employees. The directives for all agency programs are set out on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.*

The FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and execute programs and activities, while the FSH is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM.

On January 31, 2006, the Forest Service, U.S. Department of Agriculture, issued final agency directives for National Forest System Land Management Planning and published a notice of issuance of agency final directives in the **Federal Register** (71 FR 5124). The final agency directives included FSH 1909.12, chapter 10, ''Land Management Plan.'' On April 21, 2008, the Department replaced the planning rule for the National Forest System that it had issued in 2005 (2005 rule) (70 FR 1022,), as amended 71 FR 10837, March 3, 2006) with a new planning rule (73 FR 21468, 36 CFR part 219, subpart A). The 2008 planning rule provides broad programmatic direction in developing and carrying out land management planning. The rule explicitly directs the Chief of the Forest Service to establish planning procedures in the Forest Service Directive System (36 CFR 219.1(c)).

This interim directive makes necessary changes to FSH 1909.12, Land Management Planning Handbook, chapter 10, to clarify the procedures on writing plan components, on describing the monitoring program, and on considering individual resources to aid consistent interpretation and application of the direction by agency personnel. Our Washington Office review of several proposed land management plans showed that changes in procedural and technical details are necessary. These changes in procedural and technical details associated with carrying out the 2008 planning rule at 36 CFR part 219 are needed immediately for use by units beginning plan revisions or resuming plan revisions under the 2008 rule. Approximately 40 plan revision efforts are currently ongoing. The Forest Service expects 38 unit supervisors of the ongoing current plan revisions to use the 2008 planning rule to finish their plan revisions. In the next few months, many of these units will be developing plan components, monitoring programs, and considering individual resources in collaboration with the public. It is imperative that this direction is effective immediately so that units use the proper procedures.

### Overview

The interim directive guides agency employees to develop, amend, or revise land management plans that meet the

intent of the 2008 planning rule. The interim directive sets forth the common characteristics of all land management plans developed, amended and revised under the 2008 rule and adds new direction or clarifies existing direction.

Specifically, the interim directive focuses on writing plan components, describing the monitoring program, and considering individual resources. The interim directive sets forth direction that special areas are limited to existing categories established by Congress, the Department, or the Agency. The interim directive adds a list of the characteristics of standards; in addition, adds guidance on appropriate NEPA for standards. The interim directive sets forth direction for how to include other information besides plan components such as explanatory narrative and management approaches. The interim directive clarifies how projects or activities must be consistent with applicable plan components, as required by the NFMA (16 U.S.C. 1604(i)). The interim directive sets forth that the responsible official should use the ''NFS LMP Monitoring and Evaluation Framework'' when describing the monitoring program. The framework is available on the Agency Web site at *http://www.fs.fed.us/emc/met/*. The interim directive sets forth direction about soils. Finally, the interim directive clarifies direction for evaluation and establishing plan components for many individual resources including: Access, roads, trails, and travel management; air management; cultural resources; fire and fuels management; land use and special uses; minerals including energy minerals; paleontological resources; range management; recreation and scenery management; and water.

**Section-by-Section Discussion**

*Section 10.2 Objectives.* This section sets forth the objectives of this chapter. The interim directive removes obsolete direction on objectives and adds new direction on what employees should strive to accomplish by following direction in this chapter. This additional direction concerns adapting the plan to changing situations; carrying out the intent of the planning rule; including timber requirements in the content of the plan; and making wilderness recommendations, if appropriate. This section also reflects the nature of planning. The direction on adapting the plan to changing situations and the nature of planning is not new but is incorporated from the existing section 11 of chapter 10. Note that the heading ''Objectives'' here refers, not to the plan component but to the overall objectives of the chapter. ''Objectives'' is a standard section of Forest Service directives.

*Section 10.4 Responsibility.* This section describes the responsibilities of line officers. The interim directive adds direction to use a collaborative and participatory approach to plan development, plan amendment, and plan revision. This section sets forth responsibilities for about adapting the plan to changing situations, projects, and activities previously in section 11.

*Section 11 Plan Components and Other Plan Contents.* This section provides direction for writing plan components and other plan content. The interim directive removes direction about the nature of planning, about adapting the plan to changing situations, and about developing projects and activities because the direction was added to sections 10.2 and 10.4. Removes obsolete direction about developing budgets.

*Section 11.1 Plan Components.* This section describes appropriate desired conditions, objectives, guidelines, suitability of areas, special areas, and standards. The interim directive removes direction that a plan must include provisions required by 16 U.S.C. 1604 and 1611 and substitutes the requirement that the plan must include resource management provisions required by 36 CFR 219.9(b). The interim directive adds direction that plan components should not include explanatory narrative. The interim directive adds the definition of geographic areas. The interim directive removes obsolete reference to technical guide ''Developing Plan Components with Examples.''

*Section 11.1, Exhibit 01, Sample Plan Components.* The interim directive revised the examples of plan components that had been in this exhibit in the existing FSH chapter 10.

*Section 11.11 Desired Conditions.* The interim directive clarifies and adds direction so that desired conditions are written to meet the intent of the planning rule. The interim directive adds a list of the characteristics of desired conditions.

*Section 11.12 Objectives.* The interim directive clarifies and adds direction so that objectives are written to meet the intent of the planning rule. The interim directive adds a list of the characteristics of objectives.

*Section 11.13 Guidelines.* The interim directive clarifies and adds direction so that guidelines are written to meet the intent of the planning rule. The interim directive adds a list of the characteristics of guidelines.

*Section 11.14 Suitability of Areas.* The interim directive clarifies and adds direction so that identifications of suitability of areas are written to meet the intent of the planning rule. The interim directive adds that plans may identify areas as ''not generally suitable'' for uses. The interim directive adds that any substantive change in plan suitability for timber production may only be made by a plan amendment. The interim directive clarifies that identification in a plan of suitability is tentative and final suitability is determined when projects and activities are approved.

*Section 11.15 Special Areas.* The interim directive clarifies and adds direction so that identification of special areas meets the intent of the planning rule. The interim directive adds that the intent to include special areas in plans is not to expand special areas into new categories, but rather to assure that plans recognize existing categories established by Congress, the Department, or the Agency. The interim directive adds direction to deal with the situation where the responsible official lacks authority to designate a special area. The interim directive removed direction about proposed adjustments in national forest boundaries (now discussed in section 13.13f of the interim directive). The interim directive adds direction that a plan may establish other plan components for special areas. The interim directive adds direction that if an area does not meet the qualifications for a special area it may be identified as a management area.

*Section 11.5, Exhibit 01, Special Area—Designating Official and Guidance Cross-Reference.* The interim directive adds the following areas to the list of potential special areas: historical area, national heritage area, paleontological area, recreational area, scenic area, and zoological area. The interim directive clarifies the designation authority for these areas.

*Section 11.16 Standards.* This is a new section, which sets forth direction for writing standards in accordance with 36 CFR 219.7(a)(3). The interim directive adds a list of the characteristics of standards; adds guidance about actions that are not standards, and adds guidance on NEPA compliance and standards. Also, adds guidance on retaining, revising, or removing existing standards based on the **Federal Register** notice for ''National Environmental Policy Act Documentation Needed for Developing, Revising, or Amending Land Management Plans; Categorical Exclusion'' (71 FR 75481, December 15, 2006, page 75486).

*Section 11.2 Project and Activity Consistency with the Plan.* This section was section 11.4 in the existing chapter 10 of this handbook. The ''Plan Consistency Template'' has also been moved to this section, from section 11.4 in the existing chapter. This section modifies the wording to clarify how projects or activities must be consistent with applicable plan components similar to the tentative wording set out in the preamble to the final rule, Volume 73 of the **Federal Register**, page 21491, April 21, 2008. This section clarifies the previous direction and adds new wording in the template that explains how projects and activities are consistent with applicable components, including standards.

*Section 11.3 Possible Actions.* This section was section 11.2 in the prior chapter 10 of this handbook. This section modifies the wording of the prior section to meet the intent of section 6(f)(2)(g) of the National Forest Management Act (16 U.S.C. 1604(f)(2)), which states plans shall ''be embodied in appropriate written material, * * * reflecting proposed and possible actions, including the planned timber sale program and the proportion of timber harvest within the unit necessary to fulfill the plan.''

*Section 11.4 Plan Guidance for Special Conditions or Situations.* This section sets forth the guidance for special conditions or situations that was previously in section 11.3.

*Section 11.5 Other Information.* This new section sets forth direction for including ''other information'' in plans in addition to plan components such as: explanatory narrative, general management principles, management approaches, management challenges, referenced material, or roles and contributions.

*Section 11.6 Management Approaches.* This new section sets forth direction for including ''management approaches'' in plans.

*Section 12 Monitoring.* The interim directive clarifies and adds additional direction about using the monitoring and evaluation framework described in the ''NFS LMP Monitoring and Evaluation Framework'' available on the Agency Web site at *http://www.fs.fed.us/emc/met/.* The interim directive removes the requirement that monitoring must ''address the minimum timber management requirements of the National Forest Management, for example, restocking, cut block size and shape, and watershed protection.'' The interim directive adds the requirement that monitoring should focus on where there is substantial uncertainty over the effectiveness of a plan component in contributing to the achievement or maintenance of desired conditions.

*Section 12, Exhibit 01, Example of a Subset of a Monitoring Program for a Plan.* The interim directive clarifies the examples of desired conditions and questions in the example of a monitoring program in a plan.

*Section 12.1 Selecting Monitoring Questions.* This section had been captioned ''Monitoring Questions'' in the existing chapter 10 of this handbook. The interim directive changes the discussion from screening monitoring questions to selecting monitoring questions.

*Section 12.2 Performance Measures.* The interim directive clarifies the discussion of performance measures and adds a definition of performance measures. The interim directive adds that measures should be based on standardized data in corporate data systems or other official sources.

*Section 12.3 Documents Associated with the Monitoring Program.* This section had been captioned ''Documenting the Monitoring Program'' in the existing chapter 10 of this handbook. The interim directive clarifies the description of the annual evaluation report, comprehensive evaluation report, monitoring guide, and annual monitoring work plan.

*Section 13 Consideration of Individual Resources.* The interim directive clarifies the references to direction in other chapters of this handbook for considering social, economic, and ecological sustainability; timber; wilderness; and wild and scenic rivers. To simplify the discussion and to be clear, the interim directive removes the obsolete discussion of three phases of the planning process: initial evaluation to determine the need for change, evaluation of plan components, and integration into the plan. Direction about the responsible official identifying and selecting the parameters for evaluation has been added to section 13.1.

*Section 13.1 Resource Considerations.* The interim directive adds direction to evaluate sustainability within an area large enough to consider broad-scale social, economic, and ecological factors and trends over large landscapes based on policy of FSM 1920.3.

*Section 13.11a Paleontological Resources.* The interim directive revised the discussion of paleontological resources from focus on special areas to a focus on desired conditions and objectives for paleontological resources.

*Section 13.11b Air Management.* The interim directive revises caption from ''Air'' to ''Air Management'' and clarifies the direction for evaluation and establishing plan components for air management.

*Section 13.11 Water.* The interim directive clarifies direction for evaluation and establishing plan components for water.

*Section 13.11d Soil.* This new section codes and sets forth direction for evaluation and establishing plan components for soil.

*Section 13.12a Fire and Fuels Management.* This section had been captioned ''Fire, Aviation, and Fuels Management'' in the existing chapter 10 of this handbook. The interim directive clarifies direction for evaluation and establishing plan components for fire and fuels management. The interim directive adds examples of desired conditions and guidelines for fire and fuels management.

*Section 13.12b Large Fire Cost Containment.* The interim directive clarifies direction for large fire cost containment. The interim directive removes reference to wildland fire situation analysis and wildland fire implementation plan.

*Section 13.12c Wildlife and Fisheries.* No change to this section.

*Section 13.13a Recreation and Scenery Management.* This section had been captioned ''Recreation and Scenery'' in the existing chapter 10 of this handbook. The interim directive clarifies direction for recreation and scenery management in the planning process.

*Section 13.13b Cultural Resources.* The interim directive revises caption from ''Heritage Resources'' to ''Cultural Resources.'' The interim directive clarifies direction for cultural resources in the planning process.

*Section 13.13c Minerals Including Energy Minerals.* This section was section 13.3d of the existing chapter 10 of this handbook. The interim directive adds direction for establishing desired conditions, objectives, and guidelines for minerals. The interim directive clarifies existing direction about recognizing minerals in the planning process previously contained at section 13.13d.

*Section 13.13d Range Management.* This section was section 13.3e of the existing chapter 10 of this handbook. The interim directive clarifies existing direction about range management and wild horse-burro territory boundaries in the planning process.

*Section 13.13e Access, Roads, Trails, or Travel Management.* This section was section 13.13f of the existing chapter 10 of this handbook. The interim directive clarifies existing direction about access, roads, trails, and

travel management in the planning process previously contained at section 13.13f. The interim directive adds direction related to the requirement in the travel management regulations, at 36 CFR 212.5(b) to identify a minimum road system to be documented in the forest transportation atlas.

*Section 13.13f Land Use and Special Uses.* This section was section 13.3g of the existing chapter 10 of this handbook. The interim directive clarifies existing direction about land use and special uses in the planning process previously contained at section 13.13g. The interim directive adds requirement that if the administrative unit proposes to recommend adjustment in the national forest boundary that Washington Office notice is required.

*Section 13.2.* The interim directive removes this section on individual resource analytical tools because the information about tools has been moved to appropriate places within section 13.

**Regulatory Certifications**

*Regulatory Impact*

This interim directive has been reviewed under USDA procedures and Executive Order 12866, Regulatory Planning and Review. It has been determined that this is not a significant action. This interim directive to clarify agency guidance would not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This interim directive would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this interim directive would 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 proposed action is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this proposed action has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this proposed action would not have a significant economic impact on a substantial number of small entities as defined by the act because it will not impose recordkeeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market.

*Environmental Impact*

This interim directive to Forest Service Handbook (FSH) 1909.12, chapter 10, clarifies direction and guides agency employees on writing plan components, on describing the monitoring program, and on considering individual resources. This interim directive amends Forest Service Handbook 1902.12, chapter 10. The intended effect of issuance of this interim directive is to provide consistent overall guidance to Forest Service line officers and employees in developing, amending, or revising land management plans for units of the National Forest System about land management planning. Title 36, Code of Federal Regulations, section 220.6(d)(2) excludes from documentation in an environmental assessment or environmental impact statement ''Rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions'' (73 FR 43084, July 24, 2008). The Agency's conclusion is that this interim directive, which simply sets out guidance for the planning process and makes no resource management decisions, falls within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

*Unfunded Mandates*

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 Agency has assessed the effects of this interim directive on State, local, and tribal governments and the private sector. This interim directive would 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.

*Controlling Paperwork Burdens on the Public*

This interim directive does not contain any additional recordkeeping or reporting requirements associated with National Forest System land management planning or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. The Office of Management and Budget (OMB) (Number 0596–00158) has approved the information collection associated with the submitting an objection under the planning rule (36 CFR part 219). Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

*Conclusion*

This interim directive provides consistent interpretation of the planning rule for line and staff officers, and interdisciplinary teams. Therefore, the Agency can fulfill its commitment to improve public involvement and decisionmaking associated with developing, amending, or revising a land management plan.

The full text of this handbook is available on the World Wide Web at *http://www.fs.fed.us./im/directives.* Single paper copies are available upon request from the address and telephone numbers listed earlier in this notice as well as from the nearest regional office, the location of which are also available on the Washington Office headquarters homepage on the World Wide Web at *http://www.fs.fed.us.*

Dated: October 9, 2008.

**Abigail R. Kimbell,**

*Chief, Forest Service.*

[FR Doc. E8–26939 Filed 11–12–08; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Northeast Region Surfclam and Ocean Quahog Individual Transfer Quota (ITQ) Administration.

*OMB Control Number:* 0648–0240.

*Form Number(s):* None.

*Type of Request:* Regular submission.

*Burden Hours:* 45.

*Number of Respondents:* 205.

*Average Hours Per Response:* Individual Transfer Quota (ITQ) requests, 5 minutes; and applications to shuck surfclams at sea, 30 minutes.

*Needs and Uses:* Federally-permitted fishing vessels participating in the Atlantic surfclam or ocean quahog ITQ fishery in the Northeast Region of the U.S. are subject to certain information collection requirements. These requirements allow NMFS to process requests for the transfer of surfclam or

ocean quahog quota shares or authorization to shuck surfclams or ocean quahogs at sea. The regulations governing the Atlantic surfclam and ocean quahog fishery including the collections of information are found in 50 CFR part 648, subpart E.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: November 6, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8–26873 Filed 11–12–08; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Aleutian Islands Pollock Fishery Requirements.

*OMB Control Number:* 0648–0513.

*Form Number(s):* None.

*Type of Request:* Regular submission.

*Burden Hours:* 134.

*Number of Respondents:* 6.

*Average Hours Per Response:* Annual fishery letter to NMFS re participants, 16 hours; copy of NMFS approval to participants, 5 minutes; and appeals, 20 hours.

*Needs and Uses:* The Consolidated Appropriations Act of 2004 requires the Aleutian Islands pollock fishery to be allocated to the Aleut Corporation for economic development of Adak, Alaska. The statute requires the Aleut Corporation's approval for participants and limits participation to American Fisheries Act qualified entities and vessels less than or equal to 60 ft overall length with certain endorsements. The qualified entities/vessels are nominated by the corporation and subsequently approved by the National Marine Fisheries Service (NMFS) to participate in the fishery.

*Affected Public:* Business or other for-profit organizations; individuals and households.

*Frequency:* Annually and on occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov)*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: November 6, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8–26874 Filed 11–12–08; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–849]**

### Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China: Preliminary Results of New Shipper Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** November 13, 2008.

**SUMMARY:** The Department of Commerce (''the Department'') is currently conducting a new shipper review of the antidumping duty order on cut–to-length carbon steel plate (''CTL Steel Plate'') from the People's Republic of China (''PRC'') covering the period November 1, 2006, through October 31, 2007. This new shipper review covers one producer/exporter.

We preliminarily determine that the new shipper has made sale(s) below normal value (''NV''), and the producer/exporter combination is entitled to a separate rate in this new shipper review. If these preliminary results are adopted in our final results of this new shipper review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on entries of subject merchandise during the period of review (''POR'') for which the importer specific assessment rates are above *de minimis*. Interested parties are invited to comment on the preliminary results. We intend to issue the final results no later than 90 days from the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Demitrios Kalogeropoulos, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–2623.

**SUPPLEMENTARY INFORMATION:**

### Background

The antidumping duty order on CTL Steel Plate from the PRC was published on October 21, 2003. *See Suspension Agreement on Certain Cut–to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order*, 68 FR 60081 (October 21, 2003).

On November 30, 2007, we received a timely request for a new shipper review from Hunan Valin Xiangtan Iron & Steel Co., Ltd. (''Valin Xiangtan'') in accordance with 19 CFR 351.214(d)(2). In its request, Valin Xiangtan certified that it produced and exported the CTL Steel Plate on which it based its request for a new shipper review. Pursuant to 19 CFR 351.214(b)(2)(iv), Valin Xiangtan submitted documentation establishing the date on which the merchandise was first shipped for export to the United States, the volume of that first shipment, and the date of the first sale to an unaffiliated customer in the United States.

On December 27, 2007, the Department initially determined that Valin Xiangtan did not meet the requirements under which the Department can initiate a new shipper review. On January 7, 2008, upon further review of subsequent information submitted by the requester, the Department reconsidered its decision and initiated the new shipper review on January 17, 2008. *See Certain Cut–to-Length Carbon Steel Plate From the People's Republic of China; Initiation of New Shipper Review*, 73 FR 3236 (January 17, 2008). On January 14,

2008, we issued the antidumping duty questionnaire to Valin Xiangtan. We issued supplemental questionnaires to Valin Xiangtan in April, May, and September 2008. On April 18, 2008, the Department extended the POR by one month to enable the Department to capture the entries corresponding to the respondent's sales to the United States.

**Period of Review**

The POR covers November 1, 2006, through October 31, 2007.

**Affiliation**

On March 25, 2008, Nucor Corporation (''Nucor'') submitted comments regarding Valin Xiangtan's eligibility for a new shipper review and separate rate status. Specifically, Nucor argued that the Department should rescind the new shipper review because Valin Xiangtan is affiliated with exporters that shipped to the United States during the original period of investigation (''POI''). Because one of Valin Xiangtan's corporate parents is wholly owned by the Hunan–Supervision and Administration Commission (''Hunan SASAC''), Nucor contends that the Hunan SASAC and Valin Xiangtan are affiliated by an excess of five percent ownership. Since the PRC–wide entity had shipments of subject merchandise during the POI, and because the Hunan SASAC, as an organ of the central–Supervision and Administration Commission (''central SASAC''), is the same as the PRC–wide entity, Nucor argued that Valin Xiangtan is affiliated with a producer/exporter that exported subject merchandise to the United States during the POI.

Nucor also argued that affiliation exists between Valin Xiangtan and two respondents in the original investigation (*i.e.*, AISCO/Anshan International/Sincerely Asia Ltd. (collectively ''Anshan Steel'') and Bao/Baoshan International Trade Corp/Bao Steel Metals Trading Corp. (collectively ''Baoshan Steel'')). Nucor contends these two companies' financial statements demonstrate that they are directly owned by and under the control of the central SASAC. Therefore, Nucor argued, Valin Xiangtan, through the Hunan SASAC and the central SASAC, is affiliated with producers/exporters that exported subject merchandise to the United States during the POI.

On October 21, 2008, in its pre–preliminary comments submission, Valin Xiangtan argued the Department has reviewed similar allegations in other proceedings and rejected them.[1] Valin Xiangtan contended there is no rationale to justify the Department reversing its long–standing practice of allowing new shippers that are state–owned to request and receive reviews.

For the preliminary results, in response to Nucor's claims that Valin Xiangtan is state–owned and therefore affiliated with Anshan Steel and Baoshan Steel, we note first that the Department has considered and granted NSR requests in the past where the requesting firm was state–owned (''owned by the whole people'').[2] In this case, we determine that Valin Xiangtan is not affiliated with Anshan Steel and Baoshan Steel. In order to find these companies affiliated, section 771(33)(F) of the Act requires more than some degree of commonality of state ownership interest between them. Rather, to make a finding of affiliation between two or more entities, section 771(33)(F) of the Act requires the Department to find ''common control.'' Otherwise, all state–owned companies would automatically be found affiliated. Further, consistent with long–standing policy and practice,[3] we find that ownership by a government entity such as the Hunan SASAC or central SASAC, in and of itself, is not germane to Valin Xiangtan's eligibility for a new shipper review. In the instant case, as discussed in the ''Separate Rates'' section below, there is no evidence that the Hunan SASAC or central SASAC exerted control over Valin Xiangtan's export activities. In other words, absent evidence of such de jure or de facto control, government ownership alone does not warrant denying Valin Xiangtan eligibility for a new shipper review. Indeed, the Department has in previous proceedings granted separate rates to companies that were wholly owned by government entities when evidence of actual government control over export activities was not present.[4]

**Collapsing of Affiliated Producers**

On May 23, 2008, Nucor submitted comments regarding Valin Xiangtan's affiliated producers. Nucor urged the Department to conduct a full collapsing analysis on all of the companies with a relationship to Valin Xiangtan or its owners in addition to all of the subsidiaries of each of these entities. Nucor argued that any steel producer with a rolling mill would be capable of producing subject merchandise with only minor retooling, thus satisfying the collapsing criteria under 19 CFR 351.401(f)(1).

For the preliminary results, we have determined not to collapse Valin Xiangtan with any of its affiliates. We have determined that based on record evidence of the four affiliates we identified as possible candidates for a collapsing analysis, two do not have any production capabilities at all, and the remaining two produce steel wire and steel rod, respectively.[5] Further, we have determined that neither of the steel producing affiliates has a rolling mill,[6] and it would be cost prohibitive (*i.e.*, require substantial retooling) to build a rolling mill capable of producing subject merchandise. Thus the collapsing criteria under 19 CFR 351.401(f)(1) are not satisfied. In determining whether there is a significant potential for manipulation, as contemplated by 19 CFR 351.401(f)(2), the Department considers the totality of the circumstances of the situation and may place more reliance on some factors than others. In the instant case, because Valin Xiangtan's affiliates do not produce subject merchandise and do not have the capability to produce subject merchandise without a substantial retooling, the totality of the circumstances here shows that there is not a significant potential for the manipulation of price or production. Therefore, for the preliminary results, we have not collapsed Valin Xiangtan with its affiliates.

**Scope of the Order**

The products covered by the order include hot–rolled carbon steel universal mill plates (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not

[1] Citing previous cases such as *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (''Diamond Sawblades'') and accompanying Issues and Decision Memorandum at Comment 9.

[2] *See, e.g., Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review*, 63 FR 3085 (January 21, 1998) (''*Pure Magnesium*'').

[3] *See, e.g., Pure Magnesium and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of New Shipper Reviews*, 66 FR 59569 (November 29, 2001)

[4] Diamond Sawblades, 71 FR 29303 at Comment 16.

[5] *See* the Department's Memorandum to the File entitled, ''Cut-To-Length Carbon Steel Plate from the People's Republic of China: Analysis of the Preliminary Determination Margin Calculation for Valin Xiangtan,'' dated concurrent with this notice (''Valin Xiangtan Preliminary Analysis Memorandum'').

[6] *See* Valin Xiangtan's second supplemental submission dated October 16, 2008, at 3.

painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot–rolled carbon steel flat–rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in the order are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. Excluded from the order is grade X–70 plate. Also excluded from the order is certain carbon cut–to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM, and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

**Separate Rates**

In proceedings involving non–market economy (''NME'') countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both de jure and de facto government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate–rate analysis is not necessary to determine whether it is independent from government control.

*A. Separate–Rate Recipient*

Valin Xiangtan is a wholly Chinese–owned company.[7] Therefore, the Department must analyze whether Valin Xiangtan can demonstrate the absence of both *de jure* and *de facto* government control over its export activities.

*a. Absence of De Jure Control*

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See Sparklers, 56 FR at 20589 at Comment 1.

In this case, Nucor, a domestic interested party, argued that Valin Xiangtan should not receive a separate rate because the State–owned entity (*i.e.*, the central SASAC) exercised de jure control over Valin Xiangtan during the POR.[8] Among other things, Nucor alleged that the existence of a SASAC demonstrates a recentralization of control over companies in which it maintains ownership, and that because of the nature of the central SASAC's authority Valin Xiangtan cannot establish the absence of *de jure* control. We solicited additional information from Valin Xiangtan regarding Nucor's allegations as they relate to the Department's criteria in determining whether there is *de jure* control by the PRC government over a company's export activities.[9] In response, Valin Xiangtan submitted copies of relevant laws under which it operates including the Interim Measures for the Supervision and Administration of State–owned Assets of the Enterprises (''Interim Measures'') and the Company Law of the People's Republic of China (''Company Law''). After examining record evidence, we found no indication that these laws granted *de jure* government control.[10] Moreover, review of Valin Xiangtan's business license indicates an absence of restrictive stipulations.[11] Further, under Company Law, in addition to Valin Xiangtan's Articles of Association, indicates that control rests with the company's executive director and not the PRC government.[12]

The evidence provided by Valin Xiangtan supports a preliminary finding of *de jure* absence of government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. *See, e.g.*, Valin Xiangtan's section A submissions dated March 5, 2008, and its supplemental questionnaire responses dated March 25, 2008, and October 18, 2008.

*b. Absence of De Facto Control*

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

[7] *See* Valin Xiangtan's business license in its Section A response, dated March 5, 2008, at Exhibit A-4.1.

[8] *See* Nucor's March 25 and May 23, 2008, submissions regarding its comments on the section A and supplemental section A questionnaire responses of Valin Xiangtan.

[9] *See*, e.g., Valin Xiangtan's March 25, 2008, and October 18, 2008, supplemental questionnaire responses.

[10] *See* Valin Xiangtan's March 25, 2008, submission.

[11] *See* Valin Xiangtan's March 5, 2008, submission at Exhibit 4.1

[12] *See* Valin Xiangtan's April 25, 2008, supplemental submission at Exhibit A-23 Article 11.

In this case Nucor alleged that Valin Xiangtan should not receive a separate rate because there is indirect *de facto* control over Valin Xiangtan by the PRC government. *See* Nucor's March 25, 2008, submission regarding its comments on Valin Xiangtan eligibility for a new shipper review and separate rate status; and Nucor's May 27, 2008, submission regarding Valin Xiangtan's supplemental section A Questionnaire Response. Among other things, Nucor alleged that the authorities of the central SASAC as outlined in the Interim Measures demonstrate control over the companies in which the central SASAC invests. We solicited additional information from Valin Xiangtan regarding Nucor's allegations as they relate to the Department's criteria in determining whether there is *de facto* control by the PRC government over a company's export activities.[13] In its responses, Valin Xiangtan reported that it sets its own export prices and has the authority to sign and negotiate its sales contracts without review or guidance from any governmental organization (*e.g.*, the sales contract and correspondence between it and its U.S. customer). *See* Valin Xiangtan's section A supplemental submission dated April 28, 2008, at Exhibits A–24 and A–25. Valin Xiangtan further submitted evidence indicating autonomy in the process by which its managers and directors were elected to their positions (*e.g.*, Valin Xiangtan's Articles of Association) *See* Valin Xiangtan's section A supplemental submission dated April 28, 2008, at Exhibit A–33. The mere fact that the Hunan SASAC has shareholder ownership in companies that have shareholder ownership in Valin Xiangtan does not in itself demonstrate that Valin Xiangtan is controlled by the PRC central government.[14] Indeed, the Department has in the past granted separate rates to companies that were wholly owned by government entities when evidence of actual government control was not present.[15] In this case, we have found no record evidence indicating that the Hunan SASAC exercised control over Valin Xiangtan's export activities or the disposition of its profits during the POR.[16] Therefore, we have determined that the roles and duties undertaken by the Hunan SASAC do not confer *de facto* government control over the day–to-day activities and decisions regarding Valin Xiangtan's export activities. Furthermore, Valin Xiangtan has supported its claim that it negotiates its own contracts and does not need approval from any government authority before making a sale (*i.e.*, the sales contract and correspondence between Valin Xiangtan and its U.S. customer).[17]

The evidence placed on the record of this new shipper review by Valin Xiangtan demonstrate an absence of *de jure* and *de facto* government control with respect to its exports of the merchandise under review, in accordance with the criteria identified in *Sparklers and Silicon Carbide*. Accordingly, the Department has preliminarily determined that Valin Xiangtan is eligible for a separate rate because it has demonstrated an absence of government control both in law and in fact.

**Bona Fide Sales Analysis**

In evaluating whether or not sales are commercially reasonable, and therefore *bona fide*, the Department has considered, inter alia, such factors as: (1) the timing of the sale; (2) the price and quantity of the sale; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's–length basis. *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246 (CIT 2005) (''*TTPC*'') at 1249–1250, citing *Am. Silicon Techs. v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000). Therefore, the Department examines a number of factors, all of which may speak to the commercial realities surrounding the sale of subject merchandise. While some *bona fides* issues may share commonalities across various cases, each case is company–specific and the analysis may vary with the facts surrounding each sale. *See, e.g., Certain Preserved Mushrooms From the People's Republic of China: Final Results and Partial Rescission of the New Shipper Review and Final Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 68 FR 41304 (July 11, 2003). The weight given to each factor investigated will depend on the circumstances surrounding the sale. *See TTPC*, 366 F. Supp at 1263.

For the reasons stated below, we preliminarily find that Valin Xiangtan's reported U.S. sales during the POR appear to be *bona fide* sales, as required by 19 CFR 351.214(b)(2)(iv)(c), based on the totality of the facts on the record. Specifically, we find that the unit prices for Valin Xiangtan's sales were comparable to the unit values of other U.S. imports of CTL Steel Plate from the PRC during the POR. Further we find that the quantity of Valin Xiangtan's sales is commercially reasonable.[18] Furthermore, we found no unusual circumstances surrounding the sales (*e.g.*, no unusual freight terms). Therefore, for the reasons mentioned above, the Department preliminarily finds that Valin Xiangtan's U.S. sale during the POR is a *bona fide* commercial transaction.

**Non–Market Economy Country**

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In the investigation of certain lined paper products from the PRC, the Department examined the PRC's market status and determined that NME status should continue for the PRC.[19] In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (''the Act''), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006). The presumption of the NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of this new shipper review. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

**Surrogate Country**

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's factors of production

[13] *See, e.g.*, Valin Xiangtan's section A submission dated March 5, 2008, and its supplemental questionnaire responses dated March 25, 2008, and October 18, 2008.

[14] *See, e.g., Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 7.

[15] *See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 16.

[16] *See, e.g.*, Valin Xiangtan's section A response dated March 5, 2008 at pages 14 through 16.

[17] *See* Valin Xiangtan's section A supplemental submission dated April 28, 2008 at Exhibits A-24 and A-25.

[18] For further information, *see* the Department's memorandum entitled ''2006-2007 New Shipper Review of the Antidumping Duty Order on CTL Steel from the People's Republic of China: Bona Fide Analysis of Hunan Valin Xiangtan Iron § Steel Company Ltd.,'' dated concurrent with this notice.

[19] *See* the Department's memorandum entitled, ''Antidumping Duty Investigation of Certain Lined Paper Products from the People's Republic of China (''China'') China's status as a non-market economy (''NME''),'' dated August 30, 2006. This document is available online at: http:// ia.ita.doc.gov/ download/prc-nmestatus/ prc-lined-paper-memo-08302006.pdf.

(''FOPs''), valued in a surrogate market economy (''ME'') country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. For a detailed discussion of the surrogate values (''SVs'') used in this proceeding, *see* the ''Factor Valuations'' section below and the Department's memorandum to the file entitled, ''New Shipper Review of Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China: Factor Valuations for the Preliminary Determination,'' dated concurrently with this notice (''Factor Valuation Memorandum'').

On January 14, 2008, the Department determined that India, Indonesia, Thailand, the Philippines, and Colombia are countries comparable to the PRC in terms of economic development.[20] On January 16, 2008, the Department requested comments on the selection of a surrogate country from the interested parties in this new shipper review. Valin Xiangtan submitted comments on February 6, 2008, providing information regarding CTL Steel Plate production in Indonesia, Thailand and India.

Customarily, we select an appropriate surrogate country from the Policy Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is at a level of economic development comparable to that of the PRC; is a significant producer of comparable merchandise (*i.e.*, CTL Steel Plate); and has publicly available and reliable data.[21] Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate country selection.[22] We obtained and relied upon publicly available information wherever possible. In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in an antidumping new shipper review, interested parties may submit publicly available information to value FOPs under 19 CFR 351.408(c) within 20 days after the date of publication of these preliminary results.[23]

**Fair Value Comparisons**

To determine whether sales of the subject merchandise by Valin Xiangtan to the United States were made at prices below NV, we compared its export prices to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

**Export Price**

We used export price (''EP'') methodology in accordance with section 772(a) of the Act because the subject merchandise was first sold prior to importation by the exporter outside the United States directly to an unaffiliated purchaser in the United States, and constructed export price was not otherwise indicated.

We calculated EP based on the packed delivery duty paid ex–docks delivered prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland rail and barge freight from the plant to the port of exportation, domestic brokerage, marine insurance, U.S. Customs duty, U.S. brokerage and handling charges, other U.S. transportation expense, international freight expense, *etc.*) in accordance with section 772(c)(2)(A) of the Act,[24] Where foreign inland freight, foreign brokerage and handling fees and foreign marine insurance were provided by PRC service providers or paid for in renminbi, we based those charges on surrogate value rates from India. *See* ''Factor Valuations'' section below for further discussion of surrogate value rates.

In determining the most appropriate SVs to use in a given case, the Department's stated practice is to use period–wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly available data.[25] The data we used for brokerage and handling expenses fulfill all of the foregoing criteria except that they are not specific to the subject merchandise. There is no information of that type on the record of this new shipper review. The Department used two sources to calculate a surrogate value for domestic brokerage expenses: (1) data from the January 9, 2006, public version of the Section C questionnaire response from Kejriwal Paper Ltd. (''Kejriwal'') in the investigation of certain lined paper products from India;[26] and (2) data from Agro Dutch Industries Ltd. in the administrative review of certain preserved mushrooms from India.[27] Because these values were not concurrent with the POR of this new shipper review, we adjusted these rates for inflation using the Wholesale Price Indices (''WPI'') for India as published in the International Monetary Fund's *International Financial Statistics*, available at http://ifs.apdi.net/imf, and then calculated a simple average of the two companies' brokerage expense data.[28] *See* Factor Valuation Memorandum at Attachment 9.

**Normal Value**

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home–market

[20] *See* the Department's Office of Policy memorandum entitled, ''New Shipper Review of the Antidumping Duty Order on Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China (PRC): Request for a List of Surrogate Countries,'' dated January 14, 2008 (''Policy Memorandum'').

[21] *See* the Department's memorandum entitled, ''New Shipper Review of the Antidumping Duty Order of Cut-To-Length Steel Plate from the People's Republic of China: Selection of a Surrogate Country,'' dated February 11, 2008 (''Surrogate Country Memorandum'').

[22] *See* Surrogate Country Memorandum.

[23] In accordance with 19 CFR 351.301(c)(2), for the final results of this review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(2) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional information previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(2). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part*, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[24] For a detailed description of all adjustments, *see* Valin Xiangtan Preliminary Analysis Memorandum.

[25] *See, e.g., Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

[26] Kejriwal was a respondent in the certain lined paper products from India investigation for which the period of investigation was July 1, 2004, to June 30, 2005. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006) (''CLPP'') (unchanged in final determination).

[27] *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005) (unchanged in final results).

[28] *See, e.g., Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 72 FR 52073, 52076 (September 12, 2007) (unchanged in final results).

prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. The Department's questionnaire requires that the respondent provide information regarding the weighted–average FOPs across all of the company's plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology ensures that the Department's calculations are as accurate as possible.[29]

For purposes of calculating NV, we valued the PRC FOPs in accordance with section 773(c)(1) of the Act. The FOPs include: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by Valin Xiangtan for materials, energy, and labor. *See* section 773(c)(3) of the Act.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find appropriate SVs to value FOPs, but when a producer sources an input from a market economy and pays for it in market–economy currency, the Department will normally value the factor using the actual price paid for the input. *See* 19 CFR 351.408(c)(1); *see also Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994). In examining SVs, we selected, where possible, the publicly available value, which was an average non–export value, representative of a range of prices within the POR or most contemporaneous with the POR, product–specific, and tax–exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004) (unchanged in final determination). For a detailed explanation of the methodology used to calculate SVs, *see* Factor Valuation Memorandum.

Valin Xiangtan reported that during the production process of CTL Steel Plate, it generated certain by–products that were recycled and resold during the POR.[30] However, Valin Xiangtan failed to provide the requested documentation for each sale of its by–products and each transaction of recycled by–product.[31] Nor did Valin Xiangtan provide an explanation as to why it did not provide the requested documentation.[32] In the original and supplemental questionnaires, we instructed Valin Xiangtan to provide evidence for the full amount of by–products that were sold or returned to production. Valin Xiangtan provided incomplete documentation that amounted to a non–response to this request. For example, Valin Xiangtan provided one by–product sales invoice for each type of by–product sold, which did not reconcile to its reported by–product sales.[33] Further, Valin Xiangtan provided inadequately translated screen prints from its internal accounting system for some recycled by–products.[34] These screen prints were also not reconciled to Valin Xiangtan's reported recycled product. The amount of products reused or sold during the POR is an integral part of the factor calculation for by–products.[35] *See Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from Belarus*, 68 FR 9055 (February 27, 2003), and accompanying Issues and Decision Memorandum at Comment 3 (''The Department allows such credits, but only for the amount of the by–product/recovery actually sold or reused.''); *Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 68 FR 27530 (May 20, 2003), and accompanying Issues and Decision Memorandum at Comment 6; and *Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7515 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2. Because Valin Xiangtan has not provided the Department with the requested information in order to determine whether Valin Xiangtan is entitled to its claimed offsets, for the preliminary results, we have determined to not grant any of Valin Xiangtan's claimed offsets. For further details, *see* Valin Xiangtan Preliminary Analysis Memorandum.

**Factor Valuations**

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Valin Xiangtan for the POR. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available Indian SVs. In selecting the SVs, we considered the quality, specificity, and contemporaneity of the data.[36] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the U.S. Court of Appeals for the Federal Circuit decision in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). In those instances where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the SVs using, where appropriate, the Indian WPI, as published in the *International Financial Statistics* of the International Monetary Fund. For a detailed description of all SVs used for respondent, *see* the Factor Valuation Memorandum.

Except where discussed below, we valued raw material inputs using November 2006 through October 2007, weighted–average unit import values derived from the Monthly Statistics of the Foreign Trade of India, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India and compiled by the World Trade Atlas (''WTA''), available at http:www.gtis.com/wta.htm. The Indian WTA import data is reported in rupees and is contemporaneous with the POR.[37] Indian SVs denominated in Indian rupees were converted to U.S. dollars using the applicable daily exchange rate for India for the POR. *See* http://www.ia.ita.doc.gov/exchange/index.html.

[29] *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China*, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 19.

[30] *See* Valin Xiantan's March 14, 2008, section D submission at 17 and Exhibit D-6

[31] *See* Valin Xiantan's section D submission at 17 and Exhibit D-6; and its supplemental section D response at 6 through 7 and Exhibits D-15, D-16, and D-19 through D-25, dated March 14 and May 28, 2008, respectively.

[32] *See id.*

[33] *See* Valin Xiantan's supplemental section D response at 6 through 7 and Exhibit D-20 dated May 28, 2008.

[34] *See* Valin Xiantan's supplemental section D response at 6 through 7 and Exhibits D-23 and D-24 dated May 28, 2008.

[35] *See id.*

[36] *See, e.g., Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9.

[37] *See* Factor Valuation Memorandum at Attachments 1 and 3.

Valin Xiangtan reported that certain of its reported raw material inputs were sourced from an ME country and paid for in ME currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities), we use the actual price paid by respondent for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[38] Valin Xiangtan's reported information demonstrates that it has both significant and insignificant quantities of certain raw materials purchased from ME suppliers. Where we found ME purchases to be of significant quantities, in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,[39] we used the actual purchases of these inputs to value the inputs. Accordingly, we valued Valin Xiangtan's inputs using the ME prices paid for in ME currencies for the inputs where the total volume of the input purchased from all ME sources during the POR exceeds or is equal to 33 percent of the total volume of the input purchased from all sources during the period.[40] Where the quantity of the reported input purchased from ME suppliers was below 33 percent of the total volume of the input purchased from all sources during the POI, and were otherwise valid, we weight averaged the ME input's purchase price with the appropriate surrogate value for the input according to their respective shares of the reported total volume of purchases.[41] Where appropriate, we added freight to the ME prices of inputs. For a detailed description of the actual values used for the ME inputs reported, *see* Valin Xiangtan Preliminary Analysis Memorandum.

Where we could not obtain publicly available information contemporaneous with the POR with which to value factors, we adjusted the SVs for inflation using the WPI for India. *See* Factor Valuation Memorandum.

Furthermore, with regard to the WTA Indian import–based SVs, we have disregarded prices from NME countries[42] and those we have reason to believe or suspect may be subsidized, because we have found in other proceedings that the exporting countries maintain broadly available, non–industry-specific export subsidies and, therefore, there is reason to believe or suspect all exports to all markets from such countries may be subsidized.[43] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. No. 576 100th Cong., 2. Sess. 590–91 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we excludes export prices from Indonesia, South Korea, Thailand, and India when calculating the Indian import–based SVs. *See* Factor Valuation Memorandum. Finally, we excluded imports that were labeled as originating from an ''unspecified'' country from the average value, because we could not be certain that they were not from either an NME or a country with general export subsidies.

We used Indian transport information to value the inland truck, rail, and waterway freight cost of the raw materials. The Department determined the best available information for valuing truck freight to be from the following website: http://www.infobanc.com/logistics/logtruck.htm. The logistics section of this source contains inland truck freight rates from four major points of origin to 25 destinations in India. The Department obtained inland truck freight rates updated through September 2008 from each point of origin to each destination and averaged the data accordingly. Since this value is not contemporaneous with the POI, we deflated the rate using the WPI. *See* Factor Valuation Memorandum. The Department determined the best available information for valuing rail freight to be from http://www.indianrailways.gov.in. To value waterway freight, we used an Indian domestic ship rate from Indian Waterways Authority. For data that were not contemporaneous with the POR, we adjusted the rates for inflation using WPI, where applicable.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country–wide, publicly available information on tax–exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POR, we inflated the values using the WPI. *See* Factor Valuation Memorandum.

The Department valued water using data from the Maharashtra Industrial Development Corporation (www.midcindia.org) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the ''inside industrial areas'' usage category and 193 for the ''outside industrial areas'' usage category. Because the value was not contemporaneous with the POR, we adjusted the rate for inflation. *See* Factor Valuation Memorandum.

For direct and indirect labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression–based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, available at http://www.trade.gov/ia/. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. For further details on the labor calculation, *see* Factor Valuation Memorandum.

Interested parties submitted financial statements for the year ending March 31, 2007, of three Indian producers of identical merchandise: Essar Steel Limited (''Essar''), Steel Authority of India Limited (''SAIL''), and TATA Steel Limited (''TATA'').[44] Because neither SAIL's nor TATA's financial statements were complete, the Department has determined to disregard each statement

[38] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

[39] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs*'').

[40] *See* Valin Xiangtan's May 28, 2008, supplemental D submission at Exhibit D-8.

[41] *See Antidumping Methodologies: Market Economy Inputs*, 71 FR at 61718.

[42] The NME countries are Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, PRC, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

[43] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of the 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001), and accompanying Issues and Decision Memorandum at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1999-2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1; and*China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

[44] *See* Valin Xiangtan's and IPSCO's surrogate value submissions dated March 14, 2008.

in calculating surrogate financial ratios, for the preliminary results.[45]

For the preliminary results, we have determined to use Essar's year ending March 31, 2007, financial statements to calculate surrogate financial ratios because they appear to be complete, are publicly available, and are contemporaneous with the POR. Therefore, for factory overhead, selling, general, and administrative expenses, and profit, consistent with 19 CFR 351.408(c)(4), we used the public information from Essar's year ending March 31, 2007, financial statements. For a full discussion of the calculation of these ratios, *see* Factor Valuation Memorandum.

Finally, Valin Xiantan did not provide a full description of certain of its FOPs to the Department nor has it provided recommendations for valuing certain FOPs. For the preliminary results, the Department is using SVs either recommended by the parties or found in its own research to value FOPs in its margin calculation. For further details regarding each FOP, *see* Factor Valuation Memorandum and Valin Xiangtan Preliminary Analysis Memorandum.

For the final results, the Department is providing Valin Xiangtan an opportunity to provide a full description as requested by the Department in the original questionnaire issued on January 14, 2008, and recommendations for valuing these FOPs. A full description of certain FOPs, including all support documentation is hereby due to the Department no later than 14 days after its receipt of our supplemental questionnaire, which we intend to issue shortly to Valin Xiangtan.

### Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. See http://www.ia.ita.doc.gov/exchange/index.html.

### Preliminary Results of Reviews

We preliminarily find the weighted–average dumping margin for Valin Xiangtan for the period November 1, 2006, through October 31, 2007, to be 133.38 percent.

### Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue appropriate appraisement instructions for the company subject to this new shipper review directly to CBP 15 days after publication of the final results of this new shipper review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer- specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this new shipper review if any importer–specific assessment rate calculated in the final results of this new shipper review is above *de minimis*.

### Cash Deposit Requirements

Upon completion of this new shipper review, we will require cash deposits at the rate established in the final results as further described below. Bonding will no longer be permitted to fulfill security requirements for shipments of CTL Steel Plate from the PRC produced and exported by Valin Xiantan that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review. The following cash deposit requirements will be effective upon publication of the final results of this new shipper review for shipments of subject merchandise from Valin Xiangtan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) Subject merchandise produced and exported by Valin Xiangtan, the cash deposit rate will be that established in the final results of this review; (2) subject merchandise exported by Valin Xiangtan but not produced by Valin Xiangtan, the cash deposit rate will continue to be the PRC–wide rate of 128.59 percent; (3) for subject merchandise produced by Valin Xiangtan, and exported by any party but themselves, the cash deposit rate will be the rate applicable to the exporter.

These requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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.

This new shipper review and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 351.214.

Dated: November 6, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8–26992 Filed 11–12–08; 8:45 am]

BILLING CODE 3510–DS–S

[45] *See* IPSCO's surrogate value submission dated March 14, 2008.

---

## DEPARTMENT OF COMMERCE

## International Trade Administration

**A–588–837**

## Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Reconsideration of Sunset Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On November 6, 2006, the Department of Commerce (the Department) published a notice of preliminary results of the reconsideration of the sunset review of the antidumping duty order on large newspaper printing presses and components thereof, whether assembled or unassembled (LNPP), from Japan (71 FR 64927), following the requirements of section 751(c) of the Tariff Act of 1930, as amended (the Act). We provided interested parties an opportunity to comment on our preliminary results. We received case and rebuttal briefs from domestic and foreign interested parties, and we held a public hearing. As a result of this review, the Department finds that revocation of the order on LNPP from Japan after the original sunset review period of 1996–2001 would have likely led to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

**EFFECTIVE DATE:** November 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger or Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC, 20230; telephone: 202–482–4136 or 202–482–4929, respectively.

**SUPPLEMENTARY INFORMATION:**

### Scope of the Order

The products covered by the scope of the order are large newspaper printing

presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of the order includes the five press system components. They are: (1) a printing unit, which is any component that prints in monocolor, spot color and/or process (full) color; (2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit; (3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format; (4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and (5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non–subject elements before or after importation, is included in the scope of the order. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of the scope, the following definitions apply irrespective of any different definition that may be found in customs rulings, U.S. Customs law or the *Harmonized Tariff Schedule of the United States* (HTSUS): (1) the term ''unassembled'' means fully or partially unassembled or disassembled; and (2) the term ''incomplete'' means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start–up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of the order. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's–length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Also excluded from the scope, in accordance with the Department's determination in a previous changed circumstances review of the antidumping duty order which resulted in the partial revocation of the order with respect to certain merchandise, are elements and components of LNPP systems, and additions thereto, which feature a 22–inch cut–off, 50–inch web width and a rated speed no greater than 75,000 copies per hour. *See Large Newspaper Printing Presses Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order, In Part*, 64 FR 72315 (December 27, 1999). In addition to the specifications set out in this paragraph, all of which must be met in order for the product to be excluded from the scope of the order, the product must also meet all of the specifications detailed in the five numbered sections following this paragraph. If one or more of these criteria is not fulfilled, the product is not excluded from the scope of the order.

1. *Printing Unit*: A printing unit which is a color keyless blanket–to-blanket tower unit with a fixed gain infeed and fixed gain outfeed, with a rated speed no greater than 75,000 copies per hour, which includes the following features:
   - Each tower consisting of four levels, one or more of which must be populated.
   - Plate cylinders which contain slot lock–ups and blanket cylinders which contain reel rod lock–ups both of which are of solid carbon steel with nickel plating and with bearers at both ends which are configured in–line with bearers of other cylinders.
   - Keyless inking system which consists of a passive feed ink delivery system, an eight roller ink train, and a non–anilox and non–porous metering roller.
   - The dampener system which consists of a two nozzle per page spraybar and two roller dampener with one chrome drum and one form roller.
   - The equipment contained in the color keyless ink delivery system is designed to achieve a constant, uniform feed of ink film across the cylinder without ink keys. This system requires use of keyless ink which accepts greater water content.
2. *Folder*: A module which is a double 3:2 rotary folder with 160 pages collect capability and double (over and under) delivery, with a cut–off length of 22 inches. The upper section consists of three–high double formers (total of 6) with six sets of nipping rollers.
3. *RTP*: A component which is of the two–arm design with core drives and core brakes, designed for 50 inch diameter rolls; and arranged in the press line in the back–to-back configuration (left and right hand load pairs).
4. *Conveyance and Access Apparatus*: Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process, and a drive system which is of conventional shafted design.
5. *Computerized Control System*: A computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

Further, the scope covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by the scope are imported into the United States under subheadings 8443.11.10,

8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

**Background**

On November 6, 2006, the Department published in the **Federal Register** a notice of preliminary results of the reconsideration of sunset review of the antidumping duty order on LNPP from Japan, following the requirements of section 751(c) of the Act. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Preliminary Results of Reconsideration of Sunset Review*, 71 FR 64927 (November 6, 2006) (*Preliminary Results*). In our *Preliminary Results*, we determined that, for purposes of this reconsideration of the sunset review, had the antidumping duty order not been revoked in *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan (A–588–837) and Germany (A–428–821): Notice of Final Results of Five–Year Sunset Reviews and Revocation of Antidumping Duty Orders*, 67 FR 8522 (February 25, 2002) (*2002 Sunset Review*), revocation of the antidumping duty order on LNPP from Japan would have likely led to continuation or recurrence of dumping with a margin of 59.67 percent for Mitsubishi Heavy Industries, Ltd. (MHI), 51.97 percent for Tokyo Kikai Seisakusho, Ltd. (TKS), and an all–others rate of 55.05 percent.

On December 6, 2006, MHI, TKS, and the domestic interested party, Goss International Corporation (known as Goss Graphics Systems Inc. during the period of the *2002 Sunset Review*) (Goss) submitted case briefs in response to the Department's preliminary results. TKS and Goss submitted rebuttal comments on December 11, 2006. We held a public hearing on December 18, 2006.

On January 24, 2007, the Court of International Trade (CIT) issued its decision in *Tokyo Kikai Seisakusho, Ltd. v. United States*, 473 F. Supp. 2d 1349, 1364 (Ct. Int'l Trade 2007), and ordered the Department to ''discontinue any action in regard to a reconsideration'' of the sunset review. In accordance with that decision, the Department discontinued action with respect to its reconsideration of the sunset review. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Discontinuation of Reconsideration of Sunset Review*, 72 FR 9730 (March 5, 2007).

On June 17, 2008, the Court of Appeals for the Federal Circuit (CAFC) reversed the CIT's decision directing the Department to discontinue its sunset review reconsideration. The CAFC held that the issue was not ripe for judicial review and that the CIT erred in finding that the Department's stated intention to reopen the sunset review proceeding (in the context of the March 2006 changed circumstances review final results) was final agency action. *See Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d 1352 (Fed. Cir. 2008). Accordingly, the Department resumed its reconsideration of the sunset review. *See Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Resumption of Reconsideration of Sunset Review*, 73 FR 57059 (October 1, 2008).

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the ''Issues and Decision Memorandum'' (Decision Memo) to David M. Spooner, Assistant Secretary for Import Administration, which is hereby adopted and incorporated by reference into this notice. Parties can find a discussion of the issues raised for the final results of this reconsideration of the sunset review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room 1117 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memo are identical in content.

**Final Results of Review**

We determine that, for purposes of this reconsideration of the sunset review, had the antidumping duty order not been revoked in the *2002 Sunset Review*, revocation of the antidumping duty order on LNPP from Japan would have likely led to continuation or recurrence of dumping at the following weighted–average margins:

| Manufacturers/Producers/Exporters | Weighted–Average Margin (Percent) |
|---|---|
| Mitsubishi Heavy Industries, Ltd. | 59.67 |
| Tokyo Kikai Seisakusho, Ltd. ..... | 51.97 |
| All Others ..... | 55.05 |

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This reconsideration of sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 6, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8–26987 Filed 11–12–08; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–890]**

### Wooden Bedroom Furniture from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** November 13, 2008.

**SUMMARY:** On October 10, 2008, the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (''Department'') final results of redetermination pursuant to the Department's voluntary remand. *See Macau Youcheng Trading Co. and Zhongshan Youcheng Wooden Arts & Crafts Co., Ltd. v. United States Court No. 07–00322: Final Results Of Redetermination Pursuant To Voluntary Remand*, dated October 3, 2008 (''*Youcheng v. United States*''). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the administrative review of the

antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC'') covering the period of review (''POR'') of June 24, 2004, through December 31, 2005. *See Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 46957 (August 22, 2007) (''*Final Results*''); and *Second Amended Final Results of Antidumping Duty Administrative Review: Wooden Bedroom Furniture From the People's Republic of China*, 72 FR 62834 (November 7, 2007) (''*Amended Final Results*'').

**FOR FURTHER INFORMATION CONTACT:** Frances Veith, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4295.

**SUPPLEMENTARY INFORMATION:** On August 22, 2007, the Department published its final results in the administrative review and on November 7, 2007, it published its amended final results. *See Final Results and Amended Final Results*. In the *Final Results*, the Department denied Macau Youcheng Trading Co. and Zhongshan Youcheng Wooden Arts and Crafts Co., Ltd. (collectively ''Youcheng'') a separate rate stating that Youcheng failed to demonstrate that it made a sale of subject merchandise during the POR because Youcheng did not provide proof of payment for its reported sales transaction. The Department's determination to deny Youcheng a separate rate in the Final Results remained unchanged in the *Amended Final Results*.

On September 4, 2007, Youcheng filed a summons and complaint with the CIT challenging the Department's denial of a separate rate to Youcheng. On June 19, 2008, the Department requested a voluntary remand so that the Department could further analyze the record, explain its decision, and take such action as may be appropriate pertaining to the denial of separate–rate status to Youcheng. On June 20, 2008, the CIT granted the Department's voluntary remand motion. On August 22, 2008, we issued our draft redetermination pursuant to the remand to the interested parties for comment. On September 12, 2008, Petitioners[1] and Youcheng provided comments on the Department's draft redetermination results.

On October 3, 2008, the Department issued its final results of redetermination pursuant to *Youcheng v. United States*. The remand redetermination explained that, in accordance with the CIT's instructions, the Department analyzed the record and reconsidered the *Final Results* and determined to grant separate–rate status to Youcheng. Based on this reconsideration, Youcheng's status from the final results changed from an entity considered as part of the PRC–wide entity and subject to the PRC–wide rate to an entity eligible for separate–rate status and having a separate rate. Accordingly, Youcheng's revised antidumping duty margin is the weighted–average margin of the mandatory respondents (*i.e.*, 35.78 percent) in the administrative review.

TIMKEN NOTICE:

In its decision in *Timken*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. *See Timken*, 893 F.2d at 341. The CIT's decision in *Youcheng v. United States* on October 10, 2008, constitutes a final decision of that court that is not in harmony with the Department's *Final Results* and *Amended Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties based on the weighted average of the cash deposit rates calculated for the mandatory respondents (*i.e.*, 35.78 percent) in the administrative review pursuant to section 735(c)(5)(B) of the Act.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: November 5, 2008.

**David M. Spooner**

*Assistant Secretary for Import Administration.*

[FR Doc. E8–26976 Filed 11–12–08; 8:45 am]

**BILLING CODE 3510–DS–S**

[1] American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Northeast Fisheries Observer Program Fishermen's Comment Card

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before January 12, 2009.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Amy S. Van Atten, (508) 495–2266 or *Amy.Van.Atten@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The National Marine Fisheries Service (NMFS) Northeast Fisheries Observer Program (NEFOP) is managed by the Fisheries Sampling Branch (FSB) at the Northeast Fisheries Science Center (NEFSC). NEFOP observers serve aboard commercial fishing vessels from Maine to North Carolina, as required by the Magnuson-Stevens Fishery Conservation and Management Act and the Marine Mammal Protection Act.

NMFS NEFSC is renewing its request to collect information from fishermen who have had NEFOP observers on their vessels. This information would be collected on a voluntary basis as a qualitative survey to provide NMFS with direct feedback on an observer's performance. This information, upon receipt, will ensure higher data quality, help to detect fraud, assess contractor performance, provide feedback on observer performance, and offer a direct line of communication from fishermen to the NEFOP management.

## II. Method of Collection

Paper survey with a pre-addressed, pre-paid postage to be submitted to the NEFOP at the NEFSC. The survey will also be available on the Internet.

## III. Data

*OMB Control Number:* 0648–0536.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Business or other for-profit organizations.
*Estimated Number of Respondents:* 520.
*Estimated Time Per Response:* 15 minutes.
*Estimated Total Annual Burden Hours:* 260.
*Estimated Total Annual Cost to Public:* $0.

## IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 6, 2008.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E8–26872 Filed 11–12–08; 8:45 am]

BILLING CODE 3510–22–P

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XL59**

### Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

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

**ACTION:** Notice of public meeting.

**SUMMARY:** NMFS will hold a 2-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in February 2009. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

**DATES:** The AP meeting will be held from 1 p.m. to 5 p.m. on Wednesday, February 18, 2009, and from 8 a.m. to 5 p.m. on Thursday, February 19, 2009.

**ADDRESSES:** The meeting will be held in Silver Spring, MD. At this time the address is unknown, but will be provided on the internet at *www.nmfs.noaa.gov/sfa/hms/* when available. The address will not be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Othel Freeman or Chris Rilling at 301–713–2347.

**SUPPLEMENTARY INFORMATION:** The Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) for HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks. The AP has previously consulted with NMFS on: Amendment 1 to the Billfish FMP (April 1999), the HMS FMP (April 1999), Amendment 1 to the HMS FMP (December 2003), the Consolidated HMS FMP (October 2006), and Amendments 1 and 2 to the Consolidated HMS FMP (April and October 2008). The February 2009 AP meeting will focus on conservation and management options for Atlantic tunas and sharks. NMFS is considering an amendment to the 2006 Consolidated HMS FMP for small coastal sharks to rebuild blacknose sharks which are overfished with overfishing occurring, and will consider management options for Atlantic bluefin tuna based on any potential management recommendations resulting from the 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting.

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Othel Freeman at (301) 713–2347, at least 7 days prior to the meeting.

Dated: November 5, 2008.

**Emily H. Menashes,**

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

[FR Doc. E8–26854 Filed 11–12–08; 8:45 am]

BILLING CODE 3510–22–S

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Initiation of the Monitor National Marine Sanctuary Management Plan Review: Notice of Public Scoping Meetings

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of public scoping meetings for initiation of the Monitor National Marine Sanctuary management plan review.

**SUMMARY:** In accordance with section 304(e) of the National Marine Sanctuaries Act, as amended (NMSA), NOAA is holding scoping meetings to:

1. Solicit public comments and identify issues on the continued management of the Monitor National Marine Sanctuary; and
2. Help determine the scope of issues to be addressed in the preparation of an environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA), if warranted.

**DATES:** See **SUPPLEMENTARY INFORMATION** section below for the dates, times, and locations of the public scoping meetings. All comments on issues related to the continued management of the Monitor National Marine Sanctuary will be considered if received on or before February 1, 2009.

**FOR FURTHER INFORMATION AND SUBMISSION OF COMMENTS CONTACT:** Shannon Ricles at (757) 591–7328. All written inquiries and comments may also be mailed to Monitor National Marine Sanctuary, 100 Museum Drive, Newport News, VA 23606, or by fax at (757) 591–7353.

**SUPPLEMENTARY INFORMATION:**

## Background Information

The Monitor National Marine Sanctuary (MNMS or Sanctuary) was designated on January 30, 1975, and is located on the Atlantic continental shelf approximately 16 miles south-southeast of Cape Hatteras, North Carolina. The Sanctuary encompasses a vertical column of water around the wreck site one nautical mile in diameter from the

surface to the seabed. The present management plan for the Sanctuary was completed in February 1983, and a comprehensive long-range plan that focused on the stabilization, preservation, recovery, conservation, and exhibition of materials and artifacts from the Monitor site was implemented in April 1998. For detailed information on the Monitor National Marine Sanctuary, including the 1983 Management Plan and the 1998 Comprehensive Preservation Plan, please visit *http://www.monitor.noaa.gov*.

In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended (NMSA), 16 U.S.C. 1431 *et seq.*, the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) is initiating a review of the current management plan to evaluate the substantive progress made toward implementing the goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA. The proposed revised management plan may involve changes to existing policies and regulations of the sanctuary, will address contemporary issues and challenges, and better protect and manage the Sanctuary's resources and qualities. The review process is composed of four primary stages:

(1) Information collection and characterization, including public scoping meetings;

(2) Preparation and release of a revised draft management plan/environmental evaluation that includes any proposed new regulations or amendments to current regulations;

(3) Public review and comment on the draft plan; and

(4) Preparation and release of a final management plan/environmental evaluation that could also include new regulations to fully implement the revised management plan.

NOAA anticipates that the completion of the revised management plan and concomitant documents will require approximately twenty-four to thirty-six months. This notice is to inform the public that NOAA will conduct scoping meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types, and significance of issues related to the Sanctuary's management plan and regulations. These scoping meetings will also help determine the scope of issues to be addressed in the preparation of an EIS pursuant to the NEPA, 43 U.S.C. 4321 *et seq.*, if warranted. The public scoping meeting schedule is presented below.

**Public Scoping Meetings**

The public scoping meetings will be held on the following dates and at the following locations:

| | | |
|---|---|---|
| December 1, 2008 6–8 p.m | Manteo, NC | North Carolina Aquarium, 374 Airport Road, Manteo, NC. |
| December 2, 2008 6–8 p.m | Raleigh, NC | North Carolina Museum of History, 5 East Edenton Street, Raleigh, NC. |
| December 3, 2008 6–8 p.m | Pine Knoll Shores, NC | North Carolina Aquarium, 1 Roosevelt Boulevard, Pine Knoll Shores, NC. |
| December 4, 2008 6–8 p.m | Hatteras, NC | Graveyard of the Atlantic Museum, 59200 Museum Drive, Hatteras, NC. |
| December 6, 2008 1–3 p.m | Newport News, VA | Mariner's Museum, 100 Museum Drive, Newport News, VA. |

Dated: November 4, 2008.

**Daniel J. Basta,**

*Director, Office of National Marine Sanctuaries NOAA.*

[FR Doc. E8–26792 Filed 11–12–08; 8:45 am]

**BILLING CODE 3510–22–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive Patent License; NanoDynamics, Inc.; Correction

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice; Correction.

**SUMMARY:** The Department of the Navy published a document in the **Federal Register** on August 27, 2008, announcing a Notice of Intent To Grant Exclusive Patent License to NanoDynamics, Inc. The original publication contained incorrect information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rita Manak, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone: 202–767–3083. Due to U.S. Postal delays, please fax: 202–404–7920, e-mail: *techtran@utopia.nrl.navy.mil* or use courier delivery to expedite response.

**Correction**

In the **Federal Register** of August 27, 2008, in FR Doc. E8–19852, make the following changes:

1. In the third column, on page 50600 and the first column on page 50601, correct the **SUMMARY** caption to read as follows:

''**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to NanoDynamics, Inc., a revocable, nonassignable, exclusive license to practice in the field of use of Building Materials which shall mean the use of any and all substances as a biocide in building materials including but not limited to, grouts, cements, parging materials, stuccos, and mortars; and wallboards, and cellulose-based materials such as wallboard papers, wallpapers, particleboard, paneling, medium density fiberboard (MDF) paneling, plywood, chipboard, and ceiling tile; and caulks, sealants and adhesives; and high pressure laminates, including wall, counter top and floor coverings or components thereof; and ceramics, cultured marbles, and tiles; and non-cellulose (i.e. polymer) based wallpapers, paneling, and other wall, counter top, and floor coverings or components; and insulations.

It also includes the field of use of Paint for the elution of biocides and any and all substances in paints, sealers, fillers, varnishes, shellac, polyurethane coatings, and any and all ''paint like'' coatings applied in liquid form to any and all surfaces for the beautification or protection of surfaces in structures or components thereof, including but not limited to, buildings, marine structures

(including boats), furniture and other normally ''painted'' materials.

Additionally, it includes the field of use for the elution of any and all substances for sub-surface chemical treatment in oil and gas wells and the chemical treatment of the interior surfaces of surface piping used in the petroleum industry in the United States and certain foreign countries, the Government-owned inventions described in U.S. Patent No. 5,492,696: Controlled Release Microstructures, Navy Case No. 76,896; U.S. Patent No. 5,651,976: Controlled Release of Active Agents Using Inorganic Tubules, Navy Case No. 76,652; U.S. Patent No. 6,280,759: Method of Controlled Release and Controlled Release Microstructures, Navy Case No. 78,215 and any continuations, divisionals or re-issues thereof.''

2. In the first column on page 50601, correct the **DATES** caption to read as follows:

''**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than November 28, 2008.''

Dated: November 4, 2008.

**T.M. Cruz,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. E8–26907 Filed 11–12–08; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

## Office of Postsecondary Education; Overview Information: Fund for the Improvement of Postsecondary Education; (FIPSE)—Special Focus Competition: U.S.-Brazil Higher Education Consortia Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.116M.

**DATES:** *Applications Available:* November 13, 2008.

*Deadline for Transmittal of Applications:* December 18, 2008.

*Deadline for Intergovernmental Review:* February 16, 2009.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The purpose of this program is to provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas in postsecondary education or approaches to improve postsecondary education.

*Priority:* Under this competition we are particularly interested in applications that address the following priorities.

*Invitational Priorities:* For FY 2009, these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

*Invitational Priority One:*

Proposals designed to support the formation of educational consortia of United States (U.S.) and Brazilian institutions to support cooperation in the coordination of curricula, the exchange of students, and the opening of educational opportunities between the U.S. and Brazil. The invitational priority is issued in cooperation with Brazil. These awards support only the participation of U.S. institutions and students in these consortia. Brazilian institutions participating in any consortium proposal responding to the invitational priority may apply to the Coordination of Improvement of Personnel of Superior Level (CAPES), Brazilian Ministry of Education, for additional funding under a separate but parallel Brazilian competition.

*Invitational Priority Two:*

Projects that support exchanges between Brazilian universities and U.S. minority-serving institutions in order to increase the participation of underrepresented minorities in the program.

*Program Authority:* 20 U.S.C. 1138–1138d.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

### II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration has requested $37,433,000 for the Fund for the Improvement of Postsecondary Education for FY 2009, of which we propose to allocate $490,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

*Estimated Range of Awards:* $30,000–$35,000 for the first year. $210,000–$250,000 for the four-year duration of the grant. $25,000 for the first year for the two-year complementary grants.

*Estimated Average Size of Awards:* $240,000 for the four-year duration of the grant. $50,000 for the two-year complementary grants.

**Note:** Two-year complementary grants support activities that complement partnerships between or among U.S. and Brazilian colleges and universities. The objectives of these activities (which may receive up to two years of funding) support the extension of projects. These objectives are—(1) outreach to local or regional communities in both countries; (2) scale-up of current activities to include additional partners and organizations; and (3) the dissemination of project results. Proposed activities may be conducted by groups of institutions currently funded by the U.S.-Brazil Program or established partnerships not previously supported under the U.S.-Brazil Program.

*Maximum Award:* We will reject any application that proposes a budget exceeding $90,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 14.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 24 months for two-year complementary grants. Up to 48 months for four-year grants.

### III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHEs) or combinations of IHEs and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

### IV. Application and Submission Information

1. *Address to Request Application Package:* Sarah T. Beaton, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., Room 6154, Washington, DC 20006–8544. Telephone: (202) 502–7621.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (*e.g.*, braille,

large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to no more than 20 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit only applies to the application narrative [Part III]. It does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); and Part IV, the assurances, certifications and survey forms. In addition, the page limit does not apply to the one-page abstract, appendices, line item budget, or a table of contents. If you include any attachments or appendices not specifically requested, these items will be counted as part of the application narrative [Part III] for purposes of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

*Applications Available:* November 13, 2008.

*Deadline for Transmittal of Applications:* December 18, 2008.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: February 16, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the U.S.-Brazil Higher Education Consortia Program, CFDA Number 84.116M, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the U.S.-Brazil Higher Education Consortia Program at *http://www.Grants.gov*. You must search for the downloadable application package for this competition by the CFDA Number. Do not include the CFDA Number's alpha suffix in your search (*e.g.*, search for 84.116, not 84.116M).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a

multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3–Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award Number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sarah T. Beaton, U.S. Department of Education, 1990 K Street, NW., Room 6154, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116M), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before

relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA Number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* An additional factor we consider in selecting an application for an award is whether the application demonstrates a bilateral, innovative U.S.-Brazilian approach to training and education.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following will be used by the Department to assess the performance of the FIPSE program, including the U.S.-Brazil Program:

(1) The percentage of FIPSE grantees reporting project dissemination to others; and

(2) The percentage of FIPSE projects reporting institutionalization on their home campuses.

If funded, you will be asked to collect and report data in your project's annual performance report (EDGAR, 34 CFR 75.590) on steps taken toward these goals. Consequently, applicants are advised to include these two indicators in conceptualizing the design, implementation, and evaluation of the proposed project. Consideration of the two performance indicators is an important part of many of the review criteria. Thus, it is important to the success of your application that you include these indicators. Their measurement should be a part of the project evaluation plan, along with measures of your progress on the goals and objectives specific to your project.

## VII. Agency Contact

**FOR FURTHER INFORMATION CONTACT:** Sarah T. Beaton, Fund for the Improvement of Postsecondary Education, U.S.-Brazil Higher Education Consortia Program, 1990 K Street, NW., Room 6154, Washington, DC 20006–8544. Telephone: (202) 502–7621.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

## VIII. Other Information

*Alternative Format:* Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: November 7, 2008.

**Cheryl A. Oldham,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. E8–26979 Filed 11–12–08; 8:45 am]

BILLING CODE 4000–01–P

---

# DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services; List of Correspondence

**AGENCY:** Department of Education.

**ACTION:** List of Correspondence from April 1, 2008 through June 30, 2008.

**SUMMARY:** The Secretary is publishing the following list pursuant to section 607(f) of the Individuals with Disabilities Education Act (IDEA). Under section 607(f) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the U.S. Department of Education (Department) received by individuals during the previous quarter that describes the interpretations of the Department of the IDEA or the regulations that implement the IDEA.

**FOR FURTHER INFORMATION CONTACT:** Laurel Nishi or Mary Louise Dirrigl. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** The following list identifies correspondence from the Department issued from April 1, 2008 through June 30, 2008. Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by each letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

**Part A—General Provisions**

*Section 602—Definitions*

Topic Addressed: Special Education

○ Letter dated May 6, 2008 to individual (personally identifiable information redacted), clarifying how the definition of ''specially designed instruction'' applies to a child's access to the general education curriculum.

**Part B—Assistance for Education of All Children With Disabilities**

*Section 612—State Eligibility*

Topic Addressed: Child Find

○ Letter dated April 22, 2008 to Texas Education Agency General Counsel David Anderson, reiterating that a State has no obligation under the IDEA to conduct child find or provide educational services to children residing in U.S. Immigration and Customs Enforcement residential family facilities, but encouraging a State or local school district to enter into a voluntary agreement for these purposes.

Topic Addressed: Confidentiality of Information

○ Letter dated April 17, 2008 to Mountain Plains Regional Resource Center Director John Copenhaver, concerning the use of parents and other volunteers in State educational agency monitoring of local educational agencies.

Topic Addressed: Obligations Related to and Methods of Ensuring Services

○ Letter dated May 7, 2008 to Kinney Management Services, LLC representative Joseph Kinney, concerning access to public insurance benefits and applicable parental consent requirements.

Topic Addressed: Personnel Qualifications

○ Letter dated May 28, 2008 to American Speech-Language-Hearing Association Director of Education and Regulatory Advocacy Catherine D. Clarke, concerning the use of speech-language pathologists in a response to intervention model, and reiterating that State law governs the use of paraprofessionals and assistants in the provision of special education and related services and the scope of their responsibilities.

*Section 613—Local Educational Agency Eligibility*

Topic Addressed: Use of Federal Funds

○ Letter dated April 8, 2008 to Washington, DC Attorney Christine Plagata-Neubauer, concerning certain fiscal requirements in Part B of the IDEA, including excess costs, maintenance of effort, and use of funds.

*Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements*

Topic Addressed: Evaluations, Parental Consent, and Reevaluations

○ Letter dated April 8, 2008 to Lehigh University Professor Perry A. Zirkel, concerning the additional procedures for identifying children with specific learning disabilities.

○ Letter dated May 6, 2008 to New York Attorney Edward J. Sarzynski, clarifying that public agencies must obtain parental consent before conducting evaluations to determine whether services should be increased or decreased and to determine a child's continued eligibility for services or changes to services.

○ Letter dated June 3, 2008 to individual (personally identifiable information redacted), concerning the relationship of the child's evaluation to the IEP Team's determination of the special education and related services to be provided to the child.

Topic Addressed: Individualized Education Programs

○ Letter dated June 3, 2008 to Indiana Attorney Joseph Daniel Thomas, clarifying the requirements for ensuring parent participation at IEP Team meetings when parents or their experts are unable to attend IEP Team meetings scheduled during regular school or business hours.

*Section 615—Procedural Safeguards*

Topic Addressed: Student Discipline

○ Letter dated May 1, 2008 to West Virginia Attorney James Gerl, clarifying that the time period for an expedited due process hearing commences on the date that the due process complaint requesting the hearing is filed and includes the resolution period.

○ Letter dated June 5, 2008 to Austin Independent School District General Counsel Ylise Janssen, concerning requirements for functional behavioral assessments (FBAs), State personnel qualifications for individuals who conduct FBAs, and use of funds from Part B of the IDEA to assist LEAs in providing FBAs.

*Section 618—Program Information*

Topic Addressed: Disproportionality

○ Letter dated June 3, 2008 to Michigan Office of Special Education and Early Intervention Services Supervisor of Program Improvement Frances F. Loose, reiterating the Department's position that the requirements in Part B of the IDEA governing significant disproportionality based on race and ethnicity apply to disciplinary actions.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/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*.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: November 7, 2008.

**Tracy R. Justesen,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. E8–26986 Filed 11–12–08; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Innovation and Improvement; Overview Information; Transition to Teaching Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.350A, 84.350B, and 84.350C.

**DATES:**

*Applications Available:* November 13, 2008.

*Deadline for Notice of Intent to Apply:* December 15, 2008.

*Date of Pre-Application Meeting:* December 4, 2008.

*Deadline for Transmittal of Applications:* January 21, 2009.

*Deadline for Intergovernmental Review:* March 23, 2009.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The Transition to Teaching program encourages (1) the development and expansion of alternative routes to full State teacher certification, as well as (2) the recruitment and retention of highly qualified mid-career professionals, recent college graduates who have not majored in education, and highly qualified paraprofessionals as teachers in high-need schools operated by high-need local educational agencies (LEAs), including charter schools that operate as high-need LEAs.

*Priorities:* The Department has established two competitive preference priorities that are explained in the following paragraphs. In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priority 1 is from section 2313(c) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6683(c)). Competitive Preference Priority 2 is from the notice of final priorities and requirements for this program (NFP), published in the **Federal Register** on April 30, 2004 (69 FR 24002).

*Competitive Preference Priorities:* For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 5 points to an application that meets Competitive Preference Priority 1, and up to an additional 10 points to an application depending on how well the application meets Competitive Preference Priority 2.

These priorities are:

*Competitive Preference Priority 1—Partnerships or Consortia That Include a High-need LEA or a High-need State Educational Agency (SEA).* This priority supports projects that are designed and implemented in active partnerships or consortia that include at least one high-need LEA or high-need SEA.

*Competitive Preference Priority 2—District Projects To Streamline Teacher Hiring Systems, Timelines, and Processes.* This priority supports projects by one or more high-need LEAs to streamline their hiring systems, timelines, and processes. A participating high-need LEA will need to conduct both of the following activities:

(a) *Examine its current hiring system, processes, and policies to identify the critical barriers to hiring highly qualified teachers.* The lack of highly qualified teachers in most urban and rural LEAs has often been attributed to their difficulty in recruiting interested and qualified individuals. However, recent research indicates that the problem may not be one of recruitment but may stem from inefficient and untimely LEA hiring systems and processes. This is especially true in high-poverty LEAs and schools—the very LEAs and schools the Transition to Teaching program is targeted to serve. Accordingly, each participating LEA will need to examine its current hiring processes and policies and, based upon that examination, identify the critical barriers to hiring highly qualified teachers.

(b) *Design and implement efforts to remove the identified barriers and put in place systems that streamline and revamp the hiring process.* In conducting this activity, LEAs are encouraged to create an efficient and timely applicant hiring process with a strong data tracking system and clear hiring goals. These efforts also should involve negotiating policy reforms that remove critical barriers, such as delayed notification of vacancies and seniority and retirement rules.

Participating LEAs also will carry out the requirements of the Transition to Teaching program by recruiting nontraditional candidates, using the streamlined hiring system to hire these individuals for teaching in high-need schools, working with them to achieve full State certification, and retaining them for at least three years.

**Note:** While all applicants may address Competitive Preference Priority 2, only applicants that meet the eligibility requirements of a high-need LEA, as contained in this notice, may receive points under this competitive preference priority. In response to Competitive Preference Priority 2, applicants are encouraged (1) to identify existing barriers to an efficient and timely process of hiring new teachers and (2) to describe a specific plan to address these barriers that includes: (a) The active engagement of LEA officials, teacher unions, and other stakeholders in removing existing barriers and implementing changes; (b) the actions each participating LEA intends to undertake to streamline teacher hiring systems, timelines, and processes that will result in early notification and hiring of new teachers; (c) a timeline for major action steps; (d) a strong data tracking system; and (e) clear hiring goals, objectives, and performance measures that provide evidence of success in meeting the goals of hiring new teachers supported through the Transition to Teaching program.

*Program Authority:* 20 U.S.C. 6681–6684.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities and requirements for this program published in the **Federal Register** on April 30, 2004 (69 FR 24002).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

**II. Award Information**

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration has requested $43,707,000 for this program for FY 2009, of which we intend to use an estimated $7,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

The Department has established separate funding categories for projects of different scope. These categories are:

(1) National/regional projects (84.350C) that serve eligible high-need LEAs in more than one State;

(2) Statewide projects (84.350B) that serve eligible high-need LEAs statewide or eligible high-need LEAs in more than one area of a State; and

(3) Local projects (84.350A) that serve one eligible high-need LEA or two or more eligible high-need LEAs in a single area of a State.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* National/regional projects—$450,000–$750,000

per year; Statewide projects—$300,000–$650,000 per year; and Local projects—$150,000–$450,000 per year.

*Estimated Average Size of Awards:* National/regional projects—$600,000 per year; Statewide projects—$440,000 per year; and Local projects—$300,000 per year.

*Estimated Number of Awards:* National/regional projects—3; Statewide projects—5; and Local projects—10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* A State educational agency (SEA); a high-need LEA; a for-profit or nonprofit organization that has a proven record of effectively recruiting and retaining highly qualified teachers, in partnership with a high-need LEA or an SEA; an IHE in partnership with a high-need LEA or an SEA; a regional consortium of SEAs; or a consortium of high-need LEAs.

Each application must identify participating LEAs that meet the definition of ''high-need LEA'' in section 2102(3) of the ESEA.

**Note:** Section 2102(3) of the ESEA defines a high-need LEA as an LEA—

(a) That serves not fewer than 10,000 children from families with incomes below the poverty line (as that term is defined in section 9101(33) of the ESEA), or for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line; and

(b) For which there is (1) a high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach, or (2) a high percentage of teachers with emergency, provisional, or temporary certification or licensing.

The NFP describes how applicants must demonstrate that a participating LEA meets this statutory definition of ''high-need LEA'' (69 FR 24002, 24006). Pursuant to the NFP, we provide the following supplementary information regarding the data an applicant uses to demonstrate eligibility as a ''high-need LEA'' under this competition:

As described in the NFP, absent a showing of alternative LEA data that reliably show the number of children from families with incomes below the poverty line that are served by the LEA, the eligibility of an LEA as a ''high-need LEA'' under component (a) of the definition must be determined on the basis of the most recent U.S. Census Bureau data. The most recent U.S. Census Bureau data can be found in the charts on the Internet at: *http://www.census.gov/hhes/www/saipe/district.html*. The Department examines the eligibility of any LEA not listed on these charts on a case-by-case basis.

We understand that the U.S. Census Bureau may release data for 2007 before the closing date for applications under this competition. If the U.S. Census Bureau publishes 2007 poverty data before the application due date, the Department will consider U.S. Census Bureau poverty data available for either 2005 or 2007 to be the most recent. Hence, if the U.S. Census Bureau releases its poverty data for 2007 prior to the closing date of this competition, we will consider an LEA to have the requisite poverty needed to be a ''high-need LEA'' if the LEA had the requisite level of poverty, based on the U.S. Census Bureau data, in either 2005 or 2007. If the U.S. Census Bureau does not release the 2007 poverty data, we will rely on the U.S. Census Bureau's poverty data for 2005.

As discussed in the NFP, with respect to component (b)(1) of the definition of ''high-need LEA,'' whether an LEA has a ''high percentage of teachers not teaching in the academic subjects or grade levels that the teachers were trained to teach'' is determined on a case-by-case basis.

In addition, as noted in the NFP, with respect to component (b)(2) of the definition of ''high-need LEA,'' an LEA has a ''high percentage'' of teachers with emergency, provisional, or temporary certification or licensing if the percentage of teachers on waivers, as the LEA reported to the State for purposes of the State's latest report to the Secretary under section 207 of the Higher Education Act of 1965 (HEA), was at least the national average percentage of teachers on waivers of State certification for all LEAs. As outlined in the NFP, the Secretary determines the national average percentage of teachers on waivers based on data contained in the most currently available HEA section 207 State reports. At the time of publication of this notice, the Department has received all 2007 State HEA section 207 reports and those reports reflect a national percentage of teachers on waivers of State certification in all LEAs of 1.5 percent.

Accordingly, an LEA will be considered to have met component (b)(2) of the definition if the data that it provided to the State for purposes of the State's October 2007 HEA section 207 report demonstrate that at least 1.5 percent of its teachers were on waivers of State certification requirements.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. In accordance with section 2313(h)(2) of the ESEA, funds made available under this section shall be used to supplement, and not supplant, State and local public funds expended for teacher recruitment and retention programs, including programs to recruit teachers through alternative routes to certification.

3. *Other:* The NFP describes eligibility restrictions for individuals participating in this program.

## IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.350A, 84.350B, or 84.350C.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the program contact person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Additional information concerning application content requirements is in the NFP.

*Notice of Intent to Apply:* December 15, 2008. The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Secretary requests that this e-mail notification be sent to Thelma Leenhouts at: *transitiontoteaching@ed.gov*.

Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, or letters of support. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that exceed the page limit.

3. *Submission Dates and Times:*

*Applications Available:* November 13, 2008.

*Deadline for Notice of Intent To Apply:* December 15, 2008.

*Date of Pre-Application Meeting:* December 4, 2008, from 2:00 p.m. to 4:00 p.m. in the LBJ Auditorium at the U.S. Department of Education headquarters, 400 Maryland Avenue, SW., in Washington, DC. The Department is accessible by Metro on the Blue, Orange, Green, and Yellow lines at the 7th Street and Maryland Avenue exit of the L'Enfant Plaza Metro station. Please contact the U.S. Department of Education contact persons listed under **FOR FURTHER INFORMATION CONTACT** if you have any questions about the details of the pre-application meeting.

Individuals interested in attending this pre-application meeting are encouraged to pre-register by e-mailing their name, organization, and contact information to *transitiontoteaching@ed.gov.* There is no registration fee for this pre-application meeting. We encourage attendance from those who will be responsible for submitting the application or otherwise providing technical support for submitting the application electronically using the Grants.gov Apply site.

*Assistance to Individuals With Disabilities at the Pre-Application Meeting*

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g., other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

*Deadline for Transmittal of Applications:* January 21, 2009.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review:* March 23, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice and in the NFP.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Transition to Teaching Competition, CFDA number 84.350A, 84.350B, and 84.350C must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for Transition to Teaching at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.350, not 84.350A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov

system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Thelma Leenhouts, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W302, Washington, DC 20202–5960. FAX: (202) 401–8466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception

to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.350A, 84.350B, or 84.350C), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.350A, 84.350B, or 84.350C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the statute for this program and § 75.210 of EDGAR and are listed in this section. The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider in determining how well an application meets the criterion. In addressing each criterion, applicants are encouraged to make explicit connections to relevant aspects of responses to other selection criteria.

The *Notes* we have included after each criterion are guidance to assist applicants in understanding the criterion as they prepare their applications and are not required by statute or regulation.

A. *Quality of the Project Design* (35 points).

The Secretary considers the quality of the project design for the proposed project by considering how well the applicant describes a plan—

(1) To recruit and retain highly qualified mid-career professionals (including highly qualified paraprofessionals) and recent graduates of an IHE as teachers in high-need schools operated by high-need LEAs; and

(2) To enable individuals to become eligible for teacher certification under State-approved alternative routes to certification programs within a reduced period of time, relying on such factors as experience, expertise, and academic qualifications in lieu of traditional course-work in education.

In considering the quality of the project design and the applicant's plan, the Secretary considers the following factors:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(b) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(c) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(d) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

**Note:** The Secretary encourages applicants to address this criterion by discussing the overall project design and its key components, and the degree to which the design's key components are based on sound research and practice. Applicants are also encouraged to address this criterion by connecting the project design to the needs of the partner districts and identifying the specific teacher-shortage areas faced by the participating high-need LEAs on which their proposed project would focus. Applicants should understand that a project's strategy for helping participating high-need LEAs to identify and hire highly qualified individuals to fill teaching positions in high-need subjects may rely on existing alternative routes to certification, the expansion of alternative routes to certification into new areas, or the creation of wholly new alternative routes.

Additionally, applicants are encouraged to address such key components of project design as:

(1) Recruitment and selection, including identifying the target group(s) on which the program will focus and why and how the project is designed to rigorously select participants with the requisite content knowledge, skills, and commitment to teach in high-need schools in high-need LEAs. Recruitment may include members of groups that are traditionally underrepresented.

(2) Preparation, including how the project provides a route to certification that is accelerated, integrates coursework and field experience, is adapted to participants' learning needs, and will yield highly qualified teachers who are prepared to teach in high-need schools in high-need LEAs.

(3) Teacher placement, including evidence that the proposed project will meet the needs of high-need LEAs and is developed in coordination with appropriate partners, and that the project includes a system of tracking to meet statutory requirements.

(4) Support services, including mentoring, that are designed to retain participants and meet their needs in terms of length, content, and means of delivery in order to be successful in high-need schools in high-need LEAs.

(5) Certification, including consideration of how the timeline for achieving certification will meet the needs of participants, LEAs, and partners, as well as the ''Highly Qualified Teacher'' requirements established in section 9101(23) of the ESEA.

In addition, applicants are encouraged to clarify the means by which the project's specified outcomes and benefits may be sustained once Federal funding has ended.

B. *Quality of the Project Evaluation* (25 points). The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

**Note:** The Secretary encourages applicants to address this criterion by including benchmarks to monitor progress toward specific and measurable program and project objectives, as well as performance measures to assess the impact on teaching and learning or other important outcomes for project participants. The Secretary encourages applicants to consider the use of a logic model in determining intended short-term, intermediate, and long-term outcomes. (The specific performance measures established for the overall Transition to Teaching program are discussed under *Performance Measures* in section VI of this notice. Section 2314 of the ESEA also requires grantees to submit both an interim evaluation of the first three years of the grant and a final evaluation at the end of the grant.)

With respect to the implementation of the project and monitoring progress toward achieving project objectives, applicants are encouraged to describe the following: (1) What types of data will be collected; (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress and improve implementation of the funded project and to provide accountability information about project success. Applicants are encouraged to design an evaluation that provides data for annual as well as midpoint and final reporting. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

Finally, the Secretary encourages applicants to identify the individual or organization that has agreed to serve as the objective evaluator for the project and describe the qualifications of that evaluator.

C. *Quality of Project Services* (20 points).

In determining the quality of the services to be provided by the proposed project, the Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(2) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(3) The extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(4) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

**Note:** The Secretary encourages applicants to address this criterion by discussing how the proposed project services will meet the needs of both the high-need LEAs identified in the application and the project participants they would recruit to become teachers. Applicants are encouraged to consult the list of authorized activities in section 2313(g) of the ESEA in describing the specific services to be delivered to recruit, prepare, and retain participants that will increase the number of highly qualified teachers in high-need schools in high-need LEAs. In addition, the Secretary encourages applicants to consider carefully the breadth of activities that section 2313(g) of the ESEA authorizes and then to address how the project will:

(1) Provide preparation that meets the learning needs of the participants and makes use of appropriate media (such as face-to-face instruction, Web-based instruction, and distance learning) to provide them with the knowledge and skills needed to be highly qualified and effective teachers in the identified high-need subject areas and high-need schools in high-need LEAs.

(2) Support project participants' success in high-need schools in high-need LEAs during the period of their service obligation, through individual mentoring, support of participants as a group, use of technology, or other appropriate means.

(3) Encourage the participation of all project partners, including school leaders, in providing services related to the recruitment, preparation, and retention of project participants and ensuring lasting benefits or outcomes. Applicants are encouraged to clarify the roles of partners in each phase of the project and the extent of coordination that will occur with similar efforts at the State and district levels. In addition, applicants are encouraged to consider how they might demonstrate (e.g., through narrative discussion, letters of support, or formal memoranda of understanding) the commitment of partners to the project, and the partners' understanding of responsibilities they have agreed to assume in service delivery.

Applicants are encouraged to link their description of project services to be provided by the project to the overall project design described in the Quality of Project Design criterion.

D. *Quality of the Management Plan* (20 points).

In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(3) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

**Note:** Section 75.112 of EDGAR requires an applicant for a multi-year grant to include a narrative that describes how and when, in each budget period of the project, the applicant plans to meet each project objective. The Secretary encourages applicants to address this criterion by including in this narrative a clear, well thought-out implementation plan that includes annual timelines, key project milestones, and a schedule of activities with sufficient time for developing an adequate implementation plan, as well as specific timelines for providing project participants the direct support they need in their initial year(s) as teachers.

Applicants are encouraged to provide timelines that include benchmarks for determining whether the project is achieving its stated goals and objectives, with strategies for monitoring progress as well as making mid-project corrections and adjustments, as

appropriate. In addition, the Secretary encourages applicants to further address this criterion by providing specific information, such as name, title, responsibilities, and time commitment of each key individual working to implement the project's goals and objectives.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are in the NFP.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* The Secretary requires successful applicants to submit annual performance reports and, after the last year of the project, a final report. The annual performance report documents the grantee's yearly progress toward meeting expected programmatic and project specific outcomes. These outcomes must be based on measurable performance objectives including, but not limited to, the performance measures described in paragraph 4 of this section. These reports must evaluate—

(1) The grantee's progress in meeting the application's objectives;

(2) The project's effectiveness in meeting the purposes of the Transition to Teaching program; and

(3) The project's effect on the specific LEAs the project serves.

Among other things, the Department uses the annual performance reports to determine whether a grantee has demonstrated substantial progress in meeting the goals and objectives (as described in its approved application), and thereby merits a continuation award (for years 2–5). See § 75.118 of EDGAR.

Grantees also will be required to submit a final performance report, due no later than 90 days after the end of the project period.

In addition, section 2314 of the ESEA requires grantees to submit to the Department and to the Congress interim and final evaluations at the end of the third and fifth years of the grant period, respectively. These evaluations must describe the extent to which high-need LEAs that received funds through the grant have met their goals relating to teacher recruitment and retention as described in the project application. Additional requirements pertaining to these reports are in the NFP.

For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Secretary has established one performance indicator for assessing the effectiveness of the Transition to Teaching program: the percentage of new, highly qualified Transition to Teaching teachers who teach in high-need schools in high-need LEAs for at least three years. We will track this indicator through the use of the following three performance measures. We will gather the data for these measures from the grantees.

*Measure One:* The percentage of all Transition to Teaching participants who become teachers of record in high-need schools in high-need LEAs. For this measure we will collect data on the number of participants and the number of teachers of record in high-need schools in high-need LEAs.

*Measure Two:* The percentage of Transition to Teaching participants receiving certification/licensure within three years. For this measure, we will collect data on the number of participants who become certified within three years.

*Measure Three:* The percentage of Transition to Teaching teachers of record who teach in high-need schools in high-need LEAs for at least three years. For this measure, we will collect data on the number of participants who become teachers of record who have been teaching in high-need schools in high-need LEAs for at least three years.

## VII. Agency Contacts

**FOR FURTHER INFORMATION CONTACT:** Thelma Leenhouts, Patricia Barrett, Beatriz Ceja, Anthony Sepulveda, or Salimah Shabazz, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W320, Washington, DC 20202. Telephone: (202) 260–0223 (Thelma Leenhouts), (202) 260–7350 (Patricia Barrett), (202) 205–5009 (Beatriz Ceja), (202) 260–0464 (Anthony Sepulveda), or (202) 260–2434 (Salimah Shabazz), or by e-mail: *transitiontoteaching@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

**Douglas B. Mesecar,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. E8–26870 Filed 11–12–08; 8:45 am]

BILLING CODE 4000–01–P

---

# DEPARTMENT OF ENERGY

## Office of Energy Efficiency and Renewable Energy

## Proposed Agency Information Collection

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments regarding this proposed information collection must be received on or before January 12, 2009. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Written comments may be sent to Patrick Shipp, Office of Information and Business Management Systems (EE–3C), Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, (202) 586–7769; Jody Barringer, Office of Information and Business Management Systems (EE–3C), Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, (202) 586–5404; or by e-mail at *nppd@ee.doe.gov.* The proposed National Priority Project Designation application form is available on-line at the following internet address: *http://www.eere.energy.gov/office_eere/docs/npp_application.doc*.

**SUPPLEMENTARY INFORMATION:** This information collection request contains:

(1) *Information Collection Request Title:* National Priority Project Designation.

(2) *Type of Review:* New collection.

(3) *Purpose:* This collection of information is a form that DOE will make available electronically on the internet and which persons or organizations seeking National Priority Project Designation under Section 1405 of the Energy Policy Act of 2005 (Pub. L. 109–58) must use in applying for such designation. The draft application is available at *http://www.eere.energy.gov/office_eere/docs/npp_application.doc*. Published also in today's **Federal Register**, DOE published a notice of the guidelines for requesting National Priority Project Designation. The purpose of Presidential designation is to recognize energy projects that have advanced the field of renewable energy technology and contributed to North American energy security.

(4) *Respondents:* 20 each year.

(5) *Estimated Number of Burden Hours:* 400 hours annually.

**Statutory Authority:** Energy Policy Act of 2005, Public Law 109–58.

Issued in Washington, DC on October 31, 2008.

**John Mizroch,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. E8–27011 Filed 11–12–08; 8:45 am]

**BILLING CODE 6450–01–P**

---

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### National Priority Project Designation

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

**ACTION:** Notice of guidelines for requesting National Priority Project Designation.

**SUMMARY:** The Department of Energy (DOE) is publishing guidelines for persons and organizations interested in requesting National Priority Project Designation as established in the Energy Policy Act of 2005 (EPAct 2005). The President, upon recommendation of the Secretary of Energy, is authorized by EPAct 2005 annually to recognize projects that are making the greatest strides in helping the United States reduce its dependence on fossil fuels and promote domestic energy security. Following approval of an information collection request, DOE will publish an invitation to apply under the guidelines published today.

**FOR FURTHER INFORMATION CONTACT:** Patrick Shipp, Office of Information and Business Management Systems (EE–3C), Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, (202) 586–7769; Jody Barringer, Office of Information and Business Management Systems (EE–3C), Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585; or e-mail at *nppd@ee.doe.gov.*

**SUPPLEMENTARY INFORMATION:** EPAct 2005 (Pub. L. 109–58), Section 1405, authorizes the President, on the basis of recommendations of the Secretary of Energy, annually to designate as National Priority Projects those projects shown to have advanced the field of renewable energy technology and/or building energy efficiency and contributed to North American energy independence. Organizations whose projects receive a Presidential designation will receive a medal bearing the inscription ''National Priority Project,'' and they may use the National Priority Project Designation in promotion of the organization. DOE also will work with recipients and with national media sources to spotlight these projects as models for the rest of the country and the world.

Section 1405 of EPAct 2005 establishes selection criteria for the following four categories of renewable energy projects: (1) Wind and biomass energy generation projects; (2) photovoltaic and fuel cell energy generation projects; (3) energy efficient building and renewable energy projects; and (4) first-in class projects. Section 1405 also directs the Secretary of Energy to publish in the **Federal Register** guidelines for submitting applications and annual invitations for applications. DOE's Guidelines for National Priority Project Designation are set forth as an Appendix to this notice.

Following approval of the collection of information published also in today's **Federal Register**, DOE will publish an invitation for applications.

Issued in Washington, DC on October 31, 2008.

**John Mizroch,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

## Appendix

*Department of Energy*

Guidelines for National Priority Project Designation

Presidential National Priority Project Designation may be earned by organizations involved in projects that are leading the way in using energy efficiency and renewable energy technologies. This designation, established by Section 1405 of the Energy Policy Act of 2005 (Pub. L. 109–58) provides the President of the United States and the Secretary of Energy with a mechanism to recognize projects that are making the greatest strides in helping North America reduce its dependence on fossil fuels and promote domestic energy security.

Projects that receive the National Priority Project Designation will be highlighted by the Department of Energy (DOE) as transformational energy efficiency and renewable energy leaders. DOE will work with recipients and with national media sources to spotlight these projects as models for the rest of the country and the world.

*I. Eligible Projects*

*A. Categories of Projects*

DOE will accept applications for National Priority Project Designation in the following project categories:

(1) *Grid-Scale Generation by Wind and Biomass Energy Projects.* To be eligible for National Priority Project Designation, a wind or biomass project must provide electricity to the national power grid, rather than electricity designed to serve only specific end users.

A *wind energy project* is any installation of technologies that generates electricity, fuel or

other usable energy by harnessing the power of wind.

A *biomass energy project* is any installation of technologies that generate electricity, fuel or other usable energy derived from biomass, and may include co-firing or co-gasification techniques if biomass is responsible for 51% or more of the energy produced. The term ''biomass'' means any lignin waste material that is segregated from other waste materials and is determined to be nonhazardous by the Administrator of the Environmental Protection Agency; and any solid, nonhazardous, cellulosic material that is derived from—

(A) Any of the following forest-related resources: mill residues, pre-commercial thinnings, slash, brush, or non-merchantable material;

(B) Solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically treated, or painted wood wastes), and landscape or right-of-way tree trimmings; but not including municipal solid waste (garbage), gas derived from the biodegradation of solid waste, or paper that is commonly recycled;

(C) Agriculture wastes, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues; and livestock waste nutrients; or

(D) A plant that is grown exclusively as a fuel for the production of electricity.

(2) *Distributed Generation by Photovoltaic and Fuel Cell Energy Projects.* A photovoltaic or fuel cell project must produce distributed generation to be eligible for National Priority Project Designation. DOE considers distributed generation to be any power source that is designed to power an end user within a radius of one mile from the source.

A *photovoltaic energy project* is any installation of technologies that converts light directly into electricity through a solid-state, semiconductor process.

A *fuel cell energy project* is any application of technologies that uses fuel cells to store or transport energy. The term ''fuel cell'' means a device that directly converts the chemical energy of a fuel and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.

(3) *Building Energy Efficiency and Renewable Energy Projects.* This category of eligible projects consists of energy-efficient buildings and building-based renewable energy projects.

An *energy-efficient building project* is one that will retrofit an existing building or build a new building such that the building performs all of its intended roles while using significantly less energy than conventional building stock. DOE considers the term ''new building'' to mean a building that is completed to the point of being ready for occupancy not earlier than two years before the date of the application for National Priority Project Designation.

A *renewable energy project* is one using technology that generates electricity or usable energy in the form of heat, steam, or fuel from any of the following sources: solar, wind, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), geothermal, municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project.

(4) *First-in-Class Building Energy Efficiency and Renewable Energy Projects.* DOE considers a first-in-class project to be one that incorporates a new energy-related technology or technique not used before, not used in the same manner before, or not used on the same scale before.

*B. Time of Construction*

DOE will accept award applications both for projects that are being *planned* (are under construction or will begin construction within the next two years) and projects that are *complete* (were completed within the past two years).

**II. Designation Criteria**

To obtain the National Priority Project Designation, a project must:

- Utilize energy-efficient or renewable energy technologies and fit into one of the four categories of projects identified in Section I.A. of these guidelines;
- Be located within the United States; and
- Meet the following criteria (for applicable category):
  - *For wind and biomass*—the project must involve the installation of not less than 30 megawatts of renewable energy generation capacity.[1]
  - *For PV and fuel cells*—the project must involve the installation of not less than 3 megawatts of renewable energy generation capacity.
  - *For buildings—the project must have all of the following attributes:*
    - Meet guidelines for Leadership in Energy and Environmental Design (LEED) certification (any level);
    - Use whole-building integration of energy efficiency and environmental performance design and technology, including advanced building controls;
    - Use renewable energy for at least 50% of the energy consumption of the project;
    - Use ENERGY STAR®-labeled products wherever possible; and
    - Include at least 5 million square feet of enclosed space (not necessarily all in one building or at a single site). ''Enclosed'' means space closed off from the elements that is heated, cooled, or both.
  - *For first-in-class building projects*—the project must represent a first-in-class use of renewable energy or a new paradigm of building-integrated renewable energy use or energy efficiency. Any project establishing a new paradigm would need to include techniques that fundamentally change the assumptions made about energy systems as they relate to building science. This category could potentially include innovative project-financing approaches. There are no scale parameters for first-in-class building projects.

**III. DOE Review and Designation**

*A. Selection Process*

After the close of the application period, DOE will review the applications and determine which projects have the potential to receive the National Priority Project Designation. DOE will ask the applicants of those projects to have a professional engineer inspect their project and certify that the information contained in their application is correct. The professional engineer may be an employee of the applicant organization. Once this is done, DOE will consider these projects to be ''certified projects.'' A certified project is one that is reasonably expected to meet the selection criteria set forth in these Guidelines.

DOE technical staff will then conduct an additional review of all certified projects. This review may involve follow-up questions for the applicant organization. At the conclusion of this review, the Secretary of Energy will select the projects to be recommended to the President for designation as that year's National Priority Projects. While the Department of Energy will accept award applications in all four project categories, the Secretary of Energy may not recommend National Priority Project Designation for projects in all categories.

Any organization that applies for National Priority Project Designation may remove its project from consideration at any time.

*B. Promotion of Designated Projects*

Organizations whose projects are designated by the President as National Priority Projects will receive recognition from the Department of Energy in the form of:

- Receipt of a National Priority Project Designation medal at a national event;
- National news releases;
- Prominent recognition on the DOE Web site; and
- Other suitable forms of publicity and recognition

*C. Additional Information*

(1) Applicants may request confidentiality of information that they believe is exempt by law from public disclosure; this information must be clearly marked on the application by the applicant. DOE intends to honor requests for nondisclosure of information to the extent permitted by law, and it will make a final determination with regard to disclosure or nondisclosure of the information in accordance with DOE's Freedom of Information regulations (10 CFR 1004.11).

(2) Submission of an application for designation does not create any obligation on DOE to grant such designation.

(3) Questions or requests for additional information about National Priority Project Designation should be directed to *nppd@ee.doe.gov.*

[FR Doc. E8–27010 Filed 11–12–08; 8:45 am]

BILLING CODE 6450–01–P

[1] For purposes of the National Priority Project Designation, the National Renewable Energy Laboratory has defined the term ''capacity'' to mean the maximum amount of energy that can be generated or stored by a device at any given time. For example, the capacity for a wind turbine would be the maximum electricity (Watts) it could generate given ideal wind speeds. The capacity of an energy storage device would be the total amount of energy that can be stored in the device under ideal conditions.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12562–001]**

### Warmsprings Irrigation District; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

November 5, 2008.

Warmsprings Irrigation District filed an application on March 3, 2008, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of 2.5-megawatt (MW) Warmsprings Dam Hydroelectric Project. The project would be located on the Malheur River, in Malheur County, Oregon, on U.S. Bureau of Reclamation lands. The proposed project would utilize federal lands.

The proposed Warmsprings Dam Hydroelectric Project would use the U.S. Bureau of Reclamation' Warmsprings Dam and would consist of: (1) A proposed intake structure; (2) a proposed 100-foot-long, 5-foot-diameter steel penstock; (3) a proposed powerhouse containing one generating unit having a total installed capacity of 2.5 MW; (4) a proposed 100-foot-long, 15-kV transmission line; and (5) appurtenant facilities.

*Applicant Contact:* Mr. Brent Smith, Chief Operating Officer, Symbiotics, LLC., P.O. Box 535, Rigby, Idaho 83442; phone: (208) 745–0834. *FERC Contact:* Tom Papsidero, 202–502–6002.

*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 Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–12562–001) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–26896 Filed 11–12–08; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

November 6, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP09–49–000.
*Applicants:* Chandeleur Pipe Line Company.
*Description:* Chandeleur Pipe Line Co. submits Seventh Revised Sheet No. 3 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1 to be effective 10/1/08.
*Filed Date:* 11/03/2008.
*Accession Number:* 20081105–0119.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 17, 2008.

*Docket Numbers:* RP09–50–000.
*Applicants:* Puget Sound Energy, Inc.
*Description:* Puget Sound Energy, Inc. submits Eighth Revised Sheet No. 1 *et al.* to FERC Gas Tariff, Original Volume No. 1, to be effective 11/1/08 re Jackson Prairie Gas Storage Project Agreement.
*Filed Date:* 10/31/2008.
*Accession Number:* 20081104–0097.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 12, 2008.

*Docket Numbers:* RP09–51–000.
*Applicants:* Central New York Oil and Gas Co., LLC.
*Description:* Central New York Oil and Gas Co. LLC submits Fourth Revised Sheet No. 0 *et al.* to FERC Gas Tariff, Original Volume No. 1, to be effective 12/1/08.
*Filed Date:* 10/31/2008.
*Accession Number:* 20081104–0096.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 12, 2008.

*Docket Numbers:* RP09–52–000.
*Applicants:* Transcontinental Gas Pipe Line Corporation.
*Description:* Transcontinental Gas Pipe Line Corporation submits First Revised Sheet No. 40R *et al.* to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 12/1/08.
*Filed Date:* 10/31/2008.
*Accession Number:* 20081104–0095.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 12, 2008.

*Docket Numbers:* RP09–53–000.
*Applicants:* Dominion Transmission, Inc.
*Description:* Dominion Transmission, Inc. submits Second Revised Sheet No. 1 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 12/4/08.
*Filed Date:* 11/03/2008.
*Accession Number:* 20081104–0094.
*Comment Date:* 5 p.m. Eastern Time on Friday, November 14, 2008.

*Docket Numbers:* RP09–54–000.
*Applicants:* El Paso Natural Gas Company.
*Description:* El Paso Natural Gas Co. submits Second Revised Sheet No.3 to FERC Gas Tariff, Second Revised Volume No. 1A to be effective 12/5/08.
*Filed Date:* 11/04/2008.
*Accession Number:* 20081105–0120.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 17, 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. E8–26902 Filed 11–12–08; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EL08–88–000; ER08–1178–000; ER09–213–000]**

### California Independent System Operator Corporation; Supplemental Notice of Technical Conference

November 5, 2008.

On October 28, 2008, the Commission issued a Supplemental Notice (October 28, 2008 Notice) of a staff technical conference in the above-captioned proceedings. As stated in the October 28, 2008 Notice, the purpose of the technical conference is 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), in Hearing Room 1, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The agenda for this conference is attached. If there are any changes, the revised agenda will be posted on the calendar page for this event on the Commission's Web site, *http://www.ferc.gov*. Please note that the timeframes are estimates, and if the schedule for November 6, 2008 is completed before 4 p.m., discussion will turn to issues scheduled for November 7, 2008.

Also, in an abundance of caution, the instant supplemental notice adds Docket No. ER09–213–000, California Independent System Operator Submits an Amendment to the Market Redesign and Technology Upgrade Tariff, as this filing concerns forbidden operating regions.

The technical conference will be open for the public to attend and advance registration is not required. The conference will be accessible via telephone on a listen-only basis for those parties who reserved a telephone line pursuant to the instructions provided in the October 28, 2008 Notice. Staff reiterates 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. E8–26897 Filed 11–12–08; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EL08–87–000; PL09–3–000]**

### Electric Power Supply Association; Control and Affiliation for Purposes of Market-Based Rate Requirements Under Section 205 of the Federal Power Act and the Requirements of Section 203 of the Federal Power Act; Notice Redocketing Proceeding

November 5, 2008.

On September 2, 2008, the Electric Power Supply Association (EPSA) filed a petition with the Commission requesting guidance with respect to the question of when investments in publicly-held companies will be deemed to convey ''control'' or to result in ''affiliation'' for purposes of the Commission's market-based rate requirements under section 205 of the Federal Power Act (FPA) and the requirements of section 203 of the FPA. The filing was docketed as EL08–87–000.

Examination of the filing shows that that EPSA's petition raises issues of generic implication to the electric utility industry, and thus should have been assigned a PL docket prefix indicating matters of general applicability. By this notice, the above-referenced proceeding is hereby redocketed as Docket No. PL09–3–000 and Docket No. EL08–87–000 is hereby terminated. All pleadings filed in Docket No. EL08–87–000 will also be redocketed in the new docket number, Docket No. PL09–3–000. As the instant proceeding is matter of general applicability, interventions need not be filed.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E8–26898 Filed 11–12–08; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OARM–2008–0825, EPA–HQ–OARM–2008–0827, EPA–HQ–OARM–2008–0828, EPA–HQ–OARM–2008–0829; FRL–8740–2]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Background Checks for Contractor Employees, EPA ICR Number 2159.03, OMB Control Number 2030–0043; Drug Testing for Contract Employees, EPA ICR Number 2183.03, OMB Control Number 2030–0044; Monthly Progress Reports, EPA ICR Number 1039.12, OMB Control Number 2030–0005; and Contractor Cumulative Claim and Reconciliation, 1900–10, EPA ICR Number 0246.10, OMB Control Number 2030–0016

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew four existing approved Information Collection Requests (ICR) to the Office of Management and Budget (OMB). These ICRs are scheduled to expire as follows: EPA ICR Numbers 2159.03 and 2183.03 are scheduled to expire on December 31, 2008. EPA ICR Numbers 1039.12 and 0246.10 are scheduled to expire on April 30, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific

aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before *January 12, 2009.*

**ADDRESSES:** Submit your comments, identified by the Docket ID numbers provided for each item in the text, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: oei.docket@epa.gov.*
- *Fax:* (202)–566–9744.
- *Mail:* EPA Docket Center, Agency Information Collection Activities: Proposed Collection;

Docket ID: EPA–HQ–OARM–2008–0828, Background Checks for Contractor Employees, EPA ICR Number 2159.03

Docket ID: EPA–HQ–OARM–2008–0829, Drug Testing for Contract Employees, EPA ICR Number 2183.03

Docket ID: EPA–HQ–OARM–2008–0825, Monthly Progress Reports, EPA ICR Number 1039.12

Docket ID: EPA–HQ–OARM–2008–0827, Contractor Cumulative Claim and Reconciliation, EPA ICR Number 0246.10

Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

**FOR FURTHER INFORMATION CONTACT:** Donna Blanding, Policy, Training and Oversight Division, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–1130; fax number: 202–565–2553; e-mail address: *blanding.donna@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for each of the ICRs identified in this document (see the Docket ID numbers for each ICR that are provided in the text), which is available for online viewing at *www.regulations.gov,* or in person viewing at the HQ–OARM Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

## What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## What Information Collection Activity or ICR Does This Apply to?

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The

display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

**Individual ICRs**

(1) Docket ID No. EPA–HQ–OARM–2008–0828; (2) Docket ID No. EPA–HQ–OARM–2008–0829

*Affected entities:* Entities potentially affected by these two ICRs are contractors performing work at sensitive sites or on sensitive projects, and not covered under the provisions of Homeland Security Presidential Directive-12. Specifically, all contractors involved with Emergency Response, Superfund, Information Systems, Facility Services, and Research Support that have significant security concerns, as determined by the Contracting Officer, on a case-by-case basis, will be required to provide qualified personnel that meet the background check and drug testing requirements developed by EPA.

*Titles:* (1) Background Checks for Contractor Employees; (2) Drug Testing for Contractor Employees.

*ICR numbers:* (1) Background Checks for Contractor Employees, EPA ICR Number 2159.03, OMB Control Number 2030–0043; (2) Drug Testing for Contract Employees, EPA ICR Number 2183.03, OMB Control Number 2030–0044.

*ICR status:* These two ICRs are being renewed and are both currently scheduled to expire on December 31, 2008.

*Abstract:* (1) Background checks cover citizenship or valid visa, criminal convictions, weapons offenses, felony convictions, parties prohibited from receiving federal contracts. (2) Drug tests are for the presence of marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). The Contractor shall maintain records of all background checks and drug tests.

*Burden Statement:* (1) The number of contractor employees expected to submit the requested information for background checks is 3,000 for the life of this ICR (3 years) or 1,000 occurrences per year. The number of annual occurrences, 1,000, multiplied by the respondent burden effort of 1 hour to collect information, equals a total of 1,000 hours per year. The total annual respondent cost for performing background checks collection requests is $179,000. This is calculated by multiplying the number of annual occurrences, 1,000, by the respondent cost of one collection, $179. (2) The number of contractor employees expected to submit the requested information for drug testing is 450 occurrences per year. The number of annual occurrences, 450, multiplied by the respondent burden effort of 1 hour to collect information, equals a total of 450 hours per year. The total annual respondent cost for this collection request is $65,250. This is calculated by multiplying the number of occurrences, 450, by the cost of one collection, $145. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Are There Changes in the Estimates From the Last Approval?**

EPA estimates that the annual hourly burden for this collection will remain the same as reported in the previous information collection because there has been no change in the information being collected and approximately the same number of contracts remain active.

(3) Docket ID No. EPA–HQ–OARM–2008–0825.

*Affected entities:* Entities potentially affected by this action are those holding cost reimbursable, time and material, labor hour, or indefinite quantity/indefinite delivery fixed rate contracts with EPA.

*Titles:* Monthly Progress Reports.

*ICR numbers:* EPA ICR No. 1039.12, OMB Control No. 2030–0005.

*ICR status:* This ICR is being renewed and is currently scheduled to expire on April 30, 2009.

*Abstract:* Agency contractors who have cost reimbursable, time and material, labor hour, or indefinite delivery/indefinite quantity fixed rate contracts will report the technical and financial progress of the contract on a monthly basis. EPA will use this information to monitor the contractor's progress under the contract. Responses to the information collection are mandatory for contractors, and are required for the contractors to receive monthly payments. Information submitted is protected from public release in accordance with the Agency's confidentiality regulations, 40 CFR 2.201 *et seq.*

*Burden Statement:* EPA estimates that each response will take approximately 36 hours. EPA anticipates that the total active affected contracts will remain approximately 324, times 12 submissions per year to yield about 3,888 annual collections. Each collection is estimated to cost $2,592 based on a variety of contractor personnel performing individual tasks required for information gathering and submission. The anticipated 3,888 annual submissions are estimated to cost $10,077,696 annually. Minimal operation and maintenance costs are expected for photocopying and postage.

**Are There Changes in the Estimates From the Last Approval?**

EPA estimates that the annual hourly burden for this collection will remain the same as reported in the previous information collection because there has been no change in the information being collected and approximately the same number of contracts remain active.

(4) Docket ID No. EPA–HQ–OARM–2008–0827.

*Affected entities:* Entities potentially affected by this action are those holding cost reimbursable contracts with EPA.

*Titles:* Contractor Cumulative Claim and Reconciliation.

*ICR numbers:* EPA ICR No. 0246.10, OMB Control No. 2030–0016.

*ICR status:* This ICR is being renewed and is currently scheduled to expire on April 30, 2009.

*Abstract:* At the completion of a cost reimbursement contract, contractors will report final costs incurred, including direct labor, materials, supplies, equipment, other direct charges, subcontracting, consultant fees, indirect costs, and fixed fee. Contractors will report this information on EPA Form 1900–10. EPA will use this information to reconcile the contractor's costs. Establishment of the final costs and fixed fee is necessary to close out the contract. Responses to the information collection are mandatory for those contractors completing work under a cost reimbursement contract, and are required to receive final payment. Information submitted is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 *et seq.*

*Burden Statement:* EPA estimates that the annual hourly burden will be 165 hours based on the following: Each response will take approximately 40 minutes, and EPA closes out approximately 247 contracts per year. The annual dollar burden is estimated at $5,404.36 based on a combination of contractor employees providing the

information. The total cost of the contractor-provided information is estimated to be $21.88 for the 40 minute period. Minimal operation and maintenance costs are expected for photocopying and postage.

**Are There Changes in the Estimates From the Last Approval?**

EPA estimates that the annual hourly burden for this collection will remain the same as reported in the previous information collection request because there has been no change in the information being collected and approximately the same number of contracts are closed out each year.

**What Is the Next Step in the Process for All Four ICRs?**

EPA will consider the comments received and amend the ICRs as appropriate. The final ICR packages will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue **Federal Register** notices pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICRs to OMB and the opportunity to submit additional comments to OMB. If you have any questions about these ICRs or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: November 6, 2008.

**Elena deLeon,**

*Service Center Manager, Acquisition Policy and Training Service Center, Office of Acquisition Management.*

[FR Doc. E8–26947 Filed 11–12–08; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

## Insurability of Funds Underlying Stored Value Cards and Other Nontraditional Access Mechanisms

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of New General Counsel's Opinion No. 8.

**SUMMARY:** In 1996, the FDIC published General Counsel's Opinion No. 8 (''GC8''). Through that opinion, the Legal Division of the FDIC sought to clarify the meaning of the term ''deposit'' as that term relates to funds underlying stored value cards. Subsequently, the banking industry developed new types of stored value products with the result that GC8 is obsolete. For this reason, the Legal Division has decided to replace GC8. Under the new GC8, all funds underlying stored value products will be treated as ''deposits'' if they have been placed at an insured depository institution. As a result, all such funds will be subject to FDIC assessments. Also, all such funds will be insured up to the insurance limit. Whether the funds are insurable to the holders of the access mechanisms, as opposed to the distributor of the access mechanisms, will depend upon the satisfaction of the FDIC's standard requirements for obtaining ''pass-through'' insurance coverage. This treatment of the funds underlying stored value products does not differ from the treatment set forth in a proposed rule published by the FDIC in August of 2005. *See* 70 FR 45571 (August 8, 2005).

The new GC8 will provide guidance to the public about the insurance coverage of funds underlying nontraditional access mechanisms. Also, the new GC8 will promote accuracy and consistency by insured depository institutions in reporting ''deposits'' for inclusion in an institution's assessment base.

**FOR FURTHER INFORMATION CONTACT:** Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**Text of General Counsel's Opinion**

By: Sara A. Kelsey, General Counsel, FDIC.

**Introduction**

The evolution of stored value cards since the issuance of the original General Counsel's Opinion No. 8, in 1996, has created the need to revisit the issue of deposit insurance coverage for the holders of such cards. Stored value cards now commonly serve as the delivery mechanism for vital funds such as employee payroll and government payments such as benefits and tax refunds. Network branded reloadable stored value cards also serve as an alternative mechanism for holders to access funds held in a bank for their benefit. This new General Counsel's Opinion No. 8 seeks to clarify the deposit insurance coverage available to the holders of stored value cards whose funds are held for their benefit in insured depository institutions.

The FDIC is responsible for insuring ''deposits'' at insured depository institutions. *See* 12 U.S.C. 1821. Also, the FDIC is responsible for collecting assessments on ''deposits.'' *See* 12 U.S.C. 1817. In fulfilling these responsibilities, the FDIC must be able to determine the existence of ''deposits'' at insured depository institutions.

In the Federal Deposit Insurance Act (''FDI Act''), the term ''deposit'' is defined at section 3(l). *See* 12 U.S.C. 1813(l). In general, a ''deposit'' is ''the unpaid balance of money or its equivalent received or held by a bank or savings association.'' 12 U.S.C. 1813(l)(1). The definition encompasses the funds in checking accounts, savings accounts and certificate of deposit accounts. *See id.* It also includes the funds received by a bank or savings association in exchange for the issuance of traveler's checks. *See id.* Similarly, the term ''deposit'' includes the funds underlying official checks and money orders. *See* 12 U.S.C. 1813(l)(4).

In short, the statutory definition of ''deposit'' at section 3(l) of the FDI Act is very broad. By express terms, section 3(l) encompasses almost all funds subject to transfer or withdrawal through traditional access mechanisms (such as checks, traveler's checks, official checks and money orders) provided that the funds have been placed at an insured depository institution.[1]

Following the failure of an insured depository institution, the FDIC is responsible for paying insurance on ''deposits.'' *See* 12 U.S.C. 1821(f); 12 U.S.C. 1821(a). In applying the insurance limit, the FDIC must aggregate all deposits ''maintained by a depositor in the same capacity and the same right.'' 12 U.S.C. 1821(a)(1)(C). In other words, the FDIC must aggregate all deposits owned by a particular depositor in a particular ownership category. For example, the FDIC will aggregate all deposits held by a particular depositor in the form of ''single ownership accounts.'' The FDIC will provide separate insurance coverage for deposits in other ownership categories, such as ''joint ownership accounts'' or ''revocable trust accounts.'' *See* 12 CFR part 330.

In applying the insurance limit, the FDIC must be able to determine the identities of depositors. This task is different than determining the existence of ''deposits.'' A depositor is the owner of a deposit, *i.e.*, a creditor with a particular type of claim against a depository institution. In contrast, as previously discussed, a ''deposit'' is the money entrusted to the depository institution, *i.e.*, the depository institution's obligation to repay the money.

The FDI Act provides that the FDIC, in determining the identities of

[1] The only exceptions are certain narrow exceptions expressly created by Congress (such as an exception for bank obligations payable solely outside the United States). *See* 12 U.S.C. 1813(l)(5).

depositors following the failure of an insured depository institution, may rely upon the records of the failed insured depository institution. *See* 12 U.S.C. 1822(c). In accordance with this statutory authority, the FDIC has promulgated rules for determining the owners of deposits placed at insured depository institutions by agents or custodians, *i.e.*, deposits owned by persons who do not deal directly with the depository institution. First, the agency or custodial relationship must be disclosed in the account records of the insured depository institution, *e.g.*, through an account title such as ''ABC Company as Custodian.'' *See* 12 CFR 330.5(b)(1). Second, the identities and interests of the actual owners must be disclosed in the records of the depository institution or records maintained by the custodian or other party. *See* 12 CFR 330.5(b)(2). Third, the deposits actually must be owned (under the contract between the parties or any applicable law) by the named owners and not by the custodian. *See* 12 CFR 330.3(h); 12 CFR 330.5(a)(1).

When the FDIC's requirements are satisfied, the insurance coverage ''passes through'' the custodian, *i.e.*, the nominal accountholder, to each of the actual owners of the deposit. *See* 12 CFR 330.7(a). When the requirements are not satisfied, the named accountholder is treated as the owner.

The rules summarized above can be applied to the funds underlying stored value products. In the case of such funds, two issues must be addressed: (1) whether (or when) the funds should be classified as ''deposits''; and (2) whether (or when) the holders of the access mechanisms (as opposed to the distributor of the access mechanisms) should be treated as depositors. Stored value products are discussed in greater detail below.

**Stored Value Products**

Stored value products, or ''prepaid products,'' may be divided into two broad categories: (1) Merchant products; and (2) bank products.

A merchant card (also referred to as a ''closed-loop'' card) enables the cardholder to collect goods or services from a specific merchant or cluster of merchants. Generally, the cards are sold to the public by the merchant in the same manner as gift certificates. Examples are single-purpose cards such as cards sold by book stores or coffee shops. Another example is a prepaid telephone card.

Merchant cards do not provide access to money at a depository institution. When a cardholder uses the card, the merchant is not paid through a depository institution. On the contrary, the merchant has been prepaid through the sale of the card. In the absence of money at a depository institution, no insured ''deposit'' will exist under section 3(l) of the FDI Act. *See FDIC* v. *Philadelphia Gear Corporation*, 476 U.S. 426 (1986).

Bank cards are different. Bank cards (also referred to as ''open-loop'' cards) provide access to money at a depository institution. In some cases, the cards are distributed to the public by the depository institution itself. In many cases, the cards are distributed to the public by a third party. For example, in the case of ''payroll cards,'' the cards often are distributed by an employer to employees. In the case of multi-purpose ''general spending cards'' or ''gift cards,'' the cards may be sold by retail stores to customers.

A bank card usually enables the cardholder to effect transfers of funds to merchants through point-of-sale terminals. A bank card also may enable the cardholder to make withdrawals through automated teller machines (''ATMs''). In other words, a bank card provides access to money at a depository institution. The money is placed at the depository institution by the card distributor (or other company in association with the card distributor), but is transferred or withdrawn by the cardholders. In some cases, the card is ''reloadable'' in that additional funds may be placed at the depository institution for the use of the cardholder.

This General Counsel's opinion does not address merchant cards because such cards do not involve the placement of funds at insured depository institutions. The applicability of this General Counsel's opinion is limited to bank cards and other nontraditional access mechanisms, such as computers, that provide access to funds at insured depository institutions.

**''Deposits''**

The original GC8 did not address all types of stored value products offered by (or through) insured depository institutions. For example, it did not address systems in which the depository institution maintains a pooled self-described ''reserve account'' for all cardholders but also maintains an individual subaccount for each cardholder. Likewise, the original GC8 did not discuss systems in which the access mechanisms are distributed not by the insured depository institution but instead are distributed by a third party (such as the employer in the case of payroll cards or a retail store in the case of general spending cards). Hence, the original GC8 is obsolete and must be replaced.

Having reconsidered the issue of whether funds underlying stored value products qualify as ''deposits,'' the Legal Division has concluded that such funds always should be treated as ''deposits'' provided that the funds have been placed at an insured depository institution. This conclusion is based upon the general premise that the funds underlying stored value cards and other modern access mechanisms are no different, in substance, than the funds underlying traditional access mechanisms such as checks, official checks, traveler's checks and money orders.

In other words, the access mechanism is unimportant. Whether funds should be classified as ''deposits'' should not depend upon the access mechanism (or whether the access mechanism is a plastic card as opposed to a paper check). Rather, as recognized by the Supreme Court, the existence of a ''deposit'' depends upon whether ''assets and hard earnings'' have been entrusted to a bank. *See FDIC* v. *Philadelphia Gear Corporation*, 106 S. Ct. 1931 (1986).

In concluding that the funds are ''deposits,'' the Legal Division relies upon paragraph 3(l)(1), paragraph 3(l)(3) and paragraph 3(l)(4) of the statutory definition. *See* 12 U.S.C. 1813(l)(1); 12 U.S.C. 1813(l)(3). Each of these paragraphs is discussed in turn below.

*Paragraph 3(l)(1).* This paragraph defines ''deposit'' as ''[t]he unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account.* * *'' 12 U.S.C. 1813(l)(1). Under this paragraph, funds are ''deposits'' when a commercial entity (such as the employer in the case of payroll cards or a retail store in the case of general spending cards) places ''money or its equivalent'' at an insured depository institution (*i.e.*, places funds into a ''commercial'' account). Also, under this paragraph, funds are ''deposits'' when placed into checking accounts. In addition, funds are ''deposits'' when given to a bank in exchange for a traveler's check. *See id.* Some stored value products are the functional equivalents of checks or traveler's checks.

*Paragraph 3(l)(3).* This paragraph defines ''deposit'' as ''money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or

savings association, in the usual course of business for a special or specific purpose.* * *'' 12 U.S.C. 1813(l)(3). Under this paragraph, funds are ''deposits'' when held by a bank for the ''special or specific purpose'' of covering withdrawal or transfer instructions from the holders of stored value cards or other nontraditional access mechanisms. In the original GC8, the Legal Division found that paragraph 3(l)(3) applies only to cases in which the customer's spending plans are very specific but such a narrow reading of the statute is not supported by the legislative history. *See FDIC* v. *Philadelphia Gear Corporation*, 106 S. Ct. 1931 (1986). Also, the Legal Division is unaware of any case in which a court found that a bank's liability did not qualify as a ''deposit'' because the customer's spending plans were insufficiently specific.

*Paragraph 3(l)(4).* This paragraph defines ''deposit'' as ''outstanding draft * * * cashier's check, money order, or other officer's check issued in the usual course of business for any purpose.* * *'' 12 U.S.C. 1813(l)(4). Some stored value products are the functional equivalents of cashier's checks or money orders.

As outlined above, the statutory definition of ''deposit'' is very broad. The Legal Division concludes that this definition encompasses all funds underlying stored value cards and other nontraditional access mechanisms to the extent that the funds have been placed at an insured depository institution.

A separate issue is whether the holder of an access mechanism (as opposed to the distributor of the access mechanism) should be treated as the insured depositor for the purpose of applying the insurance limit. This issue is addressed below.

**Depositors**

Under the existing insurance regulations at 12 CFR part 330, the FDIC is entitled to rely upon the account records of the failed insured depository institution in determining the owners of deposits. *See* 12 CFR 330.5. Therefore, in cases in which a separate account has been opened in the name of the holder of the access mechanism, the FDIC will recognize the holder as the owner of the deposit.

In some cases, in an agency or custodial capacity, the distributor of the access mechanisms (or agent on behalf of the distributor) might open a pooled account for all holders of the access mechanisms. In such cases, the FDIC may provide ''pass-through'' insurance coverage (*i.e.*, coverage that ''passes through'' the agent to the holders). *See* 12 CFR 330.7. Such coverage is not available, however, unless certain requirements are satisfied. First, the account records of the insured depository institution must disclose the existence of the agency or custodial relationship. *See* 12 CFR 330.5(b)(1). This requirement can be satisfied by opening the account under a title such as the following: ''ABC Company as Custodian for Cardholders.'' Second, the records of the insured depository institution or records maintained by the custodian or other party must disclose the identities of the actual owners and the amount owned by each such owner. *See* 12 CFR 330.5(b)(2). Third, the funds in the account actually must be owned (under the agreements among the parties or applicable law) by the purported owners and not by the custodian (or other party). *See* 12 CFR 330.3(h); 12 CFR 330.5(a)(1). If these three requirements are not satisfied, the FDIC will treat the custodian (*i.e.*, the named accountholder) as the owner of the deposits.

It is encouraged that accurate information concerning FDIC insurance coverage be displayed on stored value cards. This information should include the name of the insured depository institution in which the funds are held. When appropriate, the card also should state that the funds are insured by the FDIC to the cardholder. These disclosures will provide the cardholder with important information concerning FDIC deposit insurance coverage.

**Conclusion**

This opinion replaces the opinion published by the FDIC in 1996. Under this opinion, all funds underlying stored value cards and other nontraditional access mechanisms will be treated as ''deposits'' to the extent that the funds have been placed at an insured depository institution. If the FDIC's standard recordkeeping requirements are satisfied, the holders of the access mechanisms will be treated as the insured depositors for the purpose of applying the insurance limit. Otherwise, the distributor of the access mechanisms (*i.e.*, the named accountholder) will be treated as the insured depositor.

This opinion is based upon the proposition that the form of the access mechanism is unimportant. Whether the mechanism is traditional, such as an ATM card, book of checks or official check, or nontraditional, such as a stored value product, the access mechanism is merely a device for withdrawing or transferring the underlying money. The ''deposit'' is the underlying money received by the depository institution and held for an accountholder.

By order of the Board of Directors, dated at Washington, DC, this 31st day of October 2008.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E8–26867 Filed 11–12–08; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission.

**DATE & TIME:** Thursday, November 13, 2008 at 1:30 p.m.

**PLACE:** 999 E Street, NW., Washington, DC (ninth floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Draft Advisory Opinion 2008–14: Melothe, Inc. by Marc E. Elias, Esquire.

Report of the Audit Division on Edwards for President.

Report of the Audit Division on the Kuhl for Congress Committee.

Report of the Audit Division on the Missouri Democratic State Committee.

Report of the Audit Division on the Oregon Republican Party.

Report of the Audit Division on Sharpton 2004.

Management and Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

**Mary W. Dove,**

*Secretary of the Commission.*

[FR Doc. E8–26877 Filed 11–10–08; 11:15 am]

BILLING CODE 6715–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this

notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*www.fmc.gov*) or contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 011539–015.

*Title:* CLNU/HLAG Space Charter and Sailing Agreement.

*Parties:* Companhia Libra de Navegacao (Libra); Compania Sud Americana de Vapores, S.A. (CSAV); Compania Libra de Navegacion Uruguay S.A.; and Hapag-Lloyd AG.

*Filing Party:* Walter H. Lion, Esq., McLaughlin & Stern, LLP, 260 Madison Avenue, New York, NY 10016.

*Synopsis:* The amendment adds Libra and CSAV as parties to the agreement and changes the name of the agreement to CSAV Group/HLAG Space Charter and Sailing Agreement.

*Agreement No.:* 011579–014.

*Title:* Inland Shipping Service Association Agreement.

*Parties:* Crowley Liner Services, Inc.; Seaboard Marine, Ltd. and Seaboard Marine of Florida, Inc.

*Filing Party:* Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

*Synopsis:* The amendment deletes APL Co. Pte Ltd. as a party to the Agreement.

*Agreement No.:* 012055.

*Title:* Maersk Line/CMA CGM Cooperative Working Agreement.

*Parties:* A.P. Moller-Maersk A/S, and CMA CGM S.A.

*Filing Party:* Wayne R. Rohde, Esq., Sher and Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

*Synopsis:* The agreement authorizes the parties to solicit bids, negotiate and enter into joint contracts for provisions of marine terminal facilities and services in the trade between Asia and the United States.

*Agreement No.:* 201199.

*Title:* Port Fee Services Agreement.

*Parties:* City of Los Angeles; City of Long Beach; PortCheck LLC; APM Terminals Pacific Ltd.; Eagle Marine Services, Ltd.; Long Beach Container Terminal, Inc.; Total Terminals International; California United Terminals, Inc.; International Transportation Service, Inc.; Seaside Transportation Service, LLC; West Basin Container Terminal LLC; Pacific Maritime Services, LLC; SSA Terminal (Long Beach), LLC; Trans Pacific Container Service Corporation; SSA Terminals, LLC; and Yusen Terminals, Inc.

*Filing Party:* David F. Smith, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036; C. Jonathan Benner, Esq., and Matthew J. Thomas, Esq., Troutman and Sanders, LLP, 401 9th Street, NW., Suite 1000, Washington, DC 20004–2134.

*Synopsis:* The agreement authorizes Port Check LLC and the marine terminal operators to provide certain services to the ports relating to the collection of a clean truck fee, control of access to port property, and related activities.

By the Commission.

Dated: November 7, 2008.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. E8–26985 Filed 11–12–08; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants**

FPS Ronin LLC dba Four Point Star Global Logistics, 2645 Fairfax Drive, Columbus, OH 43220. Officer: Michael J. Stolarczyk, CEO (Qualifying Individual).

STG Freight Services, Inc., 1111 Kane Concourse, Ste. 518, Bay Harbor Islands, FL 33154. Officers: Jacob Gibman, President (Qualifying Individual), Arthur Moroz, Vice President.

Logistic Freight Forwarders Group, 7232 NW 56 Street, Miami, FL 33166. Officer: Lizzette M. Licona, Secretary (Qualifying Individual).

American Patriot Lines, Inc., 6242 Westchester Pkwy., Ste. 160, Los Angeles, CA 90045. Officers: Ching W. Leung, Treasurer (Qualifying Individual), Terrace P. Lynch, President.

EDM International Logistics, Inc., 2225 W. Commonwealth Ave., Ste. 219, Alhambra, CA 91803. Officer: Yijie Wan, President (Qualifying Individual).

Fastmark Corporation, 7206 NW, 84 Ave., Miami, FL 33166. Officers: Juan C. Mazza, President (Qualifying Individual).

Titan Container Line Inc., 211 E. 43rd Street, #401, New York, NY 10017. Officer: Laurence Cohen, President (Qualifying Individual).

Inter-Continental Trading, Inc., dba Inter-Continental Trading Group.; Yuan Mao Logistics, 800 S. Date Ave., Alhambra, CA 91803. Officer: Chang Z. Zhou, President (Qualifying Individual).

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

Peters & May USA, Inc. dba Compass Marine, 1656 Carmen Drive, Elk Grove Village, IL 60007. Officers: Ingo Wagschal, President (Qualifying Individual).

DMS America LLC, 2025 NW 102 Ave., Ste. 112, Doral, FL 33172. Officers: Eduardo Garcia, Operational Manager (Qualifying Individual), Fernando E. Arruda, President.

Trans World Logistics Corporation, 702 Penny Lane, Plainfield, IN 46168. Officers: Malene Sorensen, Vice President (Qualifying Individual), Satinder P. Kaur, President.

Intransia LLC, 243 Fifth Ave., #727, New York, NY 10016. Officers: Can Sonat, Managing Director (Qualifying Individual), Nurettin Babus, Managing Director.

ICT International Cargo Transport (USA) Inc., 6909 Engle Road, #C29, Middleburg Hts., OH 44130. Officers: Edward Zarefoss, Secretary (Qualifying Individual), Hendrik Rigtering, General Manager.

King Cargo & Logistics LLC, 8400 NW. 170th Street, Doral, FL 33126. Officers: Daniel Maiz, MGRM (Qualifying Individual), Karim Chakour, MGRM.

United Global Logistics, LLC, 1139 E. Jersey Street, Elizabeth, NJ 07201. Officer: Soto Yudy Zuniga, Owner (Qualifying Individual).

New K.S.A.I. Inc. dba KSA America Line; KSA America Line; KSA America Inc., 3109 Lomita Blvd., Torrance, CA 90505. Officers: Kuniaki A. Tamaki, Secretary (Qualifying Individual), Hisato Yoshida, President.

Magusa Logistics Corp., 11222 N.W. 83 Lane, Doral, FL 33178. Officers: Rosa C. Maguina, Vice President, (Qualifying Individual) Carlos R. Maguina, President.

**Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants**

Global Freight Express, Inc., 671 E. Olive Ave., #1, Sunnyvale, CA 94086. Officers: Chi T. Hoang, CEO (Qualifying Individual), Justin T. Nguyen, President.

Empire Global Logistics, LLC, 160–51 Rockaway Blvd., Ste. 206, Jamaica, NY 11434. Officers: Yao Wen Mai, COO (Qualifying Individual), Paul Maghazeh, Jr., President.

Harbor Freight Logistics Ltd. L.L.C., 346 E. Park Manor Drive, Lake Charles, LA 70611. Officers: Jacob D. Pauley, Member, David B. Thompson, Owner (Qualifying Individuals).

West Coast Forwarding, Inc. (An Oregon Corporation), 1730 Skyline Drive, Unit 203, Portland, OR 97221. Officer: David O'Donnell, President (Qualifying Individual).

J & S Universal Services Incorporated, 12972 SW. 133 Court, Miami, FL 33186. Officer: Juan C. Gonzalez, President (Qualifying Individual).

SeaForward Logistics, LLC, 2769 S. Oakland Circle W., Aurora, CO 80014. Officer: Jacqueline V. Barnabas, President (Qualifying Individual).

Intership, Inc., 6119 Knollwest Drive, Houston, TX 77072. Officer: Yasser Shaikh, President (Qualifying Individual).

Dated: November 7, 2008.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. E8–26983 Filed 11–12–08; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Performance Review Board

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the members of the Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

**Karen V. Gregory,**

*Secretary.*

The members of the performance review board are:

1. Joseph E. Brennan, Commissioner.
2. Harold J. Creel, Jr., Commissioner.
3. Rebecca F. Dye, Commissioner.
4. Clay G. Guthridge, Administrative Law Judge.
5. Florence A. Carr, Director, Bureau of Trade Analysis.
6. Karen V. Gregory, Secretary.
7. Vern W. Hill, Director, Bureau of Enforcement.
8. Peter J. King, General Counsel.
9. Sandra L. Kusumoto, Director, Bureau of Certification and Licensing.
10. Austin L. Schmitt, Director of Operations.

[FR Doc. E8–26991 Filed 11–12–08; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:**

**Background**

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Request for Comment on Information Collection Proposals**

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before January 12, 2009.

**ADDRESSES:** You may submit comments, identified by *FR Y–9C, FR Y–9SP, FR Y–11, FR 2314, FR Y–7N, FR 2886b, and FR Y–8,* by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission including, the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**Proposal To Approve Under OMB Delegated Authority the Revision, Without Extension, of the Following Reports**

1. *Report title:* Consolidated Financial Statements for Bank Holding Companies, Parent Company Only Financial Statements for Small Bank Holding Companies.

*Agency form number:* FR Y–9C, FR Y–9SP.

*OMB control number:* 7100–0128.

*Frequency:* FR Y–9C: quarterly; FR Y–9SP: semi-annually.

*Reporters:* Bank holding companies.

*Annual reporting hours:* FR Y–9C: 162,602; FR Y–9SP: 48,254.

*Estimated average hours per response:* FR Y–9C: 41.65; FR Y–9SP: 5.40.

*Number of respondents:* FR Y–9C: 976; FR Y–9SP: 4,468.

*General description of report:* This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6) and (b)(8)).

*Abstract:* The FR Y–9C and FR Y–9SP are standardized financial statements for the consolidated bank holding company (BHC) and its parent. The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on-site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from BHCs. The FR Y–9C is filed by top-tier BHCs with total consolidated assets of $500 million or more. (Under certain circumstances defined in the General Instructions, BHCs under $500 million may be required to file the FR Y–9C.)

The FR Y–9SP is a parent company only financial statement filed by smaller BHCs. Respondents include BHCs with total consolidated assets of less than $500 million. This form is a simplified or abbreviated version of the more extensive parent company only financial statement for large BHCs (FR Y–9LP). This report is designed to obtain basic balance sheet and income information for the parent company, information on intangible assets, and information on intercompany transactions.

*Current Actions:* The Federal Reserve proposes to implement a number of changes to the FR Y–9C and FR Y–9SP reporting requirements to better support the surveillance and supervision of individual BHCs and enhance the monitoring of the industry's condition and performance. The proposed revisions reflect a thorough and careful review of data needs in a variety of areas as BHCs encounter the most turbulent environment in more than a decade. Thus, the revisions include new data items focusing on areas in which the banking industry is facing heightened risk due to market turmoil and illiquidity and weakening economic and credit conditions. Also, the Federal Reserve proposes certain revisions due to changes in accounting standards and amendments to regulatory capital requirements. To minimize reporting burden, where possible, the Federal Reserve has sought to establish reporting thresholds for proposed new data items.

The Federal Reserve proposes the following revisions to the FR Y–9C effective March 31, 2009: (1) New data items and revisions to existing data items on trading assets and liabilities, (2) new data items associated with the U.S. Department of the Treasury (Treasury) Capital Purchase Program (CPP), (3) new data items and revisions to existing data items on regulatory capital requirements, (4) new data items providing information on held-for-investment loans and leases acquired in business combinations, (5) new data items and revisions to several data items applicable to noncontrolling (minority) interests in consolidated subsidiaries, (6) clarification of the definition of loans secured by real estate, (7) clarification of the instructions for reporting unused commitments, (8) exemptions from reporting certain existing data items for BHCs with less than $1 billion in total assets, and (9) instructional guidance on quantifying misstatements.

The Federal Reserve proposes the following revisions to the FR Y–9C effective June 30, 2009: (1) New data items for real estate construction and development loans (for BHCs with construction and development loan concentrations), (2) new data items and deletion of existing items for holdings of collateralized debt obligations and other structured financial products, (3) new data items and revisions to existing data items for holdings of commercial mortgage-backed securities, (4) new data items and revisions to existing data items for unused commitments with an original maturity of one year or less to asset-backed commercial paper conduits, (5) new data items and revisions to existing data items for fair value measurements by level for asset and liability categories reported at fair value on a recurring basis, (6) new data items for pledged loans and pledged trading assets, (7) new data items for collateral held against over-the-counter (OTC) derivative exposures (for BHCs with $10 billion or more in total assets), (8) new data items and revisions and deletions of existing data items for investments in real estate ventures, (9) new data items and revisions to existing data items for past due and nonaccrual trading assets, and (10) new data items and revisions to existing data items for credit derivatives.

The Federal Reserve proposes to modify the FR Y–9SP to also collect new data items associated with the Treasury's Capital Purchase Program (CPP). The proposed changes would be effective as of June 30, 2009.

**Proposed Revisions—FR Y–9C**

*A. Proposed Revisions Not Related to Call Report Revisions*

The Federal Reserve proposes to make the following revisions to the FR Y–9C effective as of March 31, 2009, which are unrelated to the revisions proposed to the Call Report.

*A.1 Revisions to Information Collected on Schedule HC–D, Trading Assets and Liabilities*

BHCs report the fair value of liabilities resulting from sales of assets that the BHC does not own (short selling or short positions) in Schedule HC–D, data item 13.a, Liability for short positions. Since 2000, the total liability for short positions reported by FR Y–9C respondents has increased approximately 123 percent to over $325 billion as of March 31, 2008. This data item also comprises over half of total trading liabilities reported on the FR Y–9C. To appropriately assess the safety and soundness of BHCs that participate in short selling activity and to better monitor the specific risk exposures associated with the type of assets that are sold short, the Federal Reserve proposes to break out data item 13.a into three new categories: 13.a.(1) Equity securities; 13.a.(2) Debt securities; and 13.a.(3) All other assets.

Since 2000, the aggregate amount of Other trading assets in domestic offices reported in Schedule HC–D, data item 9, has increased approximately 108 percent to over $120 billion as of March 31, 2008. The Federal Reserve believes that a significant component of this amount is commodity contracts and physical commodities held for trading. The gross positive fair value of commodity and other contracts (other than interest rate, foreign exchange and equity derivative contracts) held for trading has grown from less than $14 billion as of year-end 2001 to over $85 billion as of March 31, 2008. Furthermore, BHCs have recently been given regulatory approval to engage in the trading of physical commodities held in inventory. Because of the volatility of the assets underlying these commodity contracts and the risk associated with the trading of these types of assets, the Federal Reserve proposes to add new memorandum item 9.a.(1), Gross fair value of commodity contracts, and new memorandum item 9.a.(2), Gross fair value of physical commodities held in inventory. These memoranda items would be completed by BHCs that reported average trading assets of $1 billion or more in any of the four preceding quarters.

Current memoranda items 9.a, 9.b, and 9.c, providing a description of and the fair value of any type of trading asset that is greater than $25,000 and exceeds 25 percent of the amount reported in Schedule HC–D, data item 9, Other trading assets would be renumbered as 9.b.(1), 9.b.(2), and 9.b.(3). In addition, the Federal Reserve proposes to exclude the reporting of the fair value of commodities from renumbered memorandum item 9.b. The Federal Reserve also proposes to modify the reporting criteria for renumbered memorandum item 9.b to provide a description of and the fair value of any type of trading asset that is greater than $25,000 and exceeds 25 percent of Schedule HC–D, data item 9, less Schedule HC–D, new memorandum item 9.a.

*A.2 Proposed Revisions to Schedule HC–M, Memoranda*

On October 14, 2008, the Secretary of the Treasury announced a program to provide capital to eligible financial institutions, including BHCs. Under the CPP, the Treasury will provide capital to participating BHCs by purchasing newly issued senior perpetual preferred stock of the bank holding company. This perpetual preferred stock will be senior to the BHCs common stock and on par with the issuer's existing preferred shares. All such senior perpetual preferred stock issued by BHCs will provide for cumulative dividends.[1] The senior perpetual preferred stock may be included without limit in the tier 1 capital of BHCs. In conjunction with the purchase of senior perpetual preferred stock, the Treasury will receive warrants to purchase common stock with an aggregate market price equal to 15 percent of the senior preferred investment.

In order to monitor the scope of the CPP, including associated warrants issued, and to ascertain the impact on BHCs tier 1 capital, the Federal Reserve proposes to add two data items to Schedule HC–M, Memoranda. The Federal Reserve proposes to add new data item 24 with the heading ''Issuances associated with the U.S. Department of Treasury Capital Purchase Program:'' with a breakout for data item 24.a, ''Senior perpetual preferred stock or similar items,'' and 24.b, ''Warrants to purchase common stock or similar items.'' BHCs would report the carrying amount of these instruments in data items 24.a and 24.b. The Federal Reserve proposes to add the phrase ''or similar items'' to each of these data items in order to provide greater flexibility to collect information related to this program as details of the program develop further.

*A.3 Proposed Revisions to Schedule HC–R, Regulatory Capital*

On March 10, 2005, the Federal Reserve amended its risk-based capital standards for BHC's to allow the continued inclusion of outstanding and prospective issuances of trust preferred securities in the tier 1 capital of BHCs (subject to stricter quantitative limits and qualitative standards). The Federal Reserve also revised the quantitative limits applied to the aggregate amount of qualifying cumulative perpetual preferred stock, qualifying trust preferred securities, and Class B[2] and Class C[3] minority interest (collectively, qualifying restricted core capital elements) included in the tier 1 capital of BHCs. These new quantitative limits become effective on March 31, 2009.

The aggregate amount of restricted core capital elements that may be included in the tier 1 capital of a BHC must not exceed 25 percent of the sum of all core capital elements (qualifying common stockholders' equity, qualifying noncumulative perpetual preferred stock including related surplus, Class A minority interest,[4] and restricted core capital elements), less goodwill net of any associated deferred tax liability.[5] Stated differently, the aggregate amount of restricted core capital elements is limited to one-third of the sum of unrestricted core capital elements (for example, common stockholders' equity, noncumulative perpetual preferred stock, and Class A minority interest), less goodwill net of any associated deferred tax liability. In addition, the aggregate amount of restricted core capital elements (other than qualifying mandatory convertible preferred securities[6]) that may be

[1] For a discussion of the terms and conditions of the CPP, see the Board's press release dated October 16, 2008, and the attachment to this press release.

[2] Class B minority interest is related to qualifying cumulative perpetual preferred stock directly issued by a consolidated U.S. depository institution or foreign bank subsidiary.

[3] Class C minority interest is related to qualifying common stockholders' equity or perpetual preferred stock issued by a consolidated subsidiary that is neither a U.S. depository institution nor a foreign bank.

[4] Class A minority interest is defined as common stockholders' equity of a consolidated subsidiary that is a U.S. depository institution or a foreign bank.

[5] Algebraically this may be expressed as $A-(B-C)$ where A represents all core capital elements, B represents goodwill, and C represents any deferred tax liability associated with goodwill.

[6] Qualifying mandatory convertible preferred securities generally consist of the joint issuance by

Continued

included in the tier 1 capital of an internationally active BHC[7] must not exceed 15 percent of the sum of all core capital elements, including restricted core capital elements, net of goodwill less any associated deferred tax liability. Amounts of restricted core capital elements in excess of these limits generally may be included in tier 2 capital. The excess amounts of restricted core capital elements that are in the form of Class C minority interest and qualifying trust preferred securities are subject to further limitation within tier 2 capital, as discussed below.

In the last five years before the maturity of the junior subordinated note held by the trust, the outstanding amount of the associated trust preferred securities is excluded from tier 1 capital and included in tier 2 capital, where the trust preferred securities are subject to certain amortization provisions and quantitative restrictions as if the trust preferred securities were limited-life preferred stock. As a limited-life capital instrument approaches maturity, it begins to take on characteristics of a short-term obligation. For this reason, the outstanding amount of term subordinated debt and limited-life preferred stock eligible for inclusion in tier 2 capital is reduced, or discounted, as these instruments approach maturity: One-fifth of the outstanding amount is excluded each year during the instrument's last five years before maturity. When remaining maturity is less than one year, the instrument is excluded from tier 2 capital.

The aggregate amount of term subordinated debt and limited-life preferred stock as well as, beginning March 31, 2009, qualifying trust preferred securities and Class C minority interest in excess of the amounts includable in tier 1 capital (previously described) may be included in tier 2 capital up to an aggregate amount of 50 percent of tier 1 capital. Amounts of these instruments in excess of this limit, although not included in tier 2 capital, will be taken into account by the Federal Reserve in its overall assessment of a BHC's funding and financial condition.

Currently some components of qualifying restricted core capital elements (numerator to the ratio calculated to compare to the limit) and of qualifying core capital elements (denominator to the ratio calculated to compare to the limit) cannot be separately identified in data items reported on the FR Y–9C. For example, mandatorily convertible preferred securities are not separately reported but are includible in the tier 1 of internationally active BHCs above the 15 percent limit up to the generally applicable 25 percent limit, while they are included in the 25 percent limit (both numerator and denominator) for other BHCs. Furthermore, Class A, B, and C minority interest are not separately reported on the current FR Y–9C report. However, in computing compliance with the March 31, 2009, standard, Class A minority interest is an unrestricted core capital element, while Class B and C minority interest are restricted core capital elements. Finally, the amount of goodwill deducted in computing applicable limits under the tier 1 components rule is reduced by the amount of any associated deferred tax liability, while goodwill reported on the FR Y–9C is not net of such deferred tax liability. Therefore, the Federal Reserve proposes to revise certain data items in Schedule HC–R, Regulatory Capital, collected for the calculation of tier 1 and tier 2 capital and to collect new data items to identify the components of restricted core capital included in tier 1 capital that would allow for the determination of a BHC's compliance with the tier 1 limits placed on restricted core capital elements:

- Change data item 6.a, Qualifying minority interests in consolidated subsidiaries and similar items, to Qualifying Class A non-controlling (minority) interests in consolidated subsidiaries.
- Change data item 6.b, Qualifying trust preferred securities, to Qualifying restricted core capital elements (other than cumulative perpetual preferred).
- Add new data item 6.c, Qualifying mandatory convertible preferred securities of internationally active bank holding companies.
- Change data item 8, Subtotal (sum of items 1, 6.a. and 6.b., less items 2, 3, 4, 5, 7.a. and 7.b.) to Subtotal (sum of items 1, 6.a., 6.b., and 6.c., less items 2, 3, 4, 5, 7.a., and 7.b.).
- Change data item 12, Qualifying subordinated debt and redeemable preferred stock, to Qualifying subordinated debt, redeemable preferred stock, and restricted core capital elements not includible in item 6.b. or 6.c.
- Change data item 13, Cumulative perpetual preferred stock includible in Tier 2 capital, to Cumulative perpetual preferred stock not included in item 5 and Class B noncontrolling (minority) interest not included in item 6.b., but includible in Tier 2 capital.
- Add a new memoranda item 8, Restricted core capital elements included in Tier 1 capital, with separate reporting of the following new data items:
  - 8.a, Qualifying Class B non-controlling (minority) interest (included in Schedule HC, item 27.b).
  - 8.b, Qualifying Class C non-controlling (minority) interest (included in Schedule HC, item 27.b).
  - 8.c, Qualifying cumulative perpetual preferred stock (included in Schedule HC, item 27.a).
  - 8.d, Qualifying trust preferred securities (included in Schedule HC, item 19.b).
- Delete current memoranda item 3.b, Preferred stock (including related surplus) eligible for inclusion in Tier 1 capital: Cumulative perpetual preferred stock (included and reported in Total equity capital on Schedule HC).
- Add new memoranda item 9, Goodwill net of any associated deferred tax liability.
- Add new memoranda item 10, Ratio of qualifying restricted core capital elements to total core capital elements less (goodwill net of any associated deferred tax liability). (This data item would be reported as a percentage.)

Also, other Schedule HC–R instructions and examples found at the end of the instructions to Schedule HC–R would be modified to reflect the aforementioned changes.

*B. Proposed Revisions Related to Call Report Revisions*

The Federal Reserve proposes to make the following revisions to the FR Y–9C, segregated into two groups, proposed for March 2009 and proposed for June 2009, to parallel proposed changes to the Call Report. BHCs have commented that changes should be made to the FR Y–9C in a manner consistent with changes to the Call Report, and implemented at the same time, to reduce reporting burden.

*B.1 Revisions Proposed for March 2009*

*B.1.1 Loans and Leases Acquired in Business Combinations*

BHCs must apply Statement of Financial Accounting Standards No. 141 (Revised), *Business Combinations* (FAS 141(R)), which was issued in December 2007, prospectively to business combinations for which the acquisition date is on or after the beginning of their first annual reporting period beginning

a BHC to investors of trust preferred securities and a forward purchase contract, which the investors fully collateralize with the securities, that obligates the investors to purchase a fixed amount of the BHC's stock, generally within three years.

[7] For this purpose, an internationally active BHC is a BHC that (1) as of its most recent year-end FR Y–9C, reports total consolidated assets equal to $250 billion or more or (2) on a consolidated basis, reports total on-balance-sheet foreign exposure of $10 billion or more on its most recent year-end FFIEC 009 Country Exposure Report.

on or after December 15, 2008. Thus, for BHCs with calendar year fiscal years, FAS 141(R) will apply to business combinations with acquisition dates on or after January 1, 2009. Under FAS 141(R), all business combinations are to be accounted for by applying the acquisition method.

Under current generally accepted accounting principles, loans to be held for investment that are acquired in a business combination accounted for using the purchase method generally are recorded at ''present values of amounts to be received determined at appropriate current interest rates, less allowances'' for loan and lease losses (ALLL).[8] Thus, in practice, an acquired entity's ALLL generally is carried over to the acquiring BHC's (consolidated) balance sheet. In contrast, under FAS 141(R), a BHC acquiring loans to be held for investment in a business combination accounted for using the acquisition method must record these loans at fair value. The fair value of these loans incorporates assumptions regarding credit risk. As a result, FAS 141(R) does not permit an acquiring BHC to carry over the acquired entity's ALLL.

Because of this significant change in the accounting for acquired loans, paragraph 68(h) of FAS 141(R) requires the following disclosures about the loans (not subject to SOP 03–3) and leases that were acquired in each business combination that occurred during the reporting period:

- The fair value of the loans and leases;
- The gross contractual amounts receivable; and
- The best estimate at the acquisition date of the contractual cash flows not expected to be collected.

These disclosures are intended to assist users of financial statements in understanding the credit quality and collectibility of the acquired loans and leases at the time of their acquisition. Accordingly, and in recognition of this significant change in accounting practice for business combinations, the Federal Reserve proposes to add new data items to the FR Y–9C that would encompass the three disclosures related to the date of acquisition as required by FAS 141(R) cited above for the following categories of acquired held-for-investment loans (not subject to SOP 03–3) and leases:

- Loans secured by real estate;
- Commercial and industrial loans;
- Loans to individuals for household, family, and other personal expenditures; and
- All other loans and all leases.

These new data items would be completed by BHCs that have engaged in business combinations that must be accounted for in accordance with FAS 141(R) for transactions for which the acquisition date is on or after January 1, 2009. A BHC that has completed one or more business combinations during the current calendar year would report these data as they relate to the date of acquisition (as aggregate totals if multiple business combinations have occurred) in each FR Y–9C report submission after the acquisition date during that year.

The Federal Reserve is also considering whether BHCs that have engaged in FAS 141(R) business combinations should provide additional information in the FR Y–9C about the acquired held-for-investment loans (not subject to SOP 03–3) and leases and the loss allowances established for them in periods after their acquisition. The Federal Reserve is considering requiring BHCs to report the outstanding balance of these acquired loans and leases, their carrying amount, and the amount of the allowance for post-acquisition losses on these loans and leases. Such reporting would be consistent with the information that BHCs currently report in the FR Y–9C about purchased impaired loans accounted for in accordance with SOP 03–3. Since these purchased loans will be recorded at fair value at acquisition, this information would help the Federal Reserve and other users of the FR Y–9C to track management's judgments regarding the collectibility of the acquired loans and leases in periods after the acquisition date and evaluate fluctuations in the level of the overall ALLL as a percentage of the held-for-investment loan and lease portfolio in periods after a business combination. However, the Federal Reserve recognizes that information about acquired loans and leases and related allowances will become less useful from an analytical standpoint with the passage of time after a business combination.

The Federal Reserve asks for comment on the merits and availability of the post-acquisition loan and lease data described above that are being considered for possible addition to the FR Y–9C and the period of time after a business combination this information should be reported (e.g., through the end of the calendar year of the acquisition, through the end of the calendar year after the year of the acquisition, for a longer period, or for some other period such as the first four calendar quarters after the acquisition).

*B.1.2 Noncontrolling Interests in Consolidated Financial Statements*

In December 2007, the Financial Accounting Standards Board (FASB) issued Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements* (FAS 160). FAS 160 defines a noncontrolling interest, also called a minority interest, as the portion of equity in a BHC's subsidiary not attributable, directly or indirectly, to the parent BHC. FAS 160 requires a BHC to clearly present in its consolidated financial statements the equity ownership interest in and the financial statement results of its subsidiaries that are attributable to the noncontrolling ownership interests in these subsidiaries. Under FAS 160, the ownership interests in subsidiaries held by the noncontrolling interests must be clearly identified, labeled, and presented in the consolidated balance sheet within equity capital, but separate from the parent BHC's equity capital. FAS 160 also requires that the amount of consolidated net income attributable to the BHC and to the noncontrolling interests in the BHC's subsidiaries be clearly identified and presented on the face of the consolidated income statement. In this regard, the consolidated income statement will reflect the amount of the BHC's consolidated net income, with separate data items then indicating the portions of the consolidated net income attributable to the noncontrolling interests and to the parent BHC.

The Federal Reserve proposes to make several changes to conform the FR Y–9C to the presentation requirements of FAS 160. The Federal Reserve proposes to amend Schedule HC, Balance Sheet, by replacing data item 22, Minority interest in consolidated subsidiaries, which is currently reported outside the Equity Capital section, with new data item 27.b in the Equity Capital section for Noncontrolling (minority) interests in consolidated subsidiaries. The Federal Reserve also proposes to renumber and rename Schedule HC, data items 26 through 29 in the following manner:

- Data Item 26.a, Retained earnings;
- Data Item 26.b, Accumulated other comprehensive income;
- Data Item 26.c, Other equity capital components;
- Data Item 27.a, Total bank holding company equity capital (sum of items 23 through 26.c);

[8] See Statement of Financial Accounting Standards No. 141, *Business Combinations* (FAS 141), paragraph 57(b). This accounting treatment does not apply to those acquired loans within the scope of American Institute of Certified Public Accountants Statement of Position 03–3, *Accounting for Certain Loans or Debt Securities Acquired in a Transfer* (SOP 03–3).

• Data Item 27.b, Noncontrolling (minority) interests in consolidated subsidiaries;

• Data Item 28, Total equity capital (sum of items 27.a and 27.b); and

• Data Item 29, Total liabilities and equity capital (sum of items 21 and 28).

The Federal Reserve also proposes to adjust certain captions in Schedule HC–R, Regulatory Capital, to reflect these changes to the Equity Capital section of the balance sheet and to conform to FAS 160. Schedule HC–R, data item 1, Total equity capital (from Schedule HC, item 28), would be renamed Total bank holding company equity capital (from Schedule HC, item 27.a). Schedule HC–R, data item 6, Qualifying minority interest in consolidated subsidiaries, would be renamed Qualifying Class A noncontrolling (minority) interest in consolidated subsidiaries.

Further, the Federal Reserve proposes to amend Schedule HI, Income Statement, and Schedule HI–A, Changes in Equity Capital, to add or revise data items to conform to FAS 160. Schedule HI, data item 10, Minority interest, would be deleted and Schedule HI, data item 11, Income (loss) before extraordinary items and other adjustments, would be renumbered as data item 10. Schedule HI, data item 12, Extraordinary items, net of applicable taxes and minority interest, would be renumbered as data item 11, and renamed Extraordinary items and other adjustments, net of income taxes. New data items 12, Net income (loss) attributable to bank holding company and noncontrolling (minority) interests (sum of items 10 and 11), and 13, Less: Net income (loss) attributable to noncontrolling (minority) interests, would be added to identify the entity's consolidated net income and segregate net income attributable to noncontrolling interests. Current Schedule HI, data item 13, Net income (loss) (sum of items 11 and 12), would be renumbered as data item 14 and renamed Net income (loss) attributable to bank holding company (item 12 minus item 13).

Schedule HI–A would be retitled Changes in Bank Holding Company Equity Capital. In Schedule HI–A, the following changes would be made:

• Current data item 1, Equity capital most recently reported for the end of previous calendar year (that is, after adjustments from amended Reports of Income), would be renamed Total bank holding company equity capital most recently reported for the end of the previous calendar year (i.e., after adjustments from amended Reports of Income);

• Current data item 4, Net income (loss) (must equal Schedule HI, item 13), would be renamed Net income (loss) attributable to bank holding company (must equal Schedule HI, item 14); and

• Current data item 15, Total equity capital end of current period (sum of items 3, 4, 5, 6, 7, 9, 12, 13, and 14, less items 8, 10, and 11) (must equal item 28 on Schedule HC, Balance Sheet), would be renamed Total bank holding company equity capital end of current period (sum of items 3, 4, 5, 6, 7, 9, 12, 13, and 14, less items 8, 10, and 11) (must equal Schedule HC, item 27.a).

The instructions to Schedule HI–A, item 5, Sale of perpetual preferred stock (excluding treasury stock transactions), and data item 6, Sale of common stock, would be amended to state that changes in BHC equity capital resulting from changes in a BHC's ownership interest in a subsidiary, while it retains its controlling financial interest in the subsidiary, should be reported in these data items.

*B.1.3 Clarification of the Definition of Loan Secured by Real Estate*

The Federal Reserve has found that the definition of a loan secured by real estate in the Glossary section of the FR Y–9C reporting instructions has been interpreted differently by FR Y–9C report preparers and users. This has led to inconsistent reporting of loans collateralized by real estate in the loan schedule (Schedule HC–C) and other schedules of the FR Y–9C report that collect loan data. As a result, the Federal Reserve proposes to clarify the definition by explaining that the estimated value of the real estate collateral must be greater than 50 percent of the principal amount of the loan at origination in order for the loan to be considered secured by real estate. BHCs would apply this clarified definition prospectively and they need not reevaluate nor recategorize loans that they currently report as loans secured by real estate into other loan categories on the loan schedule. See Attachment 2 for the revised definition of a loan secured by real estate.

*B.1.4 Clarification of Instructions for Unused Commitments*

BHCs report unused commitments in Schedule HC–L, data item 1. The instructions for this data item identify various arrangements that should be reported as unused commitments, including but not limited to commitments for which the BHC has charged a commitment fee or other consideration, commitments that are legally binding, loan proceeds that the BHC is obligated to advance, commitments to issue a commitment, and revolving underwriting facilities. However, the Federal Reserve has found that some BHCs have not reported commitments that they have entered into until they have signed the loan agreement for the financing that they have committed to provide. Although the Federal Reserve considers these arrangements to be within the scope of the existing instructions for reporting commitments in Schedule HC–L, the Federal Reserve believes that these instructions may not be sufficiently clear. Therefore, the Federal Reserve proposes to revise the instructions for Schedule HC–L, data item 1, Unused commitments. See Attachment 2 for the revised instruction for Unused commitments.

*B.1.5 Exemptions From Reporting for Certain Existing Data Items*

The Federal Reserve has identified certain data items for which the reported data are of lesser usefulness for BHCs with less than $1 billion in total assets. Accordingly, the Federal Reserve proposes to exempt BHCs with less than $1 billion in total assets from completing the following data items effective as of March 31, 2009 (these exemptions are also being proposed to corresponding items on the Call Report):

• Schedule HI, Memorandum item 12.a, Income from the sale and servicing of mutual funds and annuities (in domestic offices);

• Schedule HC–L, data item 2.a, Amount of financial standby letters of credit conveyed to others; and

• Schedule HC–L, data item 3.a, Amount of performance standby letters of credit conveyed to others.

*B.1.6 Quantifying Misstatements*

The General Instructions section of the FR Y–9C reporting instructions discusses the filing of amended FR Y–9C reports. In this regard, the instructions state that when the Federal Reserve's interpretation of how GAAP or these instructions should be applied to a specified event or transaction (or series of related events or transactions) differs from the reporting bank holding company's interpretation, the Federal Reserve may require the bank holding company to reflect the event(s) or transaction(s) in its FR Y–9C report in accordance with the Federal Reserve's interpretation and to amend previously submitted reports. The Federal Reserve will consider the materiality of such event(s) or transaction(s) in making a determination about requiring the bank holding company to apply the Federal Reserve's interpretation and to amend previously submitted reports.

Materiality is a qualitative characteristic of accounting information that is defined in Financial Accounting Standards Board (FASB) Concepts Statement No. 2 as ''the magnitude of an omission or misstatement of accounting information that, in the light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement.''

FASB Statement No. 154, *Accounting Changes and Error Corrections* (FAS 154), provides guidance for reporting the correction of an error or misstatement in previously issued financial statements. An error or misstatement can result from mathematical mistakes, mistakes in the application of generally accepted accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared, and includes a change from an accounting principle that is not generally accepted to one that is generally accepted. The Glossary entry for Accounting Changes in the FR Y–9C reporting instructions includes a section on Corrections of Accounting Errors that provides guidance on reporting such corrections that is consistent with FAS 154. However, neither FAS 154 nor the Glossary entry for Accounting Changes specifies the appropriate method to quantify an error or misstatement for purposes of evaluating materiality.

In September 2006, the Securities and Exchange Commission (SEC) noted in Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* (SAB 108),[9] that in describing the concept of materiality, FASB Concepts Statement No. 2, *Qualitative Characteristics of Accounting Information*, indicates that materiality determinations are based on whether ''it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced *by the inclusion or correction of the item*'' (emphasis added). The staff believes registrants must quantify the impact of correcting all misstatements, including both the carryover and reversing effects of prior year misstatements, on the current year financial statements.

SAB 108 describes two approaches, generally referred to as ''rollover'' and ''iron curtain,'' that have been commonly used to accumulate and quantify misstatements. The rollover approach ''quantifies a misstatement based on the amount of the error originating in the current year income statement,'' which ''ignores the 'carryover effects' of prior year misstatements.'' In contrast, the ''iron curtain approach quantifies a misstatement based on the effects of correcting the misstatement existing in the balance sheet at the end of the current year, irrespective of the misstatement's year(s) of origination.'' Because each of these approaches has its weaknesses, SAB 108 advises that the impact of correcting all misstatements on current year financial statements should be accomplished by quantifying an error under both the rollover and iron curtain approaches and by evaluating the error measured under each approach. When either approach results in a misstatement that is material, after considering all relevant quantitative and qualitative factors, an adjustment to the financial statements would be required. Guidance on the consideration of all relevant factors when assessing the materiality of misstatements is provided in the SEC's Staff Accounting Bulletin No. 99, *Materiality* (SAB 99).[10] SAB 108 observes that when the correction of an error in the current year would materially misstate the current year's financial statements because the correction includes the effect of the prior year misstatements, the prior year financial statements should be corrected.

The Federal Reserve has advised BHCs that, for FR Y–9C reporting purposes, a BHC that is a public company or a subsidiary of a public company should apply the guidance from SAB 108 and SAB 99 when quantifying the impact of correcting misstatements, including both the carryover and reversing effects of prior year misstatements, on their current year FR Y–9C reports.[11] The Federal Reserve believes that the guidance in SAB 108 and SAB 99 represents sound accounting practices that all BHCs, including those that are not public companies, should follow for purposes of quantifying misstatements and considering all relevant factors when assessing the materiality of misstatements in their FR Y–9C reports. Accordingly, the Federal Reserve proposes to incorporate the guidance in these two Staff Accounting Bulletins into the section of the Accounting Changes Glossary entry on error corrections, thereby establishing a single approach for quantifying misstatements in the FR Y–9C that would be applicable to all BHCs. The Glossary entry would explain that the impact of correcting all misstatements on current year FR Y–9C reports should be accomplished by quantifying an error under both the rollover and iron curtain approaches and by evaluating the error measured under each approach. When either approach results in a misstatement that is material, after considering all relevant quantitative and qualitative factors, appropriate adjustments to FR Y–9C reports would be required.

*B.2 Revisions Proposed for June 2009*

*B.2.1 Construction and Development Loans With Interest Reserves*

In December 2006, the Federal Reserve issued final guidance on commercial real estate (CRE) loans, including construction, land development, and other land (C&D) loans, entitled *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices* (CRE Guidance).[12] This guidance was developed to reinforce sound risk management practices for institutions with high and increasing concentrations of commercial real estate loans on their balance sheets. It provides a framework for assessing CRE concentrations; risk management, including board and management oversight, portfolio management, management information systems, market analysis and stress testing, underwriting and credit risk review; and supervisory oversight, including CRE concentration management and an assessment of capital adequacy.

In issuing the CRE Guidance, the Federal Reserve noted that CRE concentrations had been rising over the past several years and had reached levels that could create safety and soundness concerns in the event of a significant economic downturn. As a consequence, the CRE Guidance explains that, as part of their ongoing supervisory monitoring processes, the Federal Reserve would use certain criteria to identify institutions that are potentially exposed to significant CRE concentration risk. Thus, the CRE Guidance states in part that an institution whose total reported

[9] SAB 108 can be accessed at *http://www.sec.gov/interps/account/sab108.pdf*. SAB 108 has been codified as Topic 1.N. in the SEC's Codification of Staff Accounting Bulletins.

[10] SAB 99 can be accessed at *http://www.sec.gov/interps/account/sab99.htm*. SAB 99 has been codified as Topic 1.M. in the SEC's Codification of Staff Accounting Bulletins.

[11] For example, see the FR Y–9 report Supplemental Instructions for June 2007 at *http://www.federalreserve.gov/reportforms/supplemental/SI_FRY9_200706.pdf*.

[12] 71 FR 74580, December 12, 2006.

construction, land development, and other land loans is approaching or exceeds 100 percent or more of the institution's total risk-based capital may be identified for further supervisory analysis of the level and nature of its CRE concentration risk. As of March 31, 2008, approximately 51 percent of all FR Y–9C respondents held C&D loans in excess of 100 percent of their total risk-based capital.

A practice that is common in C&D lending is the establishment of an interest reserve as part of the original underwriting of a C&D loan. The interest reserve account allows the lender to periodically advance loan funds to pay interest charges on the outstanding balance of the loan. The interest is capitalized and added to the loan balance. Frequently, C&D loan budgets will include an interest reserve to carry the project from origination to completion and may cover the project's anticipated sell-out or lease-up period. Although potentially beneficial to the lender and the borrower, the use of interest reserves carries certain risks. Of particular concern is the possibility that an interest reserve could disguise problems with a borrower's willingness and ability to repay the debt consistent with the terms and conditions of the loan agreement. For example, a C&D loan for a project on which construction ceases before it has been completed or is not completed in a timely manner may appear to be performing if the continued capitalization of interest through the use of an interest reserve keeps the troubled loan current. This practice can erode collateral protection and mask loans that should otherwise be reported as delinquent or in nonaccrual status.

Since the CRE Guidance was issued, market conditions have weakened, most notably in the C&D sector. As this weakening has occurred, the Federal Reserve's examiners are encountering C&D loans on projects that are troubled, but where interest has been capitalized inappropriately, resulting in overstated income and understated volumes of past due and nonaccrual C&D loans. Therefore, to assist the Federal Reserve in monitoring C&D lending activities at those BHCs with a concentration of such loans, i.e., C&D loans (in domestic offices) that exceeded 100 percent of total risk-based capital as of the previous calendar year-end, the Federal Reserve proposes to add two new data items. First, BHCs with such a concentration would report the amount of C&D loans (in domestic offices) included in the loan schedule (Schedule HC–C) on which the use of interest reserves is provided for in the loan agreement. Second, these BHCs would report the amount of capitalized interest included in the interest and fee income on loans during the quarter. These data, together with information that BHCs currently report on the amount of past due and nonaccrual C&D loans, would assist in identifying BHCs with C&D loan concentrations that may be engaging in questionable interest capitalization practices for supervisory follow-up.

*B.2.2 Structured Financial Products Carried in Securities and Trading Portfolios*

Structured financial products such as collateralized debt obligations (CDOs) have become increasingly more complex and the volume of these financial products has increased substantially in recent years. Structured financial products generally convert a large pool of assets and other exposures (such as derivatives and third-party guarantees) into tradable capital market debt instruments. Some of the more complex financial product structures mix asset classes in an attempt to create investment products that diversify risk. In recent years, increasingly complex structured financial products have become more widely held as investments and trading assets, allowing investors and traders to acquire positions in a pool of assets with varying risks and rewards depending on the underlying collateral or reference assets. Some of these products are synthetic structured financial products that use credit derivatives and a reference pool of assets. Hybrid products, which are a combination of cash and synthetic structured financial products, were also created. Further, complex products known as CDOs ''squared'', which are CDOs backed primarily by the tranches of other CDOs, have contributed to the opacity and inability of investors to understand the performance of these highly complex products. Some holders of structured financial products have sustained financial losses due to defaults and losses on the underlying assets and other exposures. In addition, reduced market liquidity has contributed to significant fair value declines and lack of price transparency for other structured financial products. These recent market events have demonstrated the need to collect more comprehensive information on investment products with significant market, credit, liquidity, and valuation risks in order to identify and monitor BHCs with exposures to these products and to track such exposures for the industry as a whole.

Currently, BHCs separately report their holdings of regular mortgage-backed securities (MBS) (such as mortgage-backed pass-through securities, collateralized mortgage obligations, and real estate mortgage investment conduits) in the securities schedule (Schedule HC–B) or trading schedule (Schedule HC–D), as appropriate. All BHCs separately report their holdings of held-to-maturity and available-for-sale asset-backed securities (ABS) in the securities schedule. Those BHCs with large trading portfolios separately report their held-for-trading ABS in the trading schedule. BHCs' holdings of all other debt securities not issued by governmental entities in the U.S. are reported as Other debt securities in either the securities or trading schedule, as appropriate. However, the more complex structured financial products discussed above are not separately reported in Schedules HC–B and HC–D, but are currently reported in other data items within these two schedules.

Therefore, the Federal Reserve proposes to separately collect certain structured financial product data in both the securities and trading schedules of the FR Y–9C. First, the Federal Reserve would add data items to collect information on certain structured financial products by type of structure (cash, synthetic, and hybrid). Each of these three new data items would cover CDOs, collateralized loan obligations (CLOs), collateralized bond obligations (CBOs), CDOs squared and cubed, and similar structured financial products.[13]

These new data items would be added to the body of the securities schedule and the trading schedule. In Schedule HC–B, the amortized cost and fair value of these three types of structures would be reported using the current four-column format that distinguishes between held-to-maturity and available-for-sale securities. In Schedule HC–D, the fair value of these three types of structures would be reported. Since the new data items on structured financial products would include CDOs, the Federal Reserve would delete existing Memoranda items 5.a and 5.b from the trading schedule (Schedule HC–D).

Second, the Federal Reserve would collect information on these complex structured financial products by the predominant type of collateral supporting the structures in new memoranda items in both Schedule HC–B and Schedule HC–D. The collateral

[13] These new line items would not include mortgage-backed and asset-backed commercial paper, which would continue to be reported as MBS and ABS, respectively, in Schedules HC–B and HC–D.

supporting these products has distinct risk characteristics and the new information would provide greater insight into the risks associated with the various collateralized structured financial products. The structured financial products would be reported according to the following types of collateral:

- Trust preferred securities issued by financial institutions;
- Trust preferred securities issued by real estate investment trusts;
- Corporate and similar loans; [14]
- 1–4 family residential MBS issued or guaranteed by U.S. government-sponsored enterprises (GSEs);
- 1–4 family residential MBS not issued or guaranteed by GSEs;
- Diversified (mixed) pools of structured financial products such as CDOs squared and cubed (also known as pools of pools); and
- Other collateral.

In Schedule HC–B, amortized cost and fair value would be reported by the predominant type of collateral supporting the structure based on whether the products are classified as held-to-maturity or available-for-sale. In Schedule HC–D, the fair value of these products would be reported by predominant type of collateral supporting the structure.

*B.2.3 Holdings of Commercial Mortgage-Backed Securities*

At present, all BHCs report information on their holdings of held-to-maturity and available-for-sale MBS in Schedule HC–B, Securities, without distinguishing between residential and commercial MBS. BHCs with average trading assets of $2 million or more in any of the four preceding calendar quarters provide information on MBS held for trading in Schedule HC–D, but only those with average trading assets of $1 billion or more disclose the amount of their residential and commercial MBS.

Differences in residential mortgages and commercial mortgages carry through to MBS backed by these two types of mortgages. In contrast to residential mortgage loans, commercial mortgage loans are normally without recourse, which means that if the borrower defaults, the creditor cannot seize any other assets of the borrower. As a consequence, the ability of the underlying commercial real estate to produce income and the value of the property are key factors when assessing the credit risk of commercial MBS. In addition, the prepayment risk of commercial MBS is lower than on residential MBS because commercial mortgages normally place restrictions on prepayment that typically are not present on residential mortgages. Furthermore, the residential real estate market often performs differently than the commercial real estate market.

Given the differences between residential and commercial MBS, the Federal Reserve proposes to revise the reporting of MBS in Schedule HC–B, Securities, and Schedule HC–D, Trading Assets and Liabilities, in order to separately identify and track BHC holdings of commercial MBS. In Schedule HC–B, data items 4.a, Pass-through securities, and 4.b, Other mortgage-backed securities, would be revised to cover only residential MBS. New data items 4.c.(1) and (2) would be added for Commercial pass-through securities and Other commercial mortgage-backed securities. Similarly, in Schedule HC–D, data items 4.a through 4.c would cover only residential MBS and a new data item 4.d would collect data on Commercial mortgage-backed securities. These new and revised data items would replace Memoranda items 4.a, Residential mortgage-backed securities, and 4.b, Commercial mortgage-backed securities, in Schedule HC–D, which are currently completed only by BHCs with average trading assets of $1 billion or more in any of the four preceding calendar quarters.

*B.2.4 Unused Eligible Liquidity Facilities for Asset-Backed Commercial Paper (ABCP) Conduits With an Original Maturity of One Year or Less*

Under the Federal Reserve's risk-based capital guidelines, BHCs are required to hold capital against the unused portions of eligible liquidity facilities that provide support to ABCP programs. The capital guidelines apply different risk-based capital requirements to eligible liquidity facilities based on the original maturity of the facilities. BHCs are currently required to hold less capital against eligible liquidity facilities with original maturities of one year or less than against liquidity facilities with original maturities in excess of one year. However, because of the current structure of Schedule HC–R, Regulatory Capital, the instructions for the schedule direct BHCs to report the credit equivalent amount of both types of eligible liquidity facilities in data item 53, Unused commitments with an original maturity exceeding one year. The reporting of both types of eligible liquidity facilities in a single data item has been accomplished by having BHCs adjust the credit equivalent amount of eligible liquidity facilities with original maturities of one year or less to produce the effect of the lower capital charge applicable to such liquidity facilities. This approach does not promote transparency with respect to the actual credit equivalent amount of eligible liquidity facilities with original maturities of one year or less and does not allow for verification of the accuracy of the credit converting and risk-weighting of these exposures.

To address these concerns, the Federal Reserve proposes to renumber Schedule HC–R, data item 53 as data item 53.a and add a new data item 53.b, Unused commitments with an original maturity of one year or less to asset-backed commercial paper conduits, to Schedule HC–R. The credit conversion factor applied to amounts reported in data item 53.b, column A, would be 10 percent.

*B.2.5 Fair Value Measurements*

Effective for the March 31, 2007, report date, the Federal Reserve began collecting information on certain assets and liabilities measured at fair value on Schedule HC–Q, Financial Assets and Liabilities Measured at Fair Value. Currently, this schedule is completed by BHCs with a significant level of trading activity or that use a fair value option. The information collected on Schedule HC–Q is intended to be consistent with the fair value disclosures and other requirements in FASB Statement No. 157, Fair Value Measurements (FAS 157). Based on the Federal Reserve's ongoing review of industry reporting and disclosure practices since the inception of this standard, and the reporting of data items at fair value on Schedule HC, Balance Sheet, the Federal Reserve proposes to expand the data collected on Schedule HC–Q in two material respects.

First, to improve the consistency of data collected on Schedule HC–Q with the FAS 157 disclosure requirements and industry disclosure practices, the Federal Reserve proposes to expand the detail of the collected data. The Federal Reserve proposes to expand the detail on Schedule HC–Q to collect fair value information on all assets and liabilities reported at fair value on a recurring basis in a manner consistent with the asset and liability breakdowns on Schedule HC. Thus, the Federal Reserve proposes to add data items to collect fair value information on:

- Available-for-sale securities;
- Federal funds sold and securities purchased under agreements to resell;

[14] Securities backed by commercial and industrial loans that are commonly regarded as ABS rather than CLOs in the marketplace would continue to be reported as ABS in Schedules HC–B and HC–D.

- Federal funds purchased and securities sold under agreements to repurchase;
- Other borrowed money, and subordinated notes and debentures.

The Federal Reserve also proposes to modify the existing collection of loan and lease data and trading asset and liability data to collect data separately for:

- Loans and leases held for sale;
- Loans and leases held for investment;
- Trading derivative assets;
- Other trading assets;
- Trading derivative liabilities; and
- Other trading liabilities.

The Federal Reserve would also add data items to capture total assets and total liabilities for those data items reported on the schedule. In addition, the Federal Reserve proposes to modify the existing data items for other financial assets and servicing assets and other financial liabilities and servicing liabilities to collect information on other assets and other liabilities reported at fair value on a recurring basis, including nontrading derivatives. Components of other assets and other liabilities would be separately reported if they are greater than $25,000 and exceed 25 percent of the total fair value of other assets and other liabilities, respectively. In conjunction with this change, the existing reporting for loan commitments accounted for under a fair value option would be revised to include these instruments, based on whether their fair values are positive or negative, in the data items for other assets and other liabilities reported at fair value on a recurring basis, with separate disclosure of these commitments if significant.

Second, the Federal Reserve proposes to modify the reporting criteria for Schedule HC–Q. The current instructions require all BHCs that have adopted FAS 157 and (1) have elected to account for financial instruments or servicing assets and liabilities at fair value under a fair value option or (2) are required to complete Schedule HC–D, Trading Assets and Liabilities, to complete Schedule HC–Q. The Federal Reserve proposes to modify the reporting criteria for Schedule HC–Q to require BHCs to report all financial or servicing assets and liabilities that are measured at fair value, regardless of whether they have elected to apply a fair value option to financial or servicing assets and liabilities.

The Federal Reserve has determined that the proposed information is necessary to more accurately assess the impact of fair value accounting and fair value measurements for safety and soundness purposes. The collection of the information on Schedule HC–Q, as proposed, would facilitate and enhance the Federal Reserve's ability to monitor the extent of fair value accounting in BHCs' consolidated FR Y–9C reports, including the elective use of fair value accounting and the nature of the inputs used in the valuation process, pursuant to the disclosure requirements of FAS 157. The information collected on Schedule HC–Q is consistent with the disclosures required by FAS 157 and consistent with industry practice for reporting fair value measurements and should, therefore, not impose significant incremental burden on BHCs.

*B.2.6 Pledged Loans in Loan and Trading Portfolios and Pledged Trading Securities*

BHCs have been pledging loans for many years and the volume of these pledges has grown considerably in recent years. The pledging of loans is the act of setting aside certain loans to secure or collateralize BHC transactions with the BHC continuing to own the loans unless the BHC defaults on the transaction. Pledging is used for securing public deposits, repurchase agreements, and other BHC borrowings. Pledging affects a BHC's liquidity and other asset and liability management programs. Today there are a number of alternative funding structures used by BHCs that require BHCs to pledge loans. Some of these funding structures include pledging on-balance sheet loans to finance and support securitization structures held by the BHC that do not meet sales treatment, pledging loans to secure borrowings from a Federal Home Loan Bank, and packaging of on-balance sheet loans to collateralize bonds sold by BHCs. Currently, the FR Y–9C report does not provide information on the volume of pledged loans. Therefore, the Federal Reserve proposes to collect the total amount of held-for-sale and held-for-investment loans and leases reported in Schedule HC–C, Loans and Lease Financing Receivables, that are pledged and the total amount of pledged loans that are carried in the trading portfolio and reported in Schedule HC–D, Trading Assets and Liabilities.

In addition, although the Federal Reserve has long collected data on total amount of held-to-maturity and available-for-sale securities reported in Schedule HC–B, Securities, that are pledged, BHCs have not been required to report the amount of securities carried in the trading portfolio that are pledged. Therefore, for reasons similar to those for collecting data on pledged loans, the Federal Reserve proposes to add a data item to Schedule HC–D to capture the amount of pledged trading securities.

*B.2.7 Collateral for OTC Derivative Exposures and Distribution of Credit Exposures*

The growth in BHCs OTC derivatives and the related counterparty credit exposures has been significant in recent years. For some major dealer BHCs, the counterparty credit risk from OTC derivatives rivals or exceeds their commercial and industrial loans outstanding. Despite the magnitude of these derivative exposures, there is virtually no information on OTC counterparty credit exposures and associated risk mitigation in the FR Y–9C report.

Given the size of OTC derivative counterparty credit exposures, and the important risk mitigation provided by collateral held to offset or mitigate such exposures, information on the distribution of each would assist the Federal Reserve in their oversight and supervision of BHCs engaging in OTC derivative activities. Therefore, the Federal Reserve proposes to collect data in Schedule HC–L, Derivatives and Off-Balance Sheet Items, that would provide a breakdown of the fair value of collateral posted for OTC derivative exposures by type of collateral and type of derivative counterparty and a separate breakdown of the current credit exposure on OTC derivatives by type of counterparty. This information would give the Federal Reserve important insights into the extent to which collateral is used as part of the credit risk management practices associated with derivatives credit exposures to different types of counterparties and changes over time in the nature and extent of the collateral protection.

Since a majority of OTC derivative transactions are conducted in larger BHCs, only BHCs with total assets of $10 billion or more would be required to report the proposed new data. These BHCs would report, using a matrix, the collateral's fair value allocated by type of counterparty and type of collateral as well as the current credit exposure associated with each type of counterparty. The proposed types of collateral for which the fair value would be reported are:

- Cash—U.S. dollar;
- Cash—Other currencies;
- U.S. Treasury securities;
- U.S. Government agency and U.S. Government-sponsored agency debt securities;
- Corporate bonds;
- Equity securities; and
- All other collateral.

The fair value of the collateral would be reported according to the following types of counterparties:

- Banks and securities firms;
- Monoline financial guarantors;
- Hedge funds;
- Sovereign governments; and
- Corporations and all other counterparties.

The current credit exposure (after considering the effect of master netting agreements with OTC derivative counterparties) would also be reported for these five types of counterparties. The total current credit exposure from OTC derivative exposures that would be reported for these counterparties in Schedule HC–L would not necessarily equal the current credit exposure in the FR Y–9C regulatory capital schedule (Schedule HC–R) because the amount reported in Schedule HC–R excludes derivatives not covered by the risk-based capital standards.

*B.2.8 Investments in Real Estate Ventures*

At present, a BHC with investments in real estate ventures reports real estate (other than BHC premises) owned or controlled by the BHC and its consolidated subsidiaries that is held for investment purposes as a component of Other real estate owned in Schedule HC–M, data item 13.b, and in Schedule HC–M, data item 6, Investments in real estate. If a BHC has investments in real estate ventures in the form of investments in subsidiaries that have not been consolidated; associated companies; and corporate joint ventures, unincorporated joint ventures, general partnerships, and limited partnerships over which the BHC exercises significant influence that are engaged in the holding of real estate for investment purposes, these investments are reported as a component of Investments in unconsolidated subsidiaries and associated companies in Schedule HC, data item 8.

To better distinguish a BHC's investments in real estate ventures from these other categories of assets, particularly because Other real estate owned also includes real estate acquired either through foreclosure or in any other manner for debts previously contracted, which presents different supervisory considerations than real estate investments, the Federal Reserve proposes to add a new data item to the balance sheet (Schedule HC) for investments in real estate ventures. This new data item would include those investments in real estate ventures that are currently reported as part of Other real estate owned, Investments in real estate, and Investments in unconsolidated subsidiaries and associated companies. By making this change, the Federal Reserve would be able to eliminate data items 6, 13.b, and 13.c from Schedule HC–M. Also, to conform the FR Y–9C report to comparable concepts reported on the Call Report, the Federal Reserve proposes to modify the caption of Schedule HC–M, data item 13.a, Real estate acquired in satisfaction of debts previously contracted, as Other real estate owned and renumber as data item 13.

*B.2.9 Trading Assets That Are Past Due or in Nonaccrual Status*

The Federal Reserve has observed that BHCs are holding assets in trading for longer periods of time due to market and other factors. Some of these assets are exhibiting delinquency patterns similar to assets held outside of the trading account. Currently, past due and nonaccrual trading assets are not distinguished from other assets on Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets. The Federal Reserve proposes to replace Schedule HC–N, data item 9, for Debt securities and other assets that are past due 30 days or more or in nonaccrual status with two separate data items: 9.a, Trading assets, and 9.b, All other assets (including available-for-sale and held-to-maturity securities). These data items would follow the existing three-column breakdown on Schedule HC–N that BHCs utilize to report assets past due 30 through 89 days and still accruing, past due 90 days or more and still accruing, and in nonaccrual status. Data item 9.a would include all assets held for trading purposes, including loans held for trading. Collection of this information would allow the Federal Reserve to better assess the quality of assets held for trading purposes and generally enhance surveillance and examination planning efforts.

Also, the Federal Reserve proposes to expand the scope of Schedule HC–D, Trading Assets, Memorandum item 3, Loans measured at fair value that are past due 90 days or more, to include loans held for trading and measured at fair value that are in nonaccrual status. This change would provide for more consistent treatment with the information that would be collected on Schedule HC–N and with the disclosure requirements in FASB Statement No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities*.

*B.2.10 Enhanced Information on Credit Derivatives*

Effective for the March 2006 FR Y–9C report, the Federal Reserve revised the information collected on credit derivatives in Schedules HC–L, Derivatives and Off-Balance Sheet Items, and HC–R, Regulatory Capital, to gain a better understanding of the nature and trends of BHCs' credit derivative activities. Since that time, the volume of credit derivative activity at BHCs, as measured by the notional amount of these contracts, has increased steadily, rising to an aggregate notional amount of $17.1 trillion as of March 31, 2008. This credit derivative activity is highly concentrated in BHCs with total assets in excess of $10 billion. For these BHCs, credit derivatives function as a risk mitigation tool for credit exposures in their operations as well as a financial product that is sold to third parties for risk management and other purposes.

The Federal Reserve's safety and soundness efforts continue to place emphasis on the role of credit derivatives in BHC risk management practices. In addition, the Federal Reserve's monitoring of credit derivative activities at certain BHCs has identified differences in interpretation as to how credit derivatives are treated under the Federal Reserve's risk-based capital standards. To further the Federal Reserve's safety and soundness efforts concerning credit derivatives and to improve transparency in the treatment of credit derivatives for regulatory capital purposes, the Federal Reserve proposes to revise the information pertaining to credit derivatives that is collected on Schedules HC–L, HC–N (Past Due and Nonaccrual Loans, Leases, and Other Assets), and HC–R.

In Schedule HC–L, data item 7, Credit derivatives, the Federal Reserve proposes to change the caption of column A from Guarantor to Sold Protection and the caption of column B from Beneficiary to Purchased Protection to eliminate confusion surrounding the meaning of Guarantor and Beneficiary that commonly occurs between the users and preparers of these data. The Federal Reserve also proposes to add a new data item 7.c to Schedule HC–L to collect information on the notional amount of credit derivatives by regulatory capital treatment. For credit derivatives that are subject to the Federal Reserve's market risk capital standards, the Federal Reserve proposes to collect the notional amount of sold protection and the amount of purchased protection. For all other credit derivatives, the Federal Reserve proposes to collect the notional amount

of sold protection, the notional amount of purchased protection that is recognized as a guarantee under the risk-based capital guidelines, and the notional amount of purchased protection that is not recognized as a guarantee under the risk-based capital standards. The Federal Reserve also proposes to add a new data item 7.d to Schedule HC–L to collect information on the notional amount of credit derivatives by credit rating and remaining maturity. This data item would collect the notional amount of sold protection broken down by credit ratings of investment grade and subinvestment grade for the underlying reference asset and by remaining maturities of one year or less, over one year through five years, and over five years. The same information would be collected for purchased protection.

In Schedule HC–N, the Federal Reserve proposes to change the scope of memorandum item 6, Past due interest rate, foreign exchange rate, and other commodity and equity contracts, to include credit derivatives. The fair value of credit derivatives where the BHC has purchased protection increased significantly to over $518 billion as of March 31, 2008, as compared to a negative $13.5 billion as of March 31, 2007. Thus, the performance of credit derivative counterparties has increased in importance. The expanded scope of memorandum item 6 on Schedule HC–N would include the fair value of credit derivatives carried as assets that are past due 30 through 89 days and past due 90 days or more.

In Schedule HC–R, the Federal Reserve proposes to change the scope of the information collected in memoranda items 2.g.(1) and (2) on the notional principal amounts of Credit derivative contracts that are subject to risk-based capital requirements to include only (a) the notional principal amount of purchased protection that is defined as a covered position under the market risk capital guidelines and (b) the notional principal amount of purchased protection that is not a covered position under the market risk capital guidelines and is not recognized as a guarantee for risk-based capital purposes. The scope of memorandum item 1, Current credit exposure across all derivative contracts covered by the risk-based capital standards, would be similarly revised to include the current credit exposure arising from credit derivative contracts that represent (a) purchased protection that is defined as a covered position under the market risk capital guidelines and (b) purchased protection that is not a covered position under the market risk capital guidelines and is not recognized as a guarantee for risk-based capital purposes. The Federal Reserve also proposes to add new memoranda items 3.a and 3.b to Schedule HC–R to collect the present value of unpaid premiums on sold credit protection that is defined as a covered position under the market risk capital guidelines. Consistent with the information currently reported in memorandum item 2.g, the Federal Reserve proposes to collect this present value information with a breakdown between investment grade and subinvestment grade for the rating of the underlying reference asset and with the same three remaining maturity breakouts. Current memoranda items 3, 4, 5 and 6 would be renumbered as 4, 5, 6 and 7, respectively.

**Proposed Revisions—FR Y–9SP**

The Federal Reserve proposes to make the following revisions to the FR Y–9SP effective as of June 30, 2009. These proposed revisions are not related to the revisions proposed to the Call Report.

**Proposed Revisions to Schedule SC–M, Memoranda**

As described previously under proposed changes to the FR Y–9C report, under the CPP the Treasury will provide capital to participating BHCs by purchasing newly issued senior perpetual preferred stock of the bank holding company. In conjunction with the purchase of this senior perpetual preferred stock, the Treasury will receive warrants to purchase common stock with an aggregate market price equal to 15 percent of the senior preferred investment.

In order to monitor the scope of the CPP, including associated warrants issued, the Federal Reserve proposes to add two data items to Schedule SC–M, Memoranda. The Federal Reserve proposes to add new data item 23 with the heading ''Issuances associated with the U.S. Department of Treasury Capital Purchase Program:'' with a breakout for data item 23.a, ''Senior perpetual preferred stock or similar items,'' and 23.b, ''Warrants to purchase common stock or similar items.'' BHCs would report the carrying amount of these instruments in data items 23.a and 23.b. The Federal Reserve proposes to add the phrase ''or similar items'' to each of these data items in order to provide greater flexibility to collect information related to this program as details of the program develop.

2. *Report title:* Financial Statements of Nonbank Subsidiaries of U.S. Bank Holding Companies.

*Agency form number:* FR Y–11.

*OMB control number:* 7100–0244.

*Frequency:* Quarterly and annually.

*Reporters:* Bank holding companies.

*Annual reporting hours:* FR Y–11 (quarterly): 11,424; FR Y–11 (annual): 1,489.

*Estimated average hours per response:* FR Y–11 (quarterly): 6.80; FR Y–11 (annual): 6.80.

*Number of respondents:* FR Y–11 (quarterly): 420; FR Y–11 (annual): 219.

*General description of report:* This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6)and (b)(8) of the Freedom of Information Act [5 U.S.C. 552(b)(4), (b)(6) and (b)(8)].

*Abstract:* The FR Y–11 reports collect financial information for individual non-functionally regulated U.S. nonbank subsidiaries of domestic bank holding companies (BHCs). BHCs file the FR Y–11 on a quarterly or annual basis according to filing criteria. The FR Y–11 data are used with other BHC data to assess the condition of BHCs that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

*Current Actions:* As of March 2008, 51 nonbank subsidiaries reported trading assets of $122 billion on the FR Y–11, representing approximately 16 percent of their total assets. Since March 2004, trading assets reported on the FR Y–11 have increased over 100 percent. To enhance the data reported by nonbank subsidiaries on assets held in trading accounts and to make the data on the FR Y–11 consistent with the information currently reported on the FR 2314, the Federal Reserve proposes to revise Schedule BS–M–Memoranda, to collect the following data on trading assets by type of asset: (1) Securities of U.S. government and its agencies, (2) securities of all foreign governments and official institutions, (3) equity securities, (4) corporate bonds, notes and debentures, (5) revaluation gains on interest rate, foreign exchange rate, and other commodity and equity contracts, and (6) other (including commercial paper).

Effective with the March 31, 2008, FR Y–9C, BHCs were permitted to report loans held for sale as trading assets if the BHC applies fair value accounting and manages these assets as trading positions, subject to the controls and applicable regulatory guidance related to trading activities. In addition, new items were added to Schedule HC–D, Trading Assets and Liabilities, of the FR

Y–9C to capture detail for the types of loans reported as trading assets and the dollar amount of loans held for trading that are past due or in nonaccrual status. The FR Y–11 reporting instructions indicate that this report is to be filed on a consistent basis with the FR Y–9C report. Therefore, nonbank subsidiaries may also report loans held for sale as trading assets if they meet the above criteria. However, loans treated as trading assets and the amount of loans held for trading that are past due or in nonaccrual status are not separately disclosed on the FR Y–11.

The Federal Reserve proposes to revise Schedule BS–M–Memoranda, to also capture 1) the fair value of loans held for trading, 2) the fair value of loans held for trading that are past due 90 days or more or in nonaccrual status, and 3) the unpaid principal balance of these loans that are past due or in nonaccrual status. Collection of these data would allow the Federal Reserve to better monitor the specific risk exposures associated with and the delinquency patterns exhibited by such trading assets.

This family of reports also contains the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y–11S), which is not being revised.

3. *Report title:* Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations.

*Agency form number:* FR 2314.

*OMB control number:* 7100–0073.

*Frequency:* Quarterly and annually.

*Reporters:* Foreign subsidiaries of U.S. state member banks, bank holding companies, and Edge or agreement corporations.

*Annual reporting hours:* FR 2314 (quarterly): 5,755; FR 2314 (annual): 1,109.

*Estimated average hours per response:* FR 2314 (quarterly): 6.60; FR 2314 (annual): 6.60.

*Number of respondents:* FR 2314 (quarterly): 218; FR 2314 (annual): 168.

*General description of report:* This information collection is mandatory (12 U.S.C. 324, 602, 625, and 1844(c)). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act [5 U.S.C. §§ 552(b)(4)(b)(6) and (b)(8)].

*Abstract:* The FR 2314 reports collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks (SMBs), Edge and agreement corporations, and BHCs. Parent organizations (SMBs, Edge and agreement corporations, or BHCs) file the FR 2314 on a quarterly or annual basis according to filing criteria. The FR 2314 data are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

*Current Actions:* Effective with the March 31, 2008, FR Y–9C, BHCs were permitted to report loans held for sale as trading assets if the BHC applies fair value accounting and manages these assets as trading positions, subject to the controls and applicable regulatory guidance related to trading activities. In addition, new items were added to Schedule HC–D, Trading Assets and Liabilities, of the FR Y–9C to capture detail for the types of loans reported as trading assets and the dollar amount of loans held for trading that are past due or in nonaccrual status. The FR 2314 reporting instructions indicate that this report is to be filed on a consistent basis with the FR Y–9C report. Therefore, nonbank subsidiaries may also report loans held for sale as trading assets if they meet the above criteria. However, loans treated as trading assets and the amount of loans held for trading that are past due or in nonaccrual status are not separately disclosed on the FR 2314.

The Federal Reserve proposes to revise the FR 2314, Schedule BS–M–Memoranda, to also capture 1) the fair value of loans held for trading, 2) the fair value of loans held for trading that are past due 90 days or more or in nonaccrual status, and 3) the unpaid principal balance of these loans that are past due or in nonaccrual status. Collection of these data would allow the Federal Reserve to better monitor the specific risk exposures associated with and the delinquency patterns exhibited by such trading assets.

This family of reports also contains the Abbreviated Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314S), which is not being revised.

4. *Report title:* Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations.

*Agency form number:* FR Y–7N.

*OMB control number:* 7100–0125.

*Frequency:* Quarterly and annually.

*Reporters:* Foreign banking organizations (FBOs).

*Annual reporting hours:* FR Y–7N (quarterly): 5,277; FR Y–7N (annual): 1,149.

*Estimated average hours per response:* FR Y–7N (quarterly): 6.8; FR Y–7N (annual): 6.8.

*Number of respondents:* FR Y–7N (quarterly): 194; FR Y–7N (annual): 169.

*General description of report:* This information collection is mandatory (12 U.S.C. 1844(c), 3106(c), and 3108). Confidential treatment is not routinely given to the data in these reports. However, confidential treatment for information, in whole or in part, on any of the reporting forms can be requested in accordance with the instructions to the form, pursuant to sections (b)(4) and (b)(6) of the Freedom of Information Act [5 U.S.C. §§ 522(b)(4) and (b)(6)].

*Abstract:* The FR Y–7N collects financial information for non-functionally regulated U.S. nonbank subsidiaries held by FBOs other than through a U.S. bank holding company, U.S. financial holding company, or U.S. bank. FBOs file the FR Y–7N on a quarterly or annual basis based on size thresholds.

*Current Actions:* As of March 2008, 57 nonbank subsidiaries submitted data for trading assets of $137 billion on the FR Y–7N, representing approximately 27 percent of their total assets. Since March 2004, trading assets reported on the FR Y–7N have increased over 52 percent. To enhance the data reported by nonbank subsidiaries on assets held in trading accounts and to make the data on the FR Y–7N consistent with the information reported on the FR Y–11 and FR 2314, the Federal Reserve proposes to revise Schedule BS–M–Memoranda, to collect the following data on trading assets by type of asset: (1) Securities of U.S. government and its agencies, (2) securities of all foreign governments and official institutions, (3) equity securities, (4) corporate bonds, notes and debentures, (5) revaluation gains on interest rate, foreign exchange rate, and other commodity and equity contracts, and (6) other (including commercial paper).

Effective with the March 31, 2008, FR Y–9C report, BHCs were permitted to report loans held for sale as trading assets if the BHC applies fair value accounting and manages these assets as trading positions, subject to the controls and applicable regulatory guidance related to trading activities. In addition, new items were added to Schedule HC–D, Trading Assets and Liabilities, of the FR Y–9C to capture detail for the types of loans reported as trading assets, and the dollar amount of loans held for trading that are past due or in nonaccrual status. The FR Y–7N reporting instructions indicate that this report is to be filed on a consistent basis with the FR Y–9C report. Therefore

nonbank subsidiaries may also report loans held for sale as trading assets if they meet the above criteria. However, loans treated as trading assets and the amount of loans held for trading that are past due or in nonaccrual status are not separately disclosed on the FR Y–7N.

The Federal Reserve proposes to revise Schedule BS–M–Memoranda to also capture (1) the fair value of loans held for trading, (2) the fair value of loans held for trading that are past due 90 days or more or in nonaccrual status, and (3) the unpaid principal balance of these loans that are past due or in nonaccrual status. Collection of these data would allow the Federal Reserve to better monitor the specific risk exposures associated with and the delinquency patterns exhibited by such trading assets.

On November 15, 2007, the Securities and Exchange Commission (SEC) approved amendments to its rules that would allow foreign private issuers to file financial statements prepared using International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board without a reconciliation to U.S. generally accepted accounting principles (GAAP). The Federal Reserve is evaluating the potential use of IFRS on the FR Y–7N/NS reports.

This family of reports also contains the Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–7NS) and the Capital and Asset Report for Foreign Banking Organizations (FR Y–7Q), which are not being revised.

5. *Report title:* Consolidated Report of Condition and Income for Edge and Agreement Corporations.

*Agency form number:* FR 2886b.

*OMB control number:* 7100–0086.

*Frequency:* Quarterly.

*Reporters:* Edge and agreement corporations.

*Annual reporting hours:* 2,288.

*Estimated average hours per response:* 15.15 banking corporations, 9.60 investment corporations.

*Number of respondents:* 15 banking corporations, 50 investment corporations.

*General description of report:* This information collection is mandatory (12 U.S.C. 602 and 625). Schedules RC–M (except data item 3) and RC–V are held as confidential pursuant to section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

*Abstract:* The mandatory FR 2886b comprises a balance sheet, income statement, 2 schedules reconciling changes in capital and reserve accounts, and 10 supporting schedules, and it parallels the Call Report that commercial banks file. The Federal Reserve uses the data collected on the FR 2886b to supervise Edge corporations, identify present and potential problems, and monitor and develop a better understanding of activities within the industry.

*Current Actions:* The Federal Reserve proposes to make the following revisions to the FR 2886b to: (1) Reduce the reporting frequency to annual for Edge and agreement corporations with total assets of $50 million or less; (2) collect a new Schedule RC–D, Trading Assets and Liabilities, comparable to, but less detailed than, Schedule HC–D, Trading Assets and Liabilities, on the FR Y–9C report; and (3) collect additional information on option contracts and other swaps (other than interest rate swaps and foreign exchange swaps). The proposed changes would be effective as of March 31, 2009.

**Proposed Reporting Threshold**

The FR 2886b data are currently submitted quarterly by all Edge and agreement corporations. In accord with risk-focused supervision and in an effort to reduce reporting burden, the Federal Reserve proposes to establish that Edge and agreement corporations with total consolidated assets of $50 million or less would submit the FR 2886b data annually as of December 31.[15] All Edge and agreement corporations with consolidated assets of more than $50 million would continue to file the FR 2886b quarterly. Of the current respondent panel, 14 investment corporations and 3 banking corporations would qualify for annual reporting.

**New Schedule for Trading Assets and Liabilities**

Since the Federal Reserve is solely responsible for authorizing, supervising, and assigning ratings to Edge and agreement corporations, it is critical to receive sufficient information to understand the risk profiles of Edge and agreement corporations and not to rely on information provided at the consolidated level by the parent bank or BHC. A number of large banking organizations conduct substantial trading and structured finance activities through their subsidiary Edge and agreement corporations, an activity that carries potentially very high risk.

Total trading assets data reported by FR 2886b respondents has increased approximately 310 percent to $225 billion or nearly 18 percent of total assets between March 31, 2000, and March 31, 2008. This activity is concentrated at 9 investment Edge and agreement corporations, 8 of which have trading assets of over $2 million and 5 of which have trading assets of over $1 billion. To better assess the risk associated with this trading activity, the Federal Reserve proposes to collect a separate schedule for trading assets and liabilities, comparable to proposed FR Y–9C Schedule HC–D, Trading Assets and Liabilities, with somewhat less detail. The proposed new Schedule RC–D, Trading Assets and Liabilities, would include the following data items reported on a consolidated basis by Edge and agreement corporations:

1. U.S. Treasury securities.
2. U.S. government agency obligations (exclude mortgage-backed securities).
3. Securities issued by states and political subdivisions in the U.S.
4.a. Residential mortgage backed securities.
4.b. Commercial mortgage backed securities.
5. Other debt securities.
6. Loans.
7. Other trading assets.
8. Derivatives with a positive fair value.
9. Total trading assets.
10. Liability for short positions:
a. Equity securities.
b. Debt securities.
c. All other assets.
11. All other trading liabilities.
12. Derivatives with a negative fair value.
13. Total trading liabilities.

Memoranda:
1. Asset-backed securities:
a. Credit card receivables.
b. Home equity lines.
c. Automobile loans.
d. Other consumer loans.
e. Commercial and industrial loans.
f. Other.
2. Structured financial products:
a. Cash.
b. Synthetic.
c. Hybrid.
3. Retained beneficial interests in securitizations (first-loss or equity tranches).
4. Equity securities:
a. Readily determinable fair values.
b. Other.
5. Loans pending securitization.
6.a. Gross fair value of commodity contracts.
6.b. Gross fair value of physical commodities held in inventory.

Proposed data items 1 through 13 would be reported by Edge and agreement corporations that reported trading assets of $2 million or more in

[15] Edge and agreement corporations meeting the asset size criteria of $50 million or less would no longer file the March, June and September reports and would file annually as of December 31, beginning with the December 31, 2009, reporting date.

Schedule RC, data item 5. Proposed memoranda items 1 through 6.b would be reported by Edge and agreement corporations that reported trading assets of $1 billion or more in Schedule RC, data item 5. These thresholds are consistent with the thresholds for filing, and all data items on this schedule would be defined as reported, on FR Y–9C Schedule HC–D.

The consolidated FR Y–9C incorporates data from subsidiary Edge and agreement corporations. As mentioned previously, this reporting form collects the same trading asset and liability data items that are being proposed on the FR 2886b. Therefore, FR 2886b respondents should not realize a significant increase in reporting burden with the creation of Schedule RC–D as such information is already collected (or soon will be) for reporting on the FR Y–9C.

**Revisions to Information Collected on Option Contracts and Swaps**

Respondents currently report the notional value of option contracts in Schedule RC–L, Derivatives and Off-Balance-Sheet Items, in data item 10, with a breakout between written and purchased option contracts. Information by type of option contract is not currently collected. Written option contracts data reported by FR 2886b respondents have increased 308 percent to $1,120 billion between March 31, 2000 and March 31, 2008. Purchased option contracts have increased 294 percent to $1,079 billion over this same time period. To better assess the risk associated with each type of option contract, the Federal Reserve proposes to collect the following breakouts for written options and purchased options: Interest rate contracts, foreign exchange contracts, equity derivative contracts, and commodity and other contracts.

Respondents also currently report the notional value of swaps in Schedule RC–L, data item 11, with a breakout between interest rate swaps, foreign exchange swaps, and other swaps. Other swaps data reported by FR 2886b respondents has increased by 229 percent to $186 billion between March 31, 2000, and March 31, 2008. To better assess the risk associated with the growing use of these types of swap contracts included in the other category, the Federal Reserve proposes to split this data item into equity derivative swap contracts, and commodity and other swap contracts.

The consolidated FR Y–9C report incorporates data from subsidiary Edge and agreement corporations. This report collects the categories of option contracts and swap contracts that are being proposed. Therefore, FR 2886b respondents should not realize a significant increase in reporting burden with these proposed revisions to Schedule RC–L as such information is already collected for reporting on the FR Y–9C.

**Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report**

6. *Report title:* Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates.

*Agency form number:* FR Y–8.

*OMB control number:* 7100–0126.

*Frequency:* Quarterly.

*Reporters:* Top-tier bank holding companies (BHCs), including financial holding companies (FHCs), for all insured depository institutions that are owned by the BHC and by foreign banking organizations (FBOs) that directly own a U.S. subsidiary bank

*Annual reporting hours:* 52,010.

*Estimated average hours per response:* Institutions with covered transactions: 7.8; Institutions without covered transactions: 1.0.

*Number of respondents:* Institutions with covered transactions: 1,013; Institutions without covered transactions: 5,101.

*General description of report:* This information collection is mandatory (section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) and section 225.5(b) of Regulation Y (12 CFR 225.5(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

*Abstract:* This reporting form collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act. The primary purpose of the data is to enhance the Federal Reserve's ability to monitor bank exposures to affiliates and to ensure banks' compliance with section 23A of the Federal Reserve Act. Section 23A of the Federal Reserve Act is one of the most important statutes on limiting exposures to individual institutions and protecting against the expansion of the federal safety net.

*Current Actions:* The Federal Reserve proposes to require that all respondents electronically submit all FR Y–8 reports effective with the June 30, 2009, report date. The Federal Reserve proposes the electronic submission requirement to increase the quality and timeliness of the data.

Board of Governors of the Federal Reserve System, November 7, 2008.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E8–26916 Filed 11–12–08; 8:45 am]

BILLING CODE 6210–01–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 28, 2008.

**A. Federal Reserve Bank of Minneapolis** (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

*1. Claire L. Erickson Irrevocable Trust For The Benefit Of Kristi Erickson Kampmeyer and Descendants, the Claire L. Erickson Irrevocable Trust For The Benefit Of David B. Erickson and Descendants, and Gary Vander Vorst, as an individual and as co–trustee of the trusts*, all of Hudson, Wisconsin, and Kristi Erickson Kampmeyer, Sunfish Lake, Minnsota, as an individual and as co–trustee and beneficiary of the Claire L. Erickson Irrevocable Trust For The Benefit Of Kristi Erickson Kampmeyer and Descendants, which collectively are part of a group acting in concert with David Erickson, Hudson, Wisconsin, to gain and/or retain control of Freedom Bancorporation, Inc., and thereby indirectly gain and/or retain control of Lake Area Bank, both of Lindstrom, Minnesota.

*2. Claire L. Erickson Irrevocable Trust II For The Benefit Of Kristi Erickson Kampmeyer and Descendants, the Claire L. Erickson Irrevocable Trust For The Benefit Of Marilyn J. Kron and Descendants, and Gary Vander Vorst as an individual and as co–trustee of the trusts*, all of Hudson, Wisconsin, which collectively are part of a group acting in

concert with Kristi Erickson Kampmeyer, Sunfish Lake, Minnesota, and Marilyn J. Kron, Hudson, Wisconsin, to gain control of Waseca Bancshares, Inc., and thereby indirectly gain control of Roundbank, both of Waseca, Minnesota.

Board of Governors of the Federal Reserve System, November 7, 2008.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E8–26926 Filed 11–12–08; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission (''Commission'' or ''FTC'').

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through January 31, 2012, the current PRA clearance for information sought through compulsory process orders to a combined ten or more of the largest cigarette manufacturers and smokeless tobacco manufacturers in order to obtain from them information including, among other things, their sales and marketing expenditures. The current clearance expires on January 31, 2009.

**DATES:** Comments must be submitted on or before December 15, 2008.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Tobacco Reports: Paperwork Comment, FTC File No. P054507'' to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*) — and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-TobaccoReports*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-TobaccoReports*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

A comment filed in paper form should include the ''Tobacco Reports: Paperwork Comment, FTC File No. P054507'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

All comments should additionally be submitted to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-6974 because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed collection requirements should be addressed to Shira Modell, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580; telephone: (202) 326-3116.

**SUPPLEMENTARY INFORMATION:** For forty years, the Federal Trade Commission has published periodic reports containing data on domestic cigarette sales and marketing expenditures by the major U.S. cigarette manufacturers. The Commission has published comparable reports on smokeless tobacco sales and marketing expenditures since 1987. Both reports originally were issued pursuant to statutory mandates. After those statutory mandates were terminated, the Commission continued to collect and publish information obtained from the cigarette and smokeless tobacco industries pursuant to Section 6(b) of the FTC Act, 15 U.S.C. 46(b). The current PRA clearance to collect this information is valid through January 31, 2009, under OMB Control No. 3084-0134.

The FTC plans to continue sending information requests annually to the ultimate parent company of several of the largest cigarette companies and smokeless tobacco companies in the United States (''industry members''). The information requests will seek data regarding, *inter alia*: (1) the tobacco sales of industry members; (2) how much industry members spend advertising and promoting their tobacco products, and the specific amounts

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

spent in each of several specified expenditure categories; (3) whether industry members are involved in the appearance of their tobacco products in television shows or movies; (4) how much industry members spend on advertising intended to reduce youth tobacco usage; (5) the events, if any, during which industry members' tobacco brands are televised; and (6) for the cigarette industry, the tar, nicotine, and carbon monoxide ratings of their cigarettes, to the extent they possess such data. The information will again be sought using compulsory process under Section 6(b) of the FTC Act.

On August 7, 2008, the FTC sought public comment on its proposed information collection requests to the major cigarette and smokeless tobacco manufacturers. 73 FR 46006. One comment was received, which is discussed below.[2] Pursuant to the OMB regulations that implement the PRA, 5 CFR Part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance for the information collection requests. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before December 15, 2008.

**Comment Received:**

Altria Client Services Inc. filed a comment on behalf of Philip Morris USA Inc. (''PM USA''), in which it stated that PM USA believes the FTC's authority to collect the proposed information ''should be extended given the important role that the FTC has played and should continue to play relative to these products.'' The comment then referenced a separate Commission matter, noting that if the FTC were to rescind its guidance that factual statements of cigarette tar and nicotine yields based on the Cambridge Filter Method generally do not violate the FTC Act,[3] PM USA would question the Commission's need to continue collecting such information.

The matter referred to by PM USA is still being considered by the Commission. If the 1966 guidance is rescinded, the Commission will decide whether to continue collecting tar, nicotine, and carbon monoxide yield data to the extent the companies possess them.

**Estimated annual hours burden:**

The FTC staff's estimate of the hours burden is based on the time required to respond to each information request. Although the FTC currently anticipates sending information requests to the six largest cigarette companies and the five largest smokeless tobacco companies in 2009,[4] the burden estimate is based on up to 15 information requests being issued per year to take into account any future changes in these industries. These companies vary greatly in size, in the number of products that they sell, and in the extent and variety of their advertising and promotion. Prior input received from the industries, combined with staff's knowledge of them, suggests that the time most companies would require to gather, organize, format, and produce their responses would range from 30 to 80 hours per information request for the smaller companies, to as much as hundreds of hours for the very largest companies. As an approximation, staff continues to assume a per company average of 180 hours for the ten largest recipients of the Commission's information request to comply with it; cumulatively, 1,800 hours per year.[5] Staff further estimates that for the eleventh recipient of the information request to be issued in 2009 and the four possible additional recipients, all of which would be smaller companies than the initial ten recipients, the burden should not exceed 60 hours per company or 300 hours, cumulatively. Thus, the overall estimated burden for a maximum of 15 recipients of the information request is 2,100 hours. These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

**Estimated cost burden:**

It is not possible to calculate with precision the labor costs associated with this data production, as they entail varying compensation levels of management and/or support staff among companies of different sizes. Financial, legal, marketing, and clerical personnel may be involved in the information collection process. Commission staff assumes that professional personnel will handle most of the tasks involved in gathering and producing responsive information, and have applied an average hourly wage of $150/hour for their combined labor. Staff's best estimate for the total labor costs for up to 15 information requests is $315,000. Staff believes that the capital or other non-labor costs associated with the information requests are minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

**William Blumenthal,**

*General Counsel.*

[FR Doc. E8–26882 Filed 11–12–08: 8:45 am]

**BILLING CODE 6750–01–S**

[2] That comment is available at *http://www.ftc.gov/os/comments/tobaccoreportspra/index.shtm.*

[3] On July 14, 2008, the Commission published a **Federal Register** notice seeking comment on a proposal to rescind its guidance, issued in 1966, that it is generally not a violation of the FTC Act to make factual statements of the tar and nicotine yields of cigarettes when statements of such yields are supported by testing conducted pursuant to the Cambridge Filter Method. 73 FR 40,351.

[4] In August 2008, the Commission issued information requests to six cigarette companies and five smokeless tobacco companies. The Commission anticipates that it will issue requests to the same number of companies in 2009.

[5] 70 FR 24415 (May 9, 2005); 70 FR 62313 (Oct. 31, 2005).

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–XXXX]**

## General Services Administration; Office of Governmentwide Policy; Information Collection; Standard Form SF–XXXX, Tangible Personal Property Report

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Notice of request for comments regarding a new OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the GSA will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding reporting personal tangible property. A request for public comments was published at 72 FR 64648, November 16, 2007. Comments were received.

GSA, on behalf of the Grants Policy Committee proposes to issue a new standard form, the Tangible Personal Property Report (SF–XXXX). We anticipate this being the final notice before the form and instructions are finalized. The general public and Federal agencies are invited to comment on the proposed final form. To view the form, go to OMB's main Web page at *http://www.OMB.gov* and click on the ''Grants Management,'' then ''Forms'' then Proposed Government-Wide Standard Grants Reporting Forms Links.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this

collection of information is accurate, and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

**DATES:** Submit comments on or before: December 15, 2008.

**FOR FURTHER INFORMATION CONTACT:** Michael Nelson, Chair, Post-Award Workgroup; telephone 202–482–4538; fax 202–482–1844; e-mail *Michael.Nelson@noaa.gov*; mailing address 1401 Constitution Avenue, NW., Room 6054, Washington, DC 20230.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–XXXX, Tangible Personal Property Report, in all correspondence.

**SUPPLEMENTARY INFORMATION:**

## A. Purpose

GSA, on behalf of the Federal Grants Streamlining Initiative, proposes to issue a new standard form, the Tangible Personal Property Report (SF–XXXX). The SF–XXXX includes a cover page, an Annual Report attachment, a Final Report attachment, a Disposition/Request Report attachment and a Supplemental Sheet to provide detailed item information. The purpose of this new form is to provide a standard form for assistance recipients to use when they are required to provide a Federal agency with information related to federally owned property, or equipment and supplies (tangible personal property) acquired with assistance award funds. The form does not create any new reporting requirements. It does establish a standard annual reporting date of September 30 to be used if an award does not specify an annual reporting date. The standard form will replace any agency unique forms currently in use to allow uniformity of collection and to support future electronic submission of information.

*Background*

On November 16, 2007, GSA, on behalf of the Federal Grants Streamlining Initiative, announced in the **Federal Register** its intent to issue a new standard form, the Tangible Personal Property Report (SF–XXXX) (72 FR 64648).

Public Law 106–107 required OMB to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. The law also required executive agencies to develop, submit to the Congress, and implement a plan to achieve streamlined and simplified procedures.

Twenty-six Executive Branch agencies jointly submitted a plan to the Congress in May 2001, as the Act required. The plan described the interagency process through which the agencies would review current policies and practices, and seek to streamline and simplify them. The process involved interagency work groups under the auspices of the Grants Management Committee of the Chief Financial Officers Council. The plan also identified substantive areas in which the interagency work groups had begun their review.

One of the substantive areas that the agencies identified in the plan was a need to streamline and simplify Federal grant reporting requirements and procedures and associated business processes to reduce unnecessary burdens on recipients and to improve the timeliness, completeness and quality of the information collected.

Under the standards for management and disposition of federally owned property, equipment and supplies (tangible personal property) in 2 CFR part 215, the ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'', and the ''Uniform Administrative Requirements for Grants and Agreements with State and Local Governments'', codified by Federal agencies at 53 FR 8048 (March 11, 1988), recipients may be required to provide Federal agencies with information concerning property in their custody annually, at award closeout, or when the property is no longer needed.

During the public consultation process mandated by Public Law 106–107, recipients suggested the need for a standard form to help them submit appropriate property information when required. The Public Law 106–107 Post Award Reports Subgroup developed the Tangible Personal Property Report (SF–XXXX) for submission of required data in the situations outlined in the Table below:

| For . . . | A recipient must . . . | When . . . | Under . . . |
|---|---|---|---|
| Federally owned equipment ..... | Submit an inventory listing the equipment. | Annually, with information accurate as of 30 September, unless the award specifies a different date. | 2 CFR 215.33(a)(1); A–102, __.32(f)(2). |
| | Request Federal agency authorization. | It wants to use the equipment on other activities not sponsored by the Federal Government. | 2 CFR 215.34(d). |
| | Notify the Federal awarding agency. | Immediately upon finding equipment is lost, damaged, or stolen. | 2 CFR 215.34(f)(4). |
| | Request disposition instructions. | The equipment is no longer needed ..... | 2 CFR 215.33(a)(1); A–102, __.32(f)(3). |
| | | Upon completion of the award ..... | 2 CFR 215.33(a)(1) and 2 CFR 215.71(f); A–102, __.50(b)(5). |
| Grantee-acquired equipment in which the Federal Government retains an interest. | Obtain Federal awarding agency approval. | Acquiring replacement equipment, before: (1) using the current equipment as trade-in; or (2) selling it and using the proceeds to offset the costs of the replacement equipment. | 2 CFR 215.34(e); A–102, __.32(c)(4). |
| | Compensate the original Federal awarding agency or its successor. | Equipment has a per unit fair market value of greater than $5,000 and the grantee no longer needs the equipment for Federally supported activities but will retain the equipment for other uses. | 2 CFR 215.34(g); A–102, __.32(e)(2). |

| For . . . | A recipient must . . . | When . . . | Under . . . |
|---|---|---|---|
| | Request disposition instructions. | Grantee no longer needs the equipment for any purpose. | 2 CFR 215.34(g). |
| | Sell the equipment and reimburse the Federal awarding agency for the Federal share. | Equipment has a per unit fair market value of greater than $5,000 and the recipient no longer needs the equipment for any purpose and requested disposition instructions, and either was instructed to sell the equipment or received no instructions within 120 days. | 2 CFR 215.34(g)(1); A–102, __.32(e)(2). |
| | Account for the equipment .... | Upon completion of the award, when the awarding agency has reserved the right to transfer title to the Federal Government or a third party. | 2 CFR 215.71(f) and 2 CFR 215.34(g)(4)(ii). |
| Supplies ..... | Compensate the Federal Government for its share. | It has a residual inventory of unused supplies exceeding $5,000 in aggregate value at the end of a project or program that are not needed for other Federally supported activities. | 2 CFR 215.35(a); A–102, __.33(b). |

**Note:** Citations listed in this table for OMB Circular A–102 refer to each agency's implementing regulations. The underscore is where each agency's individual CFR location would be inserted. Citations for 2 CFR 215 are from OMB Circular A–110 which has been relocated to 2 CFR, Part 215. For further information on the Circulars, please refer to *http://www.whitehouse.gov/omb/grants/attach.html.*

*Comments on 2007* ***Federal Register*** *Notice and Responses*

*Comment:* Requested clarification as to whether the new report would take precedence over specific reporting requirements in the provisions of their awards.

*Response:* The (SF–XXXX) will replace any agency unique forms currently in use, but it does not create any new reporting requirements. The provisions of individual awards still apply.

**B. Annual Reporting Burden**

This report will be used to collect information related to tangible personal property (and supplies) when required by a Federal financial assistance award. Since this form will primarily be used for reporting under grants, and GSA does not award grants, we are providing a burden estimate for one respondent.

*Respondents:* Federal agencies and their assistance recipients.

*Estimated Total Annual Burden Hours:* 2.75.

*Estimated Cost:* There is no expected cost to the respondents or to GSA.

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Tangible Personal Property Report (SF–XXXX) ..... | 1 | 1 | 0.166666667 | 0.166666667 |
| Annual Report: Attachment to SF–XXXX ..... | 1 | 1 | 0.75 | 0.75 |
| Final Report: Attachment to SF–XXXX ..... | 1 | 1 | 0.75 | 0.75 |
| Disposition Request/Report: Attachment to SF–XXXX ..... | 1 | 1 | 0.75 | 0.75 |
| Tangible Personal Property Report Supplemental Sheet (SF–XXXX–S) ..... | 1 | 1 | 0.333333333 | 0.333333333 |
| Total ..... | ..... | ..... | ..... | 2.75 |

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 208–4755. Please cite OMB Control No. 3090–XXXX, Tangible Personal Property Report, in all correspondence.

Dated: October 17, 2008.

**Casey Coleman,**

*Chief Information Officer.*

[FR Doc. E8–26994 Filed 11–12–08; 8:45 am]

**BILLING CODE 6820–RH–P**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–XXXX]**

### General Services Administration; Office of Governmentwide Policy; Information Collection Standard Form (SF–XXXX), Real Property Status Report

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Interim Notice; request for comments regarding a new information collection.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the GSA Office of Governmentwide Policy will submit to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning reporting real property status. The GSA, on behalf of the Grants Policy Committee, proposes to issue a new standard form, the Real Property Status Report (RPSR) (SF–XXXX).

This interim notice is being issued to address comments received as a result of the notice published in the **Federal Register** at 72 FR 64646 on November 16, 2007, and to present changes made to the report as a result of those comments. We anticipate this being the interim notice before the form and instructions are finalized.

The general public and Federal agencies are invited to comment on the proposed revised report. To view the

report and a full list of comments received along with work group responses, go to OMB's Web page at *http://www.OMB.gov* and click on the ''Grants Management,'' then ''Forms,'' then Proposed Government-Wide Standard Grants Reporting Forms links.

**DATES:** *Comment Due Date:* January 12, 2009.

**FOR FURTHER INFORMATION CONTACT:** Michael Nelson, Chair, Post-Award Workgroup; telephone 301–713–0833 ext. 199; fax 301–713–0806; e-mail *Michael.Nelson@noaa.gov*; mailing address 1305 East-West Highway, Room 7142, Silver Spring, MD 20910.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405.

**SUPPLEMENTARY INFORMATION:**

## A. Purpose

The report will be used to collect information related to real property when required by a Federal financial assistance award. The SF–XXXX includes a cover page, attachment A, ''General Reporting'', attachment B, ''Request To Acquire, Improve or Furnish'' and attachment C, ''Disposition Request.'' The purpose of this new report is to assist recipients of grants and cooperative agreements when they are required to provide a Federal agency with information related to real property to which the Federal government holds an interest as a result of the real property being acquired, improved or furnished under a Federal financial assistance award, and for real property that was donated to a Federal project in the form of a required match or cost sharing donation. The report establishes a standard format for reporting real property status under financial assistance awards. It does establish an annual reporting date of September 30 to be used if an award does not specify an annual reporting date, unless Federal interest in the real property extends 15 years or longer. To create uniformity of collection and support future electronic submission of information, the standard reporting form will replace any agency unique forms currently in use.

*Background*

The GSA, on behalf of the Federal Grants Streamlining Initiative, announced in the **Federal Register** on November 16, 2007 (72 FR 64646), its intent to issue a new standard report, the Real Property Status Report (SF–XXXX).

Public Law 106–107 required the OMB to direct, coordinate, and assist Executive Branch departments and agencies in establishing an interagency process to streamline and simplify Federal financial assistance procedures for non-Federal entities. The law also required executive agencies to develop, submit to the Congress, and implement a plan to achieve streamlined and simplified procedures.

Twenty-six Executive Branch agencies jointly submitted a plan to the Congress in May 2001, as the Act required. The plan described the interagency process through which the agencies would review current policies and practices, and seek to streamline and simplify them. The process involved interagency work groups under the auspices of the Grants Management Committee of the Chief Financial Officers Council. The plan also identified substantive areas in which the interagency work groups had begun their review.

One of the substantive areas that the agencies identified in the plan was a need to streamline and simplify Federal grant reporting requirements and procedures and associated business processes to reduce unnecessary burdens on recipients and to improve the timeliness, completeness and quality of the information collected.

Under the standards for management and disposition of federally owned property, and real property acquired under assistance awards (real property status) in 2 CFR part 215, the ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations'', and the ''Uniform Administrative Requirements for Grants and Agreements With State and Local Governments'', codified by Federal agencies at 53 FR 8048 (March 11, 1988), recipients may be required to provide Federal agencies with information concerning property in their custody annually, at award closeout or when the property is no longer needed.

During the public consultation process mandated by Pub. L. 106–107, recipients suggested the need for clarification of these requirements and the establishment of a standard report to help them submit appropriate property information when required. The Real Property Status Report is to be used in connection with the requirements listed in the table below and Federal awarding agency guidelines:

| For . . . | A recipient must . . . | When . . . |
|---|---|---|
| Federally owned property | Submit an inventory listing | Annually, with information accurate as of 30 September, unless the award specifies a different date. |
| | Report the property to the Federal awarding agency. | The property is no longer needed. Upon completion of the award or at the point Federal interest in the property ceases. |
| | Notify the Federal awarding agency. | Immediately upon finding property damaged, or significantly altered. |
| | Request authority to be furnished real property. | The recipient is authorized, via the assistance award, to request to be furnished real property for the purposes of the project or program. |
| | Request disposition instructions | The property is no longer needed. Upon completion of the award or at the point Federal interest in the property ceases. |
| Real property improved, donated or acquired in whole or in part under an assistance award. | Request authority to acquire or improve real property. | The recipient is authorized, via the assistance award, to request authorization from the awarding agency, during the post award phase, to acquire or improve real property for the purposes of the project or program. |
| | Request disposition instructions | The recipient no longer needs the property for any purpose. |
| | Sell the property and reimburse the Federal awarding agency for the Federal share. | The recipient is directed to sell the property under guidelines provided by the Federal awarding agency. |

| For . . . | A recipient must . . . | When . . . |
|---|---|---|
| | Transfer title to the property to the Federal Government or to an eligible third party. | The recipient is directed to transfer title by the Federal awarding agency or its successor. |
| | Compensate the original Federal awarding agency or its successor. | The recipient wants to retain title without further obligation to the Federal Government. |
| | Obtain the approval of the Federal awarding agency. | Before making capital expenditures for improvements to property that materially increase its value or useful life. |
| | Obtain the approval of the Federal awarding agency. | The recipient wants to use the real property in other Federally-sponsored projects or programs that have purposes consistent with those authorized for support by the Federal awarding agency when the recipient determines that the property is no longer needed for the purposes of the original project. |
| | Request release from the obligation to report on real property. | The Federal interest in the property expires, or the real property has been disposed of in accordance with agency instructions. |

*Discussion of Comments*

Sixty-eight (68) comments were received in response to the November 16, 2007, **Federal Register** notice (72 FR 64646) regarding the RPSR. The majority of comments came from Federal agencies. Following the close of the comment period, an interagency team met to review the comments and make appropriate upgrades to the draft report. A summary of the comments and the work group responses are below:

*Comment 1:* The team received 9 comments regarding Attachment B, which was designed to capture recipient disposition requests and requests for acquisition, improvement or furnishing of real property. Agencies that do not allow requests for acquisition, improvement or furnishing in the post-award context expressed concern that the attachment may mislead recipients into believing it would be allowable to make such requests.

*Response:* There was confusion about the purpose of the original Attachment B because it contains both post-award requests and disposition instructions. The team revised the report to separate requests from disposition and created a new Attachment C. If a recipient is not allowed to make post-award requests to acquire, improve or to be furnished real property, Attachment B will be removed from the recipient reporting requirements at the time of award.

*Comment 2:* The team received 1 comment expressing concern that ''Conservation Easement'' was listed as an Ownership type.

*Response:* As it is not an Ownership type, ''Conservation Easement'' has been removed as an Ownership type but can be reported in the ''Other'' category.

*Comment 3:* The team received 1 comment expressing concern that the report did not request information regarding a property's requirements associated with the National Historic Preservation Act.

*Response:* The report has been updated to include a data request for any National Historic Preservation Act requirements related to the property.

*Comment 4:* The team received 3 comments regarding requests for additional program specific data blocks, such as the inclusion of detailed floor plans.

*Response:* The RPSR is designed for government-wide use. Agencies have the latitude to modify the form, with the OMB's approval, to require the reporting of additional information based on program need.

*Comment 5:* The team received 3 comments regarding the use of current agency data collection systems and the development of a new electronic solution for real property reporting.

*Response:* OMB has not made a decision regarding the development of a system for collecting real property report information. The data elements used to develop the report were taken from reporting instruments used throughout the Federal government. Agencies will be required to collect the data elements and may use existing agency systems or formats to do so, as long as those collections are consistent with the report. The intent is to issue the report in paper format with the expectation that it will be implemented electronically in the future.

*Comment 6:* The team received 1 comment on the proposed reporting frequency.

*Response:* Agencies will have the option to require reporting on a less than once a year basis not to exceed 5 years, (*e.g.*, on a 2, 3 or up to a 5 year basis) based on program needs. Agencies cannot require reporting more frequently than on a quarterly basis.

*Comment 7:* The team received 3 comments regarding the implementation of the report. Agencies were concerned about whether the form would be used to report on past and current awards.

*Response:* The team plans to require the use of the report for all awards issued after the report is released as final. Agencies can individually determine whether or not to use the report retroactively.

*Comment 8:* The team received 8 comments from agencies questioning the need to collect certain data elements or noting that many agencies already collect information appearing on the report.

*Response:* OMB is requiring the submission of all information appearing on the report so that the Federal Government, as a whole, can better track the vast amounts of real property in which the government holds an interest. Currently information on real property in which the Federal Government holds an interest is not being captured in a standardized manner; and in some cases, is not being captured at all.

The RPSR data elements will be the standard elements for reporting on real property once implemented by 2 CFR part 45. The data elements used to develop the report were taken from reporting instruments being used throughout the Federal Government. Agencies will be required to collect the data elements and may use existing agency systems or formats to do so, as long as those collections are consistent with the report.

*Comment 9:* The team received 1 comment concerning potential duplicative burden on recipients who receive funding from multiple agencies.

*Response:* Requesting reports on each funding stream is not duplicative because each agency needs to be able to establish and identify its Federal interest.

*Comment 10:* The team received 5 questions and/or comments concerning who the report applies to, when it is applicable, and the regulatory requirement associated with it.

*Response:* The requirement to use the report will apply to all Federal financial

assistance programs for awards that establish a Federal interest on real property. Currently, there is no regulatory requirement for real property reporting. The related regulatory requirement is being developed by OMB and will be included in 2 CFR part 45.

*Comment 11:* The team received 2 comments from agencies and grantee organizations concerning whether legislative requirements will take precedence over RPSR reporting requirements.

*Response:* If there is a statutory or regulatory basis for the agency's requirements, then those requirements take precedence to the report.

*Comment 12:* The team received 1 comment questioning whether ''Federal interest'' refers to real property and improvements acquired with Federal funds, and whether such interest would continue to the end of any use restrictions.

*Response:* Yes, Federal interest in real property is obtained by virtue of the use of Federal funding to acquire or improve the property and, for real property donated as required cost sharing or matching, unless excluded by statute or award terms. The related award instrument should specify the terms and duration of the Federal interest.

*Comment 13:* The team received 1 comment questioning the need for the Federal Government to impose a reporting requirement extending beyond the grant period on property donated to the Federal Government.

*Response:* The government acquires an interest in the total project, including any property recipients donate to the project as required cost sharing or matching. Through such donation, the government acquires a financial interest in the property, the value of which at any given time is the product of:

a. The Federal share of the project costs under the award; and

b. The current value of the property.

That interest remains until the government releases its interest in the property.

*Comment 14:* The team received 1 comment questioning whether ''Tax Credits'' are Federal or not.

*Response:* This is a legal question that individual agencies will need to determine.

*Comment 15:* The team received 1 comment questioning whether agencies will need to report on improvements to real property in which the Federal ownership is in question. For example: improvements to real property erected on Indian trust and allotted lands.

*Response:* This is a legal question that should be vetted by agency attorneys.

*Comment 16:* The team received 17 comments concerning the clarity of the instructions.

*Response:* Where necessary, the team revised the instruction language to clarify the type of data requested.

*Comment 17:* The team received 5 comments on the burden estimate for the report.

*Response:* The team reconsidered and revised the burden estimate.

*Comment 18:* The team received 5 general comments not requiring action or a response.

**B. Annual Reporting Burden**

This report will be used by Federal agencies to collect information related to real property when required by a Federal financial assistance award. Since this report will be used primarily for reporting related to Federal financial assistance awards, we are providing a burden estimate for one respondent.

*Respondents:* Assistance recipients.

*Estimated Total Annual Burden Hours:* 4 (per submission).

*Estimated Cost:* There is no expected cost to the respondents or to OMB.

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Real Property Status Report SF–XXXX | 1 | 1 | 0.25 | 0.25 |
| SF–XXXX—Real Property Status Report [Attachment A] | 1 | 1 | 1.50 | 1.50 |
| SF–XXXX—Real Property Status Report [Attachment B] | 1 | 1 | 1.0 | 1.0 |
| SF–XXXX—Real Property Status Report [Attachment C] | 1 | 1 | 1.25 | 1.25 |
| Total | | | | 4.0 |

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755, or by faxing your request to (202) 501–4067. Please cite the title, OMB Control No. 3090–XXXX, Real Property Status Report, in all correspondence.

Dated: October 17, 2008.

**Casey Coleman,**

*Chief Information Officer.*

[FR Doc. E8–26996 Filed 11–12–08; 8:45 am]

**BILLING CODE 6820–RH–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–09–09AD]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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. Written comments should be received within 60 days of this notice.

**Proposed Project**

Evaluation of the Field Triage Decision Scheme: The National Trauma Triage Protocol—New—Division of Injury Response (DIR), National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The *''Field Triage Decision Scheme: The National Trauma Triage Protocol''* educational initiative was developed to help emergency medical services (EMS) professionals (administrators, medical directors, trauma system leadership, and providers) learn about and implement the revised Field Triage Decision Scheme. The Decision Scheme is intended to be the foundation for the development of local and regional field triage protocols.

In the United States, injury is the leading cause of death for persons aged 1–44 years. EMS professionals have a substantial impact on care of the injured and on public health. At an injury scene, EMS professionals determine the severity of injury, initiate medical management, and identify the most appropriate facility to which the patient should be transported. This destination decision is made through a process called field triage. Certain hospitals have additional expertise, resources, and equipment to treat severely injured patients. These facilities are known as trauma centers and are classified from Level I to Level IV. The risk for death of a severely injured person is 25% lower if the patient receives care at a Level I trauma center. However, not all patients require the services of a Level I trauma center; proper triage will ensure that patients who are injured less severely will be transported to a closer emergency department that is capable of managing their injuries.

In an effort to encourage use of improved triage procedures, CDC's National Center for Injury Prevention and Control (NCIPC) worked with experts and partner organizations to develop the 2006 Field Triage Decision Scheme. In support of the 2006 Field Triage Decision Scheme, NCIPC developed a multi-media toolkit aimed at EMS professionals. The toolkit includes *A Guide to the Field Triage Decision Scheme: The National Trauma Triage Protocol*, a poster, CD–ROM, and pocket card to help EMS providers, planners, and administrators effectively train others and use the Decision Scheme criteria within their own systems.

After the national distribution, NCIPC will conduct an online survey of EMS professionals who have received a toolkit to assess the short-term impact of the communication initiative directed at EMS professionals about field triage procedures. Specifically, the survey will assess how many EMS professionals who received a copy of the Decision Scheme are using it, how EMS professionals have used the Decision Scheme and accompanying toolkit materials, how the materials have been used to educate others, what EMS professionals learned from the materials, and how the Decision Scheme changed EMS professional's triage practices. Survey results will be used to identify the impact and applicability of the Decision Scheme and toolkit materials for EMS professionals.

NCIPC will also conduct focus groups with a segment of the survey respondents in order to have them elaborate on data submitted through the survey. These group interviews will focus on the extent the Decision Scheme is being used, how it is being implemented, self-reported changes in knowledge, and perceived impact on treatment of trauma patients. There are no costs to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| EMS Professionals | Online survey | 3,000 | 1 | 15/60 | 750 |
| | Screening and Recruitment for Focus Groups | 48 | 1 | 5/60 | 4 |
| | Focus Groups | 64 | 1 | 1 | 64 |
| Total | | | | | 818 |

Dated: November 4, 2008.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E8–26988 Filed 11–12–08; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

### Centers for Medicare & Medicaid Services

### Notice of Hearing: Reconsideration of Disapproval of Michigan State Plan Amendment (SPA) 07–21

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice announces an administrative hearing to be held on January 6, 2009, at the CMS Chicago Regional Office, 233 N. Michigan Avenue, Suite 600, Chicago, Illinois 60601 to reconsider CMS' decision to disapprove Michigan SPA 07–21.

**CLOSING DATE:** Requests to participate in the hearing as a party must be received by the presiding officer by November 28, 2008.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Cohen, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244. Telephone: (410) 786–3169.

**SUPPLEMENTARY INFORMATION:** This notice announces an administrative hearing to reconsider CMS' decision to disapprove Michigan SPA 07–21 which was submitted on December 28, 2007, and disapproved on September 2, 2008.

Under this SPA, the State indicated that it would provide for the implementation of an estate recovery program under sections 1902(a)(18) and 1917(b) of the Social Security Act (the Act). CMS issued a request for additional information on March 5, 2008, which included a request for information about the State's projected cost savings resulting from implementation of the estate recovery program. In discussions with CMS regarding submission of SPA 07–21, State officials stated that these projected cost savings estimates would require revision because the estate recovery program had in fact not yet become operational. The State did not provide additional information indicating when and to what extent it would come into compliance with sections 1902(a)(18) and 1917(b) of the Act. Thus, the State's overall submission did not provide sufficient detail or information for us to determine that the State has an estate recovery program that meets statutory requirements.

Based on the above, and after consultation with the Secretary of the Department of Health and Human Services as required under Federal regulations at 42 CFR 430.15(c)(2), CMS disapproved Michigan Medicaid SPA 07–21.

The hearing will involve the following issues:

- Whether the State complied with the statutory requirements to implement an estate recovery program; and
- Whether the State has provided the information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation.

Section 1116 of the Act and Federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Michigan announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Paul Reinhart, Director, Medical Services Administration, Department of Community Health, 400 South Pine, Lansing, MI 48933.

Dear Mr. Reinhart: I am responding to your request for reconsideration of the decision to disapprove the Michigan State plan amendment (SPA) 07–21, which was submitted on December 28, 2007, and disapproved on September 2, 2008.

Under this SPA, the State indicated that it would provide for the implementation of an estate recovery program under sections 1902(a)(18) and 1917(b) of the Social Security Act (the Act). The Centers for Medicare & Medicaid Services (CMS) issued a request for additional information on March 5, 2008, which included a request for information about the State's projected cost savings resulting from implementation of the estate recovery program. In discussions with CMS regarding submission of SPA 07–21, State officials stated that these projected cost savings estimates would require revision because the estate recovery program had in fact not yet become operational. The State did not provide additional information indicating when and to what extent it would come into compliance with sections 1902(a)(18) and 1917(b) of the Act. Thus, the State's overall submission did not provide sufficient detail or information for us to determine that the State has an estate recovery program that meets statutory requirements. Based on the above, and after consultation with the Secretary of the Department of Health and Human Services as required under Federal regulations at 42 CFR 430.15(c)(2), CMS disapproved Michigan Medicaid SPA 07–21.

The issues to be considered at the hearing are:

- Whether the State complied with the statutory requirements to implement an estate recovery program; and
- Whether the State has provided the information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation.

I am scheduling a hearing on your request for reconsideration to be held on January 6, 2009, at the CMS Chicago Regional Office, 233 N. Michigan Avenue, Suite 600, Chicago, Illinois 60601, in order to reconsider the decision to disapprove SPA 07–21. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR Part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–3169. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing.

Sincerely,

Kerry Weems,

*Acting Administrator.*

Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: November 7, 2008.

**Kerry Weems,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. E8–26993 Filed 11–12–08; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Grants Awarded: Program Titles and Funding Opportunity Announcements for Fiscal Year 2009

**AGENCY:** Division of Grants Policy, Office of Financial Services, Office of Administration, Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

**ACTION:** Notice.

**SUMMARY:** The Administration for Children and Families (ACF) hereby gives notice to the public that certain programs within the Agency will administratively impose a matching requirement on grants awarded under the following program titles and funding opportunity announcements for Fiscal Year 2009:

| Program office | Funding opportunity No. | Funding opportunity title | Fiscal year | Program title | CFDA No. | Administrative match percentage | Composition of the administrative atch |
|---|---|---|---|---|---|---|---|
| Administration for Children, Youth and Families—Children's Bureau. | HHS–2009–ACF–ACYF–CA–0055. | Rigorous Evaluations of Existing Child Abuse Prevention, Family Support, Family Preservation, Family Reunification, and Adoption Promotion and Support Programs. | 2009 | Community-Based Child Abuse Prevention Grants. | 93.590 | 10 | Cash and In-Kind. |
| Administration for Children, Youth and Families—Children's Bureau. | HHS–2009–ACF–ACYF–CB–0060. | Abandoned Infants Assistance Act: Comprehensive Support Services for Families Affected by Substance Abuse and/or HIV/AIDS. | 2009 | Abandoned Infants | 93.551 | 10 | Cash and In-Kind. |
| Administration on Developmental Disabilities. | HHS–2009–ACF–ADD–DN–0046. | Projects of National Significance: Family Support 360 Centers. | 2009 | Developmental Disabilities Projects of National Significance. | 93.631 | 25 | Cash and In-Kind. |
| Administration on Developmental Disabilities. | HHS–2009–ACF–ADD–DN–0047. | Projects of National Significance: Family Support 360 Special Initiatives. | 2009 | Developmental Disabilities Projects of National Significance. | 93.631 | 25 | Cash and In-Kind. |
| Administration on Developmental Disabilities. | HHS–2009–ACF–ADD–DN–0048. | Projects of National Significance: Family Support 360 for Military Families. | 2009 | Developmental Disabilities Projects of National Significance. | 93.631 | 25 | Cash and In-Kind. |
| Office of Community Services. | HHS–2009–ACF–OCS–EJ–0009. | Compassion Capital Fund Intermediary Demonstration Program. | 2009 | Compassion Capital Fund. | 93.009 | 20 | Cash and In-Kind. |
| Office of Child Support Enforcement. | HHS–2009–ACF–OCSE–FD–0013. | Section 1115 Demonstration 1. | 2009 | Child Support Enforcement Research. | 93.564 | 5 | Cash is preferred and In-Kind resources from public entities only are accepted. |
| Office of Child Support Enforcement. | HHS–2009–ACF–OCSE–FD–0017. | Section 1115 Demonstration 3. | 2009 | Child Support Enforcement Research. | 93.564 | 5 | Cash is preferred and In-Kind resources from public entities only are accepted. |
| Office of Child Support Enforcement. | HHS–2009–ACF–OCSE–FD–0019. | Section 1115 Demonstration 2. | 2009 | Child Support Enforcement Research. | 93.564 | 5 | Cash is preferred and In-Kind resources from public entities only are accepted. |
| Office of Child Support Enforcement. | HHS–2009–ACF–OCSE–FD–0052. | Section 1115 Demonstration 4. | 2009 | Child Support Enforcement Research. | 93.564 | 5 | Cash is preferred and In-Kind resources from public entities only are accepted. |
| Office of Planning, Research and Evaluation. | HHS–2009–ACF–OPRE–PD–0029. | TANF Research ..... | 2009 | Social Services Research and Demonstration. | 93.647 | 5 | Cash and In-Kind. |

Historically, ACF has found that the imposition of a matching requirement on awards under these programs results in an increased level of community support and, often, a higher profile in the community. This can contribute to the success and sustainability of the project. The Fiscal Year 2009 funding opportunity announcements for each listed program will advise applicants on the percentage of funds that must be contributed through non-Federal

resources, the composition of the match, and the merit of the match as a criterion in the competitive review. The administratively imposed matching requirement will apply only to new awards and their continuation awards, made under the Fiscal Year 2009 funding opportunity announcements listed in this notice. This Fiscal Year 2009 matching requirement does not represent an addition to the existing matching requirements on awards made under funding opportunity announcements issued in Fiscal Year 2008 or before. The amount and acceptable types of non-Federal resources allowed is not negotiable. However, matching may be provided as direct or indirect costs. The presence and composition of matching funds may be used as a criterion in evaluating the merits of an application during competitive review. Specific information related to the matching requirement and competitive review will be provided in each listed funding opportunity announcement. Unmatched Federal funds will be disallowed. Costs borne by matching contributions are subject to the regulations governing allowability found under 45 CFR 74.23 and 45 CFR 92.24.

The Department of Health and Human Services' Grants Forecast is a database of planned grant opportunities proposed by its various agencies. Each Forecast record contains actual or estimated dates and funding levels for grants that the agency intends to award during the fiscal year. Additional details about ACF planned FY2009 funding opportunity announcements can be found on the Grants Forecast Web site at *https://extranet.acf.hhs.gov/hhsgrantsforecast/.* Published ACF funding opportunity announcements are available on Grants.gov at *http://www.grants.gov* and the ACF Grant Opportunities Web page at *http://www.acf.hhs.gov/grants/open.html.*

**FOR FURTHER INFORMATION CONTACT:** Karen Shields, Grants Policy Specialist, Office of Administration, Division of Grants Policy, 370 L'Enfant Promenade, SW., 6th Floor East, Washington, DC 20447, or by telephone at 202–401–5112 or *karen.shields@acf.hhs.gov.*

Dated: November 5, 2008

**Curtis L. Coy,**

*Deputy Assistant Secretary for Administration, Administration for Children and Families.*

[FR Doc. E8–26889 Filed 11–12–08; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0556]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in the guidance for industry on formal meetings with sponsors and applicants for Prescription Drug User Fee Act (PDUFA) products.

**DATES:** Submit written or electronic comments on the collection of information by January 12, 2009.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Guidance for Industry on Formal Meetings With Sponsors and Applicants for Prescription Drug User Fee Act Products (OMB Control Number 0910–0429)—Extension**

This information collection approval request is for an FDA guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review of PDUFA products. The guidance describes procedures for requesting, scheduling, conducting, and documenting such formal meetings. The guidance provides information on how the agency will interpret and apply section 119(a) of the Food and Drug Administration Modernization Act (the Modernization Act), specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. Agency regulations at §§ 312.47(b)(1)(ii), (b)(1)(iv), and (b)(2) describe information that should be submitted in

support of a request for an End-of-Phase 2 meeting and a Pre-New Drug Application meeting. The information collection provisions of § 312.47 have been approved by OMB (OMB Control No. 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting additional estimates for OMB approval.

**I. Request for a Meeting**

Under the guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application. FDA regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the agency as part of an Investigational New Drug Application (IND), NDA, or Biological License Application (BLA) must be submitted with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs and Form FDA 356h must accompany submissions under NDAs and BLAs. Both forms have valid OMB control numbers as follows: FDA Form 1571 (OMB Control No. 0910–0014) and FDA Form 356h (OMB Control No. 0910–0338).

In the guidance document, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2; therefore, requests should be submitted to the agency with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application and (2) to ensure that pertinent information about the request is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the guidance, the agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting as follows:

- Information identifying and describing the product,
- The type of meeting being requested,
- A brief statement of the purpose of the meeting,
- A list of objectives and expected outcomes from the meeting,
- A preliminary proposed agenda,
- A draft list of questions to be raised at the meeting,
- A list of individuals who will represent the sponsor or applicant at the meeting,
- A list of agency staff requested to be in attendance,
- The approximate date that the information package will be sent to the agency, and
- Suggested dates and times for the meeting.

This information will be used by the agency to determine the utility of the meeting, to identify agency staff necessary to discuss proposed agenda items, and to schedule the meeting.

**II. Information Package**

A sponsor or applicant submitting an information package to the agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or agency. The agency recommends that information packages generally include:

- Identifying information about the underlying product,
- A brief statement of the purpose of the meeting,
- A list of objectives and expected outcomes of the meeting,
- A proposed agenda for the meeting,
- A list of specific questions to be addressed at the meeting,
- A summary of clinical data that will be discussed (as appropriate),
- A summary of preclinical data that will be discussed (as appropriate), and
- Chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The agency finds that reviewing such information is critical to achieving a productive meeting.

The collection of information described in the guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to INDs, NDAs, and BLAs and to submit background information prior to a scheduled meeting. Agency regulations currently permit such requests and recommend the submission of an information package before an End-of- Phase 2 meeting (§§ 312.47(b)(1)(ii) and (b)(1)(iv)) and a Pre-NDA meeting (§ 312.47(b)(2)).

*Description of respondents*: A sponsor or applicant for a drug or biological product who requests a formal meeting with the agency regarding the development and review of a PDUFA product.

*Burden Estimate*: An estimate of the annual reporting burden for the submission of meeting requests and information packages under the guidance is provided in table 1 of this document.

**III. Request for a Formal Meeting**

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 907 sponsors and applicants (respondents) request approximately 2,210 formal meetings with CDER annually and approximately 144 respondents request approximately 287 formal meetings with CBER annually regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted with a meeting request in accordance with the guidance, is estimated to be approximately 10 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting.

**IV. Information Package**

Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that approximately 774 respondents submitted approximately 1,705 information packages to CDER annually and approximately 120 respondents submitted approximately 198 information packages to CBER annually before a formal meeting regarding the development and review of a PDUFA product. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package in accordance with the guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements

about the product, a description of the details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the agency.

As stated earlier, the guidance provides information on how the agency will interpret and apply section 119(a) of the Modernization Act, specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82). The information collection provisions in § 312.47 concerning End-of-Phase 2 meetings and Pre-NDA meetings have been approved by OMB (OMB Control No. 0910–0014). However, the guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is submitting these additional estimates for OMB approval.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Meeting Requests and Information Packages | No. of Respondents | No. of responses per Respondent | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Meeting Requests | | | | | |
| CDER | 907 | 2.44 | 2,210 | 10 | 22,100 |
| CBER | 144 | 1.99 | 287 | 10 | 2,870 |
| Total | | | | | 24,970 |
| Information Packages | | | | | |
| CDER | 774 | 2.20 | 1,705 | 18 | 30,690 |
| CBER | 120 | 1.65 | 198 | 18 | 3,564 |
| Total | | | | | 34,254 |
| Grand Total | | | | | 59,224 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: November 5, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–27008 Filed 11–12–08; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0574]**

### Interim Safety and Risk Assessment of Melamine and Its Analogues in Food for Humans; Availability

**AGENCY:** Food and Drug Administration, HHS

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Interim Safety and Risk Assessment of Melamine and Its Analogues in Food for Humans.'' The interim safety/risk assessment evaluated exposure to melamine and its analogues (cyanuric acid, ammelide and ammeline) in infant formula and other foods to identify, where possible, a level of exposure that would not raise public health concerns. FDA is seeking public comment on the interim safety/risk assessment.

**DATES:** Comments on the interim safety/risk assessment must be submitted by January 12, 2009.

**ADDRESSES:** Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Annette McCarthy, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1057, FAX: 301–436–2973, or e-mail: *Annette.McCarthy@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The purpose of the interim safety/risk assessment is to identify the level of melamine and melamine-related compounds in food which would not raise public health concerns. On September 11, 2008, FDA learned that melamine may be contained in an infant formula manufactured by a firm in China. As of September 21, 2008, FDA learned that a total of 52,857 cases of nephrolithiasis (and, in some instances, renal failure) had been reported in China linked to consumption of this contaminated powdered formula. There have been approximately 13,000 hospitalizations, and at least 3 deaths have been confirmed to date. The results of an investigation conducted in China indicated that Chinese-produced powdered infant formula was linked to these illnesses; no cases were associated with liquid infant formula. Test results conducted in China on samples of the powdered infant formula showed that they contained a wide range of concentrations (0.1 parts per million (ppm) to greater than 2,500 ppm melamine). In addition, other countries have reported detection of melamine in other product categories, such as confections and beverages.

The interim safety/risk assessment concludes that, based on currently available data and information, there is too much uncertainty for FDA to establish a level of melamine and its analogues in infant formula that does not raise public health concerns. In foods other than infant formula, FDA concludes that levels of melamine and

melamine-related compounds below 2.5 ppm do not raise public health concerns. This interim safety/risk assessment was developed rapidly due to the extremely time-sensitive need to understand the nature of the potential risk. We are seeking public comment on this interim safety/risk assessment. In addition, it will undergo expert peer review.

## II. Safety/Risk Assessment

A human health safety/risk assessment is a scientifically-based methodology used to estimate risk to human health from exposure to specific compounds such as contaminant(s) in food. The interim safety/risk assessment of melamine and its analogues builds upon the 2007 Melamine Safety/Risk Assessment and considers the toxicological profile of melamine and its analogues, including the observed results from controlled animal studies conducted with melamine.

For infant formula, there are gaps in our scientific knowledge about the toxicity of melamine and its analogues in infants, including:

1. The consequences of the continuous use of infant formulas as the sole source of nutrition;
2. The uncertainties associated with the possible presence and co-ingestion of more than one melamine analogue; and
3. For premature infants with immature kidney function, the possibility that they may be fed these formulas as the sole source of nutrition and thus on a body weight basis experience greater levels of intake for a longer time than is experienced by term infants. For these reasons, there is too much uncertainty for FDA to establish a level of melamine and its analogues in infant formula that does not raise public health concerns. However, it is important to understand that this does not mean that any exposure to any detectable level of melamine and melamine-related compounds in formula will result in harm to infants.

In food products other than infant formula, to estimate the level of melamine that does not raise public health concerns, FDA used a worst case exposure scenario in which one-half of a person's total daily dietary intake (Tolerable Daily Intake (TDI), an estimate of the maximum amount of an agent to which an individual could be exposed on a daily basis over the course of a lifetime without appreciable health risk) is contaminated with melamine and its analogues. The TDI used, 0.63 milligrams/kilogram (mg/kg) body weight/day (bw/d), was developed in 2007 in collaboration with the Food Safety and Inspection Service of the Department of Agriculture and in consultation with the Centers for Disease Control and Prevention, the Environmental Protection Agency, and the Department of Homeland Security.[1] In the present interim safety/risk assessment, we estimated that if 50 percent of the diet were contaminated at a level of 2.5 ppm of melamine and its analogues, a person's daily intake would equal 0.063 mg/kg bw/d —a level 10-fold below the TDI. Therefore, FDA concludes that levels of melamine and melamine-related compounds below 2.5 ppm do not raise public health concerns in food other than infant formula.

Recognizing the time-sensitive need for the safety/risk assessment, FDA invites comments concerning:

1. The assessment approach used;
2. The assumptions made;
3. The data used; and
4. The transparency and clarity of the report.

## III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

## IV. Electronic Access

The interim safety/risk assessment is available electronically at *http://www.cfsan.fda.gov/~dms/melamra3.html*.

Dated: November 5, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–26869 Filed 11–12–08; 8:45 am]

**BILLING CODE 4160–01–S**

[1]Interim Melamine and Analogues Safety/Risk Assessment, May 25, 2007 (*http://www.cfsan.fda.gov/~dms/melamra.html*).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0038]**

### Anesthesiology and Respiratory Therapy 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*: Anesthesiology and Respiratory Therapy 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 5, 2008, from 8 a.m. to 5 p.m.

*Location*: Hilton Washington DC North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

*Contact Person*: Neel J. Patel, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., 240–276–3700, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512624. 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, make recommendations and vote on a premarket approval application, sponsored by Emphasys Medical, Inc., for the Emphasys Zephyr Endobronchial Valve System, which is intended to improve forced expiratory volume in the first second (FEV1) and 6-minute walk test distance in patients with severe heterogeneous emphysema who have received optimal medical management. 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 26, 2008. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of the committee deliberations and for approximately 30 minutes near the end of committee 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 20, 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 24, 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, Conference Management Staff, 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: November 5, 2008.

**Randall W. Lutter,**

*Deputy Commissioner for Policy.*

[FR Doc. E8–26965 Filed 11–12–08; 8:45 am]

BILLING CODE 4160–01–S

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0581]**

### Request for Notification From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representative on Public Advisory Committees and Request for Nominations for Nonvoting Industry Representative on Public Advisory Committees

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of nonvoting industry representatives to serve on its public advisory committees for the Center for Biologics Evaluation and Research (CBER) notify FDA in writing. FDA is also requesting nominations for nonvoting industry representatives to serve on CBER's public advisory committees. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for upcoming vacancies effective with this notice.

**DATES:** Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating the interest to FDA by December 15, 2008, for vacancies listed in the notice. Concurrently, nomination materials for prospective candidates should be sent to FDA by December 15, 2008.

**ADDRESSES:** All letters of interest and nominations should be submitted in writing to Gail Dapolito (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Gail Dapolito, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20892, 301–827–1289, *gail.dapolito@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** The agency requests nominations for nonvoting industry representatives to the following advisory committees.

### I. CBER Advisory Committees

*A. The Cellular, Tissue and Gene Therapies Advisory Committee*

The Committee reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies and xenotransplantation products which are intended for transplantation, implantation, infusion and transfer in the prevention and treatment of a broad spectrum of human diseases and in the reconstruction, repair or replacement of tissues for various conditions. The Committee also considers the quality and relevance of FDA's research program which provides scientific support for the regulation of these products, and makes appropriate recommendations to the Commissioner of Food and Drugs (the Commissioner).

*B. Vaccines and Related Biological Products Advisory Committee*

The Committee reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases, and, as required, any other product for which FDA has regulatory responsibility. The Committee as considers the quality and relevance of FDA's research program which provides scientific support for the regulation of these products and makes appropriate recommendations to the Commissioner.

*C. Transmissible Spongiform Encephalopathies Advisory Committee*

The Committee reviews and evaluates available scientific data concerning the safety of products which may be at risk for transmission of spongiform encephalopathies having an impact on the public health as determined by the Commissioner. The Committee will make recommendations to the Commissioner regarding the regulation of such products.

### II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a

complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for a particular committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

### III. Application Procedure

Individuals may self nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. A current curriculum vitae and the name of the committee of interest should be sent to the FDA contact person (see **FOR FURTHER INFORMATION CONTACT**) within the 30 days (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process.)

FDA has a special interest in ensuring that women, minority groups, individuals with physical disabilities, and small businesses are adequately represented on its advisory committees, and therefore, encourages nominations for appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: November 5, 2008.

**Randall W. Lutter,**

*Deputy Commissioner for Policy.*

[FR Doc. E8–26963 Filed 11–12–08; 8:45 am]

**BILLING CODE 4160–01–S**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel Peptide Facility Review.

*Date:* December 8, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 5, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–26881 Filed 11–12–08; 8:45 am]

**BILLING CODE 4140–01–P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review T32 Applications, PAR–07–332.

*Date:* February 12, 2009.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH, 6701 Democracy Blvd, room 672, MSC 4878, Bethesda, MD 20892–4878, 301–594–4809, *mary_kelly@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 6, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–27001 Filed 11–12–08; 8:45 am]

**BILLING CODE 4140–01–P**

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Integrated Pre-Clinical/Clinical Program For HIV Topical Microbicides.

*Date:* December 8–9, 2008.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Betty Poon, Ph.D., Scientific Review Officer, Scientific Review

Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–6891, *poonb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 6, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–27004 Filed 11–12–08; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Division of Intramural Research Board of Scientific Counselors, NIAID.

*Date:* December 8–10, 2008.

*Time:* December 8, 2008, 8 a.m. to 5:25 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, 50 Center Drive, Conference Rooms 1227/1233, Bethesda, MD 20892.

*Time:* December 9, 2008, 8 a.m. to 5:50 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, 50 Center Drive, Conference Rooms 1227/1233, Bethesda, MD 20892.

*Time:* December 10, 2008, 8 a.m. to 11 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, 50 Center Drive, Conference Rooms 1227/1233, Bethesda, MD 20892.

*Contact Person:* Kathryn C. Zoon, PhD, Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 06, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–27006 Filed 11–12–08; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Regents of the National Library of Medicine; Subcommittee on Outreach and Public Information.

*Date:* February 10, 2009.

*Open:* 7:30 a.m. to 8:45 a.m.

*Agenda:* Outreach Activities.

*Place:* National Library of Medicine, Building 38, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

*Name of Committee:* Board of Regents of the National Library of Medicine.

*Date:* February 10–11, 2009.

*Open:* February 10, 2009, 9 a.m. to 4:30 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Closed:* February 10, 2009, 4:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Open:* February 11, 2009, 9 a.m. to 12 p.m.

*Agenda:* Program Discussion.

*Place:* National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Donald A.B. Lindberg, MD, Director National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nlm.nih.gov/od/bor/bor.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: November 4, 2008.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E8–26791 Filed 11–12–08; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health, Office of the Director, Office of Biotechnology Activities

### Notice of a Safety Symposium Sponsored by the NIH Recombinant DNA Advisory Committee (RAC) and the Intragovernmental Select Agent and Toxin Technical Advisory Committee (ISATTAC)

There will be a safety symposium entitled ''Public Health and Biosafety Practices for Research with 1918 H1N1 Influenza Virus'' on December 2, 2008 co-sponsored by the RAC, a federal advisory committee to the NIH Director and the ISATTAC, an intragovernmental committee that advises on Select Agent issues including restricted experiments. The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting. For further information concerning this meeting contact Ms. Lisa A. Parker, Advisory Committee Coordinator, Office of Biotechnology Activities, Office of the Director, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985, 301–496–9838, *parkerla@od.nih.gov.*

*Name of Committee:* Recombinant DNA Advisory Committee.

*Date:* December 2, 2008.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* The safety symposium will bring together experts to provide their perspectives on the safety, efficacy, and advisability of pre-exposure antiviral prophylaxis for researchers working with the reconstructed pandemic 1918 H1N1 Influenza Virus and how the presence or absence of pre-exposure prophylaxis should be factored into a determination of the appropriate biocontainment level for work with the 1918 H1N1 Influenza Virus. Please check the meeting agenda at *http:www4.od.nih.gov/oba/RAC/meeting.htm* for more information.

*Place:* Fishers Lane Conference Center, 5635 Fishers Lane, Terrace Level, Rockville, MD 20892.

*Contact Person:* Lisa A. Parker, Advisory Committee Coordinator, Office of Science Policy, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750–A1, Bethesda, MD 20892, 301–496–9838, *parkerla@mail.nih.gov.*

Any interested person may file written comments with the panel by forwarding the statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Background information may be obtained by contacting NIH OBA by e-mail *oba@od.nih.gov.*

Dated: November 5, 2008.

**Amy P. Patterson,**

*Director, Office of Biotechnology Activities.*

[FR Doc. E8–26886 Filed 11–12–08; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–566, Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–566, Interagency Record of Individual Requesting Change/Adjustment To or From A or G Status or Requesting A, G, or NATO Dependent Employment Authorization; OMB Control Number 1615–0027.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 15, 2008, at 73 FR 47961, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 15, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0027 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Interagency Record of Individual Requesting Change/Adjustment To or From A or G Status or Requesting A, G, or NATO Dependent Employment.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–566. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This information collection facilitates processing of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel by U.S. Citizenship and Immigration Services, and the Department of State.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5,800 responses at 15 minutes (.250 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,450 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument,

please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202–272–8377.

Dated: November 7, 2008.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8–27000 Filed 11–12–08; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–590, Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–590, Registration for Classification as Refugee; OMB Control No. 1615–0068.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 4, 2008, at 73 FR 51644, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 15, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0068 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Registration for Classification as Refugee.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–590. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information collection provides a uniform method for applicants to apply for refugee status and contains the information needed in order to adjudicate such applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 140,000 responses at 35 (.583) minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 81,620 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: November 7, 2008.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8–27002 Filed 11–12–08; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–589, Extension of a Currently Approved Information Collection; Request for Comments

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–589, Application for Asylum and Withholding of Removal; OMB Control No. 1615–0067.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 3, 2008, at 73 FR 51503, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 15, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS

Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0067 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–589. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This information collection will be used to determine whether an alien applying for asylum and/or withholding of deportation in the United States is classifiable as a refugee, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 63,138 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 757,656 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: November 7, 2008.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8–27003 Filed 11–12–08; 8:45 am]

BILLING CODE 9111–97–P

---

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form I–361, Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review: Form I–361, Affidavit of Financial Support and Intent To Petition for Legal Custody for Public Law 97–359 Amerasian; OMB Control No. 1615–0021.

---

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on September 3, 2008, at 73 FR 51503, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 15, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0021 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–361. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The information on this form is used in support of Form I–360 (Petition for Amerasian, Widow(er), or Special Immigrant) to ensure financial support for Public Law 97–359 Amerasian. The affidavit is used only to sponsor individuals eligible for immigration under Public Law 97–359.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, Telephone number 202–272–8377.

Dated: November 7, 2008.

**Stephen Tarragon,**

*Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. E8–27005 Filed 11–12–08; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R7–R–2008–N0069; 70133–1265–0000–S3]**

### Kanuti National Wildlife Refuge, Fairbanks, AK

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of the revised comprehensive conservation plan and finding of no significant impact for environmental assessment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) announce the availability of our Revised Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) for the Kanuti National Wildlife Refuge (Kanuti Refuge). In this revised CCP, we describe how we will manage this refuge for the next 15 years.

**ADDRESSES:** You may view or obtain copies of the revised CCP and FONSI by any of the following methods. You may request a paper copy, a summary, or a CD–ROM containing both.

*Agency Web Site:* Download a copy of the documents at *http://alaska.fws.gov/nwr/planning/kanpol.htm.*

*E-mail:* *fw7_Kanuti_planning@fws.gov*. Please include ''Kanuti Refuge revised CCP'' in the subject line of the message.

*Mail:* Peter Wikoff, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS 231, Anchorage, AK 99503.

*In-Person Viewing or Pickup:* Call (907) 786–3357 to make an appointment during regular business hours at the USFWS Regional Office, 1011 E. Tudor Road, Anchorage, AK 99503 or call (907) 456–0329 to make an appointment during regular business hours at Kanuti Refuge, 101 12th Ave., Room 262, Fairbanks, AK 99701.

**FOR FURTHER INFORMATION CONTACT:** Peter Wikoff, planning team leader, (907) 786–3357 or *fw7_Kanuti_planning@fws.gov*.

**SUPPLEMENTARY INFORMATION:**

### Introduction

With this notice, we finalize the CCP process for the Kanuti Refuge. We started this process through a notice of intent in the **Federal Register** (68 FR 66475, November 26, 2003) and a revised notice of intent in the **Federal Register** (71 FR 42117, July 25, 2006). We announced the availability of the draft CCP and EA, and requested comments in a notice of availability in the **Federal Register** (72 FR 27327, May 15, 2007). We announced an extension of the comment period, until September 15, 2007, with a notice in the **Federal Register** (72 FR 39438, July 18, 2007).

Kanuti Refuge is roadless and lies on the Arctic Circle about 150 miles northwest of Fairbanks, Alaska. It is situated in a broad basin formed by the Koyukuk and Kanuti rivers between the Brooks Range and the Ray Mountains. The Dalton Highway and Alyeska pipeline lie within eight miles of its eastern boundary. The refuge consists of nearly 1.3 million acres of Federal lands within an external boundary that encompasses approximately 1.6 million acres of Federal, State, and private lands. The landscape consists primarily of rolling hills, wetlands, ponds, and streams. Elevations range from 500 feet to over 3,000 feet. The major natural resources are wildlife, fisheries, and their associated habitats.

We announce our decision and the availability of the FONSI for the revised CCP for the Kanuti Refuge in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment in the EA that accompanied the draft revised CCP.

The CCP will guide us in managing and administering the Kanuti Refuge for the next 15 years. The revised CCP is a modification of Alternative C, the preferred alternative in the draft CCP, developed in response to public comments.

### Background

The Alaska National Interest Lands Conservation Act of 1980 (94 Stat. 2371; ANILCA) and the National Wildlife Refuge system Improvement Act of 1997 (16 U.S.C. 668dd–668ee) require us to develop a CCP for each Alaska refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will review and update the CCP at least every 15 years in accordance with national policy and ANILCA. ANILCA requires us is to designate areas according to their respective resources and values and to specify programs and uses within the areas designated. To meet this requirement, the Alaska Region established management categories for refuges including Wilderness, Minimal, Moderate, Intensive, and Wild River management. For each management category we identified appropriate activities, public uses, commercial uses, and facilities. Only the Minimal and Moderate management categories are applied to Kanuti Refuge.

### Draft CCP Alternatives

Our draft CCP and EA addressed two issues and evaluated three alternatives. The two significant issues raised during scoping were a desire for conservation of the natural character of the refuge and acceptance of and integration of new management policies and guidelines for refuges in Alaska. Alternative A (the no-action alternative—a NEPA requirement) described what would happen with a continuation of current management activities and served as a baseline for comparison of other alternatives. Under Alternative A, management of the refuge would continue to follow the current course of action. Refuge lands would remain in their present management categories, with 33 percent in Moderate management and 67 percent in Minimal management. Alternative B would convert all refuge lands now in Moderate management to Minimal management and incorporate new regional policies and guidelines for national wildlife refuges in Alaska. Our selected alternative, the slightly modified Alternative C, would reclassify some refuge lands and would incorporate new regional policies and guidelines for national wildlife refuges in Alaska. Eighty-six percent of the refuge would be in Minimal management and 14 percent in Moderate management.

### Comments on the Draft CCP

We solicited comments on the draft CCP/EA for Kanuti Refuge from May 15,

2007, through September 15, 2007. During the public review and comment period the Service held public meetings in Alatna, Allakaket, Bettles, Evansville, and Fairbanks. The planning team reviewed, analyzed, and summarized all comments received at the public meetings and in writing. We received a number of comments which suggested changes in the management category boundaries we had proposed in the draft plan. Generally, local residents and community leaders preferred that refuge lands adjoining private lands near their communities be in the moderate management category. Conversely, others preferred to see more of the refuge in the Minimal management category. In response to the comments received, we modified Alternative C, and adopted it as our management direction.

**Selected Alternative—Modified Alternative C**

Under the selected alternative, 13.6 percent of Federal lands within the refuge boundary are classified Moderate management. The original Alternative C classified 14.7 percent of refuge lands Moderate management. The main changes in the selected alternative were in location of Moderate management lands. In the northwestern portion of the refuge an area, which includes the upper reaches of Henshaw Creek, some Moderate management lands were reclassified Minimal management. The new northwestern boundary of the Moderate management area is offset 2 miles to the north of the Allakaket-Bettles trail. The lower boundary of this area remains the same as in the draft plan. An area of Minimal management south of Evansville and Bettles which is surrounded by private lands was reclassified Moderate management. Also, a smaller area of Minimal management south of Bettles which is surrounded by private lands, Moderate management, and the refuge boundary was reclassified Moderate management.

Dated: November 6, 2008.

**Gary Edwards,**

*Acting Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.*

[FR Doc. E8–26912 Filed 11–12–08; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CO–922–09–1310–FI; COC71373]**

## Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC71373 from Bill Barrett Corp., for lands in Montrose County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC71373 effective July 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: November 6, 2008.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E8–26928 Filed 11–12–08; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CO–922–09–1310–FI; COC70104]**

## Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC70104 from Bill Barrett Corp., for lands in Montrose County, Colorado. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC70104 effective July 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: November 6, 2008.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E8–26940 Filed 11–12–08; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[CO–922–09–1310–FI; COC70105]**

## Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of proposed reinstatement of terminated oil and gas lease.

**SUMMARY:** Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease COC70105 from Bill Barrett Corp., for lands in Montrose County, Colorado. The petition was filed on time and was

accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Milada Krasilinec, Land Law Examiner, Branch of Fluid Minerals Adjudication, at 303.239.3767.

**SUPPLEMENTARY INFORMATION:** The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC70105 effective July 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: November 6, 2008.

**Milada Krasilinec,**

*Land Law Examiner.*

[FR Doc. E8–26942 Filed 11–12–08; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAKF03000–LV.CL.00000000–F029421]**

### Notice of Realty Action: Non-Competitive Sale of Reversionary Interest, Portion of Recreation and Public Purposes Patent Number 50–65–0288

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action.

**SUMMARY:** The Bureau of Land Management has examined and found suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (Public Law 94–579, as amended; 43 CFR 2711.3–3), 4,519.35 sq. feet of public land located in Fairbanks, Alaska.

**DATES:** Interested parties may submit comments regarding whether the BLM followed proper administrative procedures in reaching the decision or any other factor not directly related to the suitability of the land for a direct sale to the BLM Field Manager, Central Yukon Field Office, at the address below. Comments must be received no later than December 29, 2008. Only written comments will be accepted. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the decision will become effective January 12, 2009. The lands will not be offered for conveyance until after the decision becomes effective.

**ADDRESSES:** Address all written comments concerning this notice to the BLM Central Yukon Field Manager, 1150 University Ave., Fairbanks, Alaska 99709.

**FOR FURTHER INFORMATION CONTACT:** Joyce Voight, Realty Specialist, (907) 474–2247 or by e-mail: *joyce_voight@blm.gov*.

**SUPPLEMENTARY INFORMATION:** The following described land in Fairbanks, Alaska, was patented to the City of Fairbanks, pursuant to the Act of Congress of June 14, 1926 (44 Stat. 741, as amended; 43 U.S.C. 869) on November 2, 1964 for a public park. Certificate of Approval of Transfer and Change of Use was issued on July 25, 2007, to the Greater Fairbanks Community Hospital Foundation, Inc., for use for Hospital Support Purposes instead of a public park recreation site.

**Fairbanks Meridian, Alaska**

The east 33 feet of Lot 69, U.S. Survey 3148, situated within Sec. 15, T. 1 S, R. 1W, subsequently surveyed as west 33 feet of Lot 70–A–1 containing 4,519.35 square feet. The patent contains a reversionary interest to the United States. The Greater Fairbanks Community Hospital Foundation, Inc., requests the purchase of the reversionary interest at not less than the fair market value of $6,299.75 as determined by a BLM-approved appraisal for a portion of the patented land, on the following described land.

The Federal interest has been examined and found suitable for sale under the provisions of section 203 of the Federal Land Policy and Management Act of 1976 (Public Law 94–579, as amended; 43 CRF 2711.3–3).

Direct sale procedures to the Greater Fairbanks Community Hospital Foundation, Inc., are considered appropriate in this case, as the land was transferred to the Greater Fairbanks Community Hospital Foundation, Inc., and transfer of the Federal interest to any other entity would not protect existing equities in the land. The direct sale is consistent with current Bureau planning for this area and would be in the public interest. The land is not required for any Federal purpose. The patent will be subject to the provisions of the Federal Land Policy and Management Act and applicable regulations of the Secretary of the Interior and the land will continue to be subject to the following reservations to the United States:

1. Any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts.

2. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (26 Stat. 391, 43 U.S.C. 945).

3. A right-of-way for the construction of railroads, telegraph and telephone lines, in accordance with the Act of March 12, 1914 (36 Stat. 305; 48 U.S.C. Sec 308).

4. All mineral deposits in the land, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

Detailed information concerning this action, including the approved appraisal report, is available for review at the Central Yukon Field Office, Bureau of Land Management, 1150 University Ave., Fairbanks, AK 99709.

Written comments must be received by the Central Yukon Field Manager, at the address stated above, on or before the date stated above. Facsimiles, telephone calls, and e-mails are unacceptable means of notification. Comments including names and street addresses of respondents will be available for public review at the BLM Central Yukon Field Office during regular business hours, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Any adverse comments will be reviewed by the BLM Alaska State Director, who may sustain, vacate or modify this realty action. In the absence of any objections, or adverse comments, the proposed realty action will become the final determination of the Department of the Interior.

**Authority:** 43 CFR 2711.1–2(a).

*Dated: November 5, 2008.*

**Nichelle Jacobson,**

*Manager, Central Yukon Field Office.*

[FR Doc. E8–26913 Filed 11–12–08; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

**[Docket No. MMS–2008 MRM–0039]**

### Agency Information Collection Activities: Proposed Collection, Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of a revision of a currently approved information collection (OMB Control Number 1010–0139).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. This information collection request (ICR) pertains to onshore and offshore royalty and production reporting on oil, gas, and geothermal leases on Federal and Indian lands. We changed the title of this ICR to reflect current regulatory actions. The new title of this ICR is ''30 CFR Parts 210 and 212, Royalty and Production Reporting.''

Publication of the final rule, RIN 1010–AD20, Reporting Amendments, on March 26, 2008 (73 FR 15885), changed a number of citations, primarily under 30 CFR part 210. The final rule removed 30 CFR part 216 and replaced part 210 in its entirety. In this revision, we also consolidated the following ICRs to allow programwide review of both aspects of reporting—remittance of royalties and production accounting on oil, gas, and geothermal leases:

- 1010–0139, previously titled ''30 CFR Part 210—Forms and Reports and Part 216—Production Accounting;'' and
- 1010–0140, previously titled ''30 CFR Part 210—Forms and Reports.''

**DATES:** Submit written comments on or before *January 9, 2009.*

**ADDRESSES:** You may submit comments by the following methods:

- Electronically go to *http://www.regulations.gov.* In the ''Comment or Submission'' column, enter ''MMS–2008–MRM–0039'' to view supporting and related materials for this ICR. Click on ''Send a comment or submission'' link to submit public comments. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. All comments submitted will be posted to the docket.
- Mail comments to Hyla Hurst, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. Please reference ICR 1010–0139 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference ICR 1010–0139 in your comments.

**FOR FURTHER INFORMATION CONTACT:** Hyla Hurst, telephone (303) 231–3495, or e-mail *hyla.hurst@mms.gov.* You may also contact Hyla Hurst to obtain copies, at no cost, of (1) the ICR, (2) any associated forms, and (3) the regulations that require the subject collection of information.

**SUPPLEMENTARY INFORMATION:**

*Title:* ''30 CFR Parts 210 and 212, Royalty and Production Reporting.''

*OMB Control Number:* 1010–0139.

*Bureau Form Number:* Forms MMS–2014, MMS–4054, and MMS–4058.

*Abstract:* The Secretary of the U.S. Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary is required by various laws to manage mineral resource production from Federal and Indian leases, collect the royalties and other mineral revenues due, and distribute the funds in accordance with applicable laws. Public laws pertaining to mineral leases on Federal and Indian lands are posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/PublicLawsAMR.htm.*

The Secretary also has a trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the minerals revenue management functions and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

### General Information

The MMS financial accounting system is an integrated computer system that includes payment and sales volumes and values, as reported by payors. Production and royalty volumes are compared to verify that proper royalties are received for the minerals produced. Additionally, the data is shared electronically with the MMS Offshore and Energy and Minerals Management program, Bureau of Land Management, Bureau of Indian Affairs, and tribal and state governments so they can perform their lease management responsibilities.

The MMS uses the information collected in this ICR to ensure that royalty is appropriately paid, based on accurate production accounting on oil, gas, and geothermal resources produced from Federal and Indian leases. The requirement to report accurately and timely is mandatory.

### Royalty Reporting

The regulations require that lessees report and remit royalties on oil, gas, and geothermal resources produced from leases on Federal and Indian lands. The following form is used for royalty reporting:

*Form MMS–2014, Report of Sales and Royalty Remittance,* is submitted monthly to report royalties on oil, gas, and geothermal leases, certain rents, and other lease-related transactions (e.g., transportation and processing allowances, lease adjustments, and quality and location differentials).

### Production Accounting

The MMS financial accounting system includes production reports submitted by lease/agreement operators and is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. The following forms are used for production accounting and reporting:

*Form MMS–4054, Oil and Gas Operations Report (OGOR),* is submitted monthly for all production reporting for Outer Continental Shelf, Federal, and Indian lands. Production information is compared with sales and royalty data submitted on Form MMS–2014 to ensure proper royalties are paid on the oil and gas production reported to MMS. The MMS uses the information from Parts A, B, and C of the OGOR to track all oil and gas from the point of production to the point of first sale or other disposition.

*Form MMS–4058, Production Allocation Schedule Report (PASR),* is submitted monthly by operators of the facilities and measurement points where production from an offshore lease or metering point is commingled with production from other sources before it is measured for royalty determination. The MMS uses the data to determine whether sales reported by the lessee are reasonable.

### OMB Approval

We will request OMB approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted to MMS under this collection is protected, and no

items of a sensitive nature are included in this information collection. Responses are mandatory.

*Frequency:* Monthly.

*Estimated Number and Description of Respondents:* 4,570 oil, gas, and geothermal reporters.

*Estimated Annual Reporting and Recordkeeping ''Hour'' Burden:* 236,421 hours. Our estimate of the number of respondents and the time required to complete the forms has not changed. However, the citations changed when the final rule, RIN 1010–AD20, Reporting Amendments, published on March 26, 2008. The final rule removed 30 CFR part 216 and replaced part 210 in its entirety and also removed the requirement at § 216.30, which changed the burden by 1 hour.

We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

| 30 CFR Part 210 | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| | **30 CFR 210—FORMS AND REPORTS** | | | |
| | **Subpart B—Royalty Reports—Oil, Gas, and Geothermal Resources** | | | |
| 210.52(a) and (b); 210.53(a) and (b); 210.54(a) and (b). | 210.52 What royalty reports must I submit? | Electronic* (approximately 99 percent) | | |
| | | 0.05 (3 minutes) | 3,103,265 | 155,163 |
| | You must submit a completed Form MMS–2014, Report of Sales and Royalty Remittance, to MMS with: (a) All royalty payments; and | Manual* (approximately 1 percent) | | |
| | (b) Rents on nonproducing leases, where specified in the lease | 0.1167 (7 minutes) | 31,346 | 3,658 |
| | 210.53 When are my royalty reports and payments due? (a) Completed Forms MMS–2014 for royalty payments and the associated payments are due by the end of the month following the production month (see also § 218.50). (b) Completed Forms MMS–2014 for rental payments, where applicable, and the associated payments are due as specified by the lease terms (see also § 218.50). 210.54 Must I submit this royalty report electronically? (a) You must submit Form MMS–2014 electronically unless you qualify for an exception under § 210.55(a). (b) You must use one of the following electronic media types, unless MMS instructs you differently: | | | |
| * | * * * * | * | * | |
| Subtotal for Royalty Reporting | | | 3,134,611 | 158,821 |
| | **Subpart C—Production Reports—Oil and Gas** | | | |
| 210.102(a)(1)(i) and (ii), (a)(2)(i) and (ii). | 210.102 What production reports must I submit? | Burden hours covered under 210.104(a) and (b). | | |
| | (a) Form MMS–4054, Oil and Gas Operations Report. If you operate a Federal or Indian onshore or OCS oil and gas lease or federally approved unit or communitization agreement that contains one or more wells that are not permanently plugged or abandoned, you must submit Form MMS–4054 to MMS: (1) You must submit Form MMS–4054 for each well for each calendar month, beginning with the month in which you complete drilling, unless: (i) You have only test production from a drilling well; or (ii) The MMS tells you in writing to report differently. (2) You must continue reporting until: (i) The Bureau of Land Management (BLM) or MMS approves all wells as permanently plugged or abandoned or the lease or unit or communitization agreement is terminated; and (ii) You dispose of all inventory. | | | |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| 30 CFR Part 210 | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| 210.102(b)(1), (b)(2)(i)–(vi). | (b) Form MMS–4058, Production Allocation Schedule Report. If you operate an offshore facility measurement point (FMP) handling production from a Federal oil and gas lease or federally approved unit agreement that is commingled (with approval) with production from any other source prior to measurement for royalty determination, you must file Form MMS–4058.<br>(1) You must submit Form MMS–4058 for each calendar month beginning with the month in which you first handle production covered by this section.<br>(2) Form MMS–4058 is not required whenever all of the following conditions are met:<br>(i) All leases involved are Federal leases;<br>(ii) All leases have the same fixed royalty rate;<br>(iii) All leases are operated by the same operator;<br>(iv) The facility measurement device is operated by the same person as the leases/agreements;<br>(v) Production has not been previously measured for royalty determination; and<br>(vi) The production is not subsequently commingled and measured for royalty determination at an FMP for which Form MMS–4058 is required under this part | Burden hours covered under 210.104(a) and (b). | | |
| 210.103 (a) and (b). | 210.103 When are my production reports due? .....<br>(a) The MMS must receive your completed Forms MMS–4054 and MMS–4058 by the 15th day of the second month following the month for which you are reporting.<br>(b) A report is considered received when it is delivered to MMS by 4 p.m. mountain time at the addresses specified in § 210.105. Reports received after 4 p.m. mountain time are considered received the following business day. | Burden hours covered under 210.104(a) and (b). | | |
| 210.104 (a) and (b). | 210.104 Must I submit these production reports electronically? ..... | Electronic* (approximately 97 percent) | | |
| | (a) You must submit Forms MMS–4054 and MMS–4058 electronically unless you qualify for an exception under § 210.105. | 0.25 ..... (15 minutes) | 301,280 | 75,320 |
| | (b) You must use one of the following electronic media types, unless MMS instructs you differently: | Manual* (approximately 3 percent) | | |
| | | 0.25 ..... (15 minutes) | 9,120 | 2,280 |
| * | * * * * | * | * | |
| | **Subpart D—Special-Purpose Forms and Reports—Oil, Gas, and Geothermal Resources** | | | |
| 210.155 ..... | 210.155 What reports must I submit for Federal onshore stripper oil properties?<br>(a) *General.* Operators who have been granted a reduced royalty rate by the Bureau of Land Management (BLM) under 43 CFR 3103.4–2 must submit Form MMS–4377, Stripper Royalty Rate Reduction Notification, under 43 CFR 3103.4–2(b)(3). | Burden covered under OMB Control Number 1010–0090 (expires December 31, 2010). | | |
| * | * * * * | * | * | |
| Subtotal for Production Reporting ..... | | ..... | 310,400 | 77,600 |
| | **PART 212—RECORDS AND FILES MAINTENANCE** | | | |
| | **Subpart B—Oil, Gas and OCS Sulphur—General** | | | |
| 212.50 ..... | 212.50 Required recordkeeping and reports ..... | Burden hours covered under 210.54(a) and (b); and 210.104(a) and (b). | | |

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS—Continued

| 30 CFR Part 210 | Reporting and recordkeeping requirement | Hour burden | Average number of annual responses | Annual burden hours |
|---|---|---|---|---|
| | All records pertaining to offshore and onshore Federal and Indian oil and gas leases shall be maintained by a lessee, operator, revenue payor, or other person for 6 years after the records are generated unless the recordholder is notified, in writing, that records must be maintained for a longer period * * *.<br>[In accordance with 30 U.S.C. 1724(f), Federal oil and gas records must be maintained for 7 years from the date the obligation became due.] | | | |
| 212.51(a) and (b) | (a) *Records*. Each lessee, operator, revenue payor, or other person shall make and retain accurate and complete records necessary to demonstrate that payments of rentals, royalties, net profit shares, and other payments related to offshore and onshore Federal and Indian oil and gas leases are in compliance with lease terms, regulations, and orders * * *.<br>(b) Period for keeping records. Lessees, operators, revenue payors, or other persons required to keep records under this section shall maintain and preserve them for 6 years from the day on which the relevant transaction recorded occurred unless the Secretary notifies the record holder of an audit or investigation involving the records and that they must be maintained for a longer period * * *.<br>[In accordance with 30 U.S.C. 1724(f), Federal oil and gas records must be maintained for 7 years from the date the obligation became due.] | Burden hours covered under 210.54(a) and (b); and 210.104(a) and (b). | | |
| Total for Royalty and Production Reporting | | ..... | 3,445,011 | 236,421 |

*Note: Each line of data is considered one response/report.

*Estimated Annual Reporting and Recordkeeping ''Non-Hour'' Cost Burden:*

Reporters require access to the Internet through a subscription to an Internet provider service. The annual subscription is estimated at $240 per reporter.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501 *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*Comments:* Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency to ''* * * provide 60-day notice in the **Federal Register** * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request. The ICR also will be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*.

*Public Comment Policy:* We will post all comments in response to this notice at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm*. We also will post all comments, including names and addresses of respondents, at *http://www.regulations.gov.* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so.

*MMS Information Collection Clearance Officer:* Arlene Bajusz (202) 208–7744.

Dated: November 6, 2008.

**Jennifer L. Goldblatt,**

*Acting Associate Director for Minerals Revenue Management.*

[FR Doc. E8–26890 Filed 11–12–08; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Outer Continental Shelf (OCS), Gulf of Mexico OCS Region, Mid-Atlantic Proposed Oil and Gas Lease Sale 220

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Call for Information and Interest/Nominations (Call) and Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** This Call for Information and Interest/Nominations (hereinafter referred to as ''Call'') and the NOI are the initial information-gathering steps in a process that incorporates planning and analysis for proposed OCS Oil and Gas Lease Sale 220 in the Mid-Atlantic Planning Area in the area offshore the Commonwealth of Virginia. The program area is that subarea of the Mid-Atlantic Planning Area offshore Virginia, identified in the OCS Oil and Gas Leasing Program, 2007–2012, that may be offered in proposed Sale 220. Readers are cautioned that this announcement is not a commitment to hold a lease sale but rather a continuation of the information-gathering and evaluation process.

Simultaneously with this Call, the MMS is giving notice of its intent to prepare an EIS for Sale 220 in the Mid-Atlantic Planning Area, scheduled for 2011. The EIS analysis will focus on the potential environmental effects of oil and gas exploration, development, and production in the proposed sale area and its vicinity. This NOI also serves to announce the initiation of the scoping process for this EIS. The MMS will consider comments received in response to this NOI and Call in determining the proposed sale area and the scope of the EIS. The Department of the Interior (DOI) is also inviting other Federal, State, Tribal, and local governments to consider becoming cooperating agencies in the preparation of the EIS.

**DATES:** Comments on the Call must be received no later than December 29, 2008. Submittals should be labeled ''Comments on the Call for Information and Interest/Nominations for Proposed Sale 220.'' Comments on the NOI also must be received no later than December 29, 2008. Submittals should be labeled ''Comments on the Notice of Intent for Proposed Sale 220.'' Scoping meetings to obtain additional comments and information regarding the scope of the EIS will be held in appropriate locations and will be announced in the **Federal Register** at a later date; an additional scoping comment period will be announced at that time.

**FOR FURTHER INFORMATION CONTACT:** For information on the Call, please contact Mr. Carrol Williams, Sales and Support Unit Supervisor, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2803. For information on the NOI, you may contact Mr. Gary Goeke, NEPA/CZM Coordination Unit Supervisor, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–3233.

*Supplementary Information on the Call:* The final EIS will serve as the National Environmental Policy Act (NEPA) analysis for the Mid-Atlantic Planning Area Sale 220. The MMS will prepare additional Coastal Zone Management Act (CZMA) Consistency Determination (CD), and Outer Continental Shelf Lands Act (OCSLA) documents, as appropriate.

The MMS is sponsoring a workshop on the environmental research needs in support of potential Virginia offshore oil and gas activities to be held Dec. 3–4, 2008, in Williamsburg, Virginia. The focus of the workshop will be on the existing scientific knowledge base along the Virginia Coast and the information gaps that need to be addressed should a lease sale for oil and gas activities be held offshore Virginia. Additionally, the following three new studies are being funded by the MMS: Oil and Gas Infrastructure in the Atlantic Region, Inventory and Analysis of Archaeological Site Occurrence on the Atlantic OCS, and Mid-Atlantic Ocean Model Calculations.

### Call for Information and Interest/Nominations

*1. Authority:* This Call is published pursuant to the OCSLA (43 U.S.C. 1331–1356, as amended) and the regulations issued thereunder (30 CFR part 256); and in accordance with the OCS Oil and Gas Leasing Program, 2007–2012.

*2. Purpose of Call:* The purpose of the Call is to gather information for proposed OCS Lease Sale 220 in the Mid-Atlantic Planning Area offshore Virginia, tentatively scheduled in 2011.

Information on oil and gas leasing, exploration, and development and production within the program area offshore Virginia are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the DOI for its consideration in future decisions in the leasing process pursuant to the OCSLA and regulations at 30 CFR part 256. This Call/NOI is being issued in accordance with the OCS Oil and Gas Leasing Program, 2007–2012.

This Call is to gather information and does not indicate a preliminary decision to lease in the area described below. Final decision and delineation of the area for possible leasing will be made at a later date and only if there is compliance with applicable laws including all requirements of the OCSLA and NEPA using established departmental procedures. The MMS is aware of Virginia's current Energy Policy, which states: ''* * * The policy of the Commonwealth shall further support the inclusion of the Atlantic Planning Areas in the Minerals Management Service's draft environmental impact statement with respect to natural gas exploration 50 miles or more off the Atlantic shoreline.'' The OCSLA does not include provisions that would allow gas-only leasing. The only potential avenue to allow for the exploration of gas resources is through the leasing process described in section 8 and section 19 of the OCSLA. This Call/NOI is the first step in the section 19 process.

*3. Description of Area:* The area that is the subject of this Call is located in the Mid-Atlantic Planning Area offshore Virginia. The ''program area'' is that offshore Virginia subarea of the larger Mid-Atlantic Planning Area identified in OCS Oil and Gas Leasing Program, 2007–2012. The ''program area'' extends offshore from about 50 statute miles to approximately 183 statute miles (or 159 nautical miles), in water depths from approximately 40 meters to 3,500 meters. This area consists of approximately 593 whole and partial blocks encompassing about 2.9 million acres. A page-size map of the program area considered for leasing accompanies this Call. Official Protraction Diagrams (OPDs) are available at no charge at the Web site: *http://www.mms.gov/ld/atlantic.htm.*

*4. Instructions on Call:* Information must be received no later than 45 days following publication of this Call in the **Federal Register** in envelopes labeled ''Comments on the Call for Information and Interest/Nominations for Proposed Sale 220,'' submitted to the Minerals Management Service, Gulf of Mexico OCS Region, Leasing Activities Section, (Attention: Mr. Carrol Williams), 1201 Elmwood Park Boulevard (Mail Stop 5422), New Orleans, Louisiana 70123–2394. You may also submit comments on the Call via e-mail to *carrol.williams@mms.gov.* You should include ''Comments on the Call for

Proposed Sale 220'' in the subject line of your message.

Please submit e-mail comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

The Call for Information and Interest/Nominations Map delineates the Call area identified by MMS as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate nominations of areas to be considered for leasing and comments on any or all of the Federal acreage within the boundaries of the Call area. Although individual nominations are considered privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record.

Nominations must be submitted using the large-scale Call for Information and Interest/Nominations Map located at: *http://www.gomr.mms.gov/homepg/lsesale/220/matl220.html* by outlining the area of interest along block lines. Respondents should rank the portion of the area in which they have nominated according to priority of interest; for example, priority 1 (high), or 2 (medium). Blocks nominated that do not indicate priorities will be considered priority 3 (low). Respondents must be specific in indicating blocks by priority, and be prepared to discuss with MMS their priority of interest regarding the nominated area. The telephone number and name of a person to contact in the nominator's organization for additional information should be included in the response. The Gulf of Mexico OCS Regional Office may contact this person to set up a mutually agreeable time and place for a meeting to more fully review the company's nominations. Respondents may also submit a detailed list of blocks nominated by Official Protraction Diagram and Leasing Map designations to ensure correct interpretation of their nominations.

Comments are sought from all interested parties about particular environmental, biological, archaeological, socioeconomic, and geological (including natural hazard areas) conditions or potential conflicts, or other information that might bear upon the potential leasing, exploration, and development of the program area and vicinity. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sale and the enforceable policies of an approved local district coastal management plan. These comments should identify specific policies of concern, the nature of the potential conflict foreseen, and steps that MMS could take to avoid or mitigate the potential conflict. Comments may be in terms of broad area or restricted to particular blocks or areas of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information and Interest/Nominations Map.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*5. Use of Call Information:* Information submitted in response to this Call will be used for several purposes. Responses will be used to:

- Identify the proposed sale area;
- Help identify areas of potential oil and gas development;
- Identify potential environmental effects and potential use conflicts;
- Assist in the scoping process for the EIS;
- Develop possible alternatives to the proposed action;
- Develop lease terms and conditions/mitigating measures; and
- Identify potential conflicts between oil and gas activities and coastal management plans.

*6. Tentative Schedule:* The following is a list of tentative milestone dates that apply to Sale 220 covered by this Call:

| | |
|---|---|
| Call/NOI published | November 2008 |
| Comments due on Call/NOI | December 2008/January 2009 |
| Area Identification of the Area to be Included in the EIS | early 2009 |
| Notice of Scoping Meetings and Additional Scoping Comment Period | Spring 2009 |
| Draft EIS available | 2010 |
| Public Hearings | 2010 |
| Final EIS available | 2011 |
| Consistency Determination/Proposed Notice of Sale issued | 2011 |
| Governor's Comments due | 2011 |
| Final Notice of Sale published | 2011 |
| Sale held | 2011 |

**Supplemental Information on Notice of Intent To Prepare an EIS**

*1. Authority:* The NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.* (1988)) (NEPA).

*2. Purpose of Notice of Intent:* Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of NEPA, the MMS is announcing its intent to prepare an EIS for proposed oil and gas lease Sale 220 tentatively scheduled for 2011 in the Mid-Atlantic Planning Area offshore Virginia, no closer than 50 statute miles off the coast of the Commonwealth of Virginia. The proposed action is to offer for lease all of the blocks in this Mid-Atlantic Planning Area offshore Virginia. The EIS analysis will focus on the potential environmental effects on biological, physical, and socioeconomic environmental resources from oil and gas exploration, development, and production activities in the Mid-Atlantic OCS. This NOI also serves to announce the initiation of the scoping process for this EIS. Throughout the scoping process, Federal, State, Tribal, and local governments and other interested parties aid MMS in determining the significant issues, reasonable alternatives, and potential mitigating measures to be analyzed in the EIS and the possible need for additional information. Alternatives may include, at a minimum, the proposed action, taking no action, or implementing appropriate restrictions on oil and gas activities. These and any additional alternatives developed through scoping and the NEPA

evaluation will be considered in the decision-making process.

*3. Instructions on the Notice of Intent:* Federal, State, Tribal, and local governments and other interested parties are requested to provide comments related to the scope of the EIS, including significant issues that should be addressed, the types of biologic, physical or socioeconomic resources that should be considered, the types of activities that produce impacts, reasonable alternatives, potential mitigation measures, and other relevant information that is available and should be considered. You may mail comments to the Minerals Management Service, Gulf of Mexico OCS Region (Attention: Mr. Gary Goeke), 1201 Elmwood Park Boulevard, New Orleans, LA 70123–2394. Comments should be enclosed in an envelope clearly labeled ''Comments on the NOI for Proposed Sale 220.'' You may also submit comments via e-mail to *Sale220@mms.gov.* Please include ''Attn: Proposed Sale 220 NOI'' in the subject line, and your name and return address in your scoping comment. If you do not receive an auto-confirmation from the system that we have received your e-mail message, please contact us at (504) 736–3233. Lastly, you may hand-deliver comments to the address above. Comments are due no later than December 29, 2008.

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the public record, which we will honor to the extent allowable by law. There may also be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Scoping meetings to obtain additional comments and information regarding the scope of the EIS will be held in appropriate locations and will be announced at a later date. An additional comment period will be announced at that time.

A Notice of Availability of the draft EIS for public review and comment will be announced in the **Federal Register** by the MMS and the Environmental Protection Agency; on the MMS, Gulf of Mexico OCS Region Web site; and, in the local media. Public hearings will be held in the local area following release of the draft EIS on dates and at locations to be determined.

*4. Cooperating Agencies:* The DOI policy is to invite other Federal agencies, and State, Tribal, and local governments to consider becoming cooperating agencies in the preparation of an EIS. Under the Council of Environmental Quality (CEQ) regulations, qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency. Cooperating agency status neither enlarges nor diminishes the final decision-making authority of any agency involved in the NEPA process. The MMS invites qualified government entities to inquire about cooperating agency status for this lease sale EIS. Upon request, the MMS will provide qualified cooperating agencies with a written summary of ground rules for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and handling of predecisional information. The MMS anticipates this summary will form the basis for a Memorandum of Understanding between the MMS and each cooperating agency. You should also consider the CEQ's ''Factors for Determining Cooperating Agency Status.'' This document is available on the CEQ Web site at: *http://ceq.eh.doe.gov/nepa/regs/cooperating/cooperatingagencymemofactors.html.*

Even if your agency is not a cooperating agency you will continue to have opportunities to provide information and comments to MMS during the normal public input phases of the NEPA/EIS process.

5. *Background Information:* The Mid-Atlantic Planning Area lies offshore the middle Atlantic States and extends from Delaware to North Carolina. The program area lies in the Mid-Atlantic Planning Area offshore Virginia at the southern end of a basin in a geologic province called the Baltimore Trough. The area is believed to be gas-prone. The program area consists of 593 whole and partial OCS blocks encompassing approximately 2.9 million acres. Water depths in the program area range from 40 meters to 3,500 meters. The program area is pie-slice-shaped with the apex pointed to the east. It is everywhere greater than 50 statute miles from the boundary between the Commonwealth of Virginia and Federal waters, and extends seaward to 183 statute miles.

In spending bills since 1983, Congress has banned DOI expenditures in support of any petroleum leasing or development activities in the Atlantic planning areas. In June 1990 President George H.W. Bush reinforced the ban by issuing an executive order that more explicitly blocked Atlantic drilling for a period of 10 years. On June 12, 1998, President William J. Clinton withdrew these areas from leasing through June 30, 2012. On July 14, 2008, President George W. Bush announced a modification of the Presidential Withdrawal and on September 30, 2008, the Congress let expire the previous Department of the Interior Appropriations measures that had imposed an Atlantic drilling ban that lasted a total of 25 years.

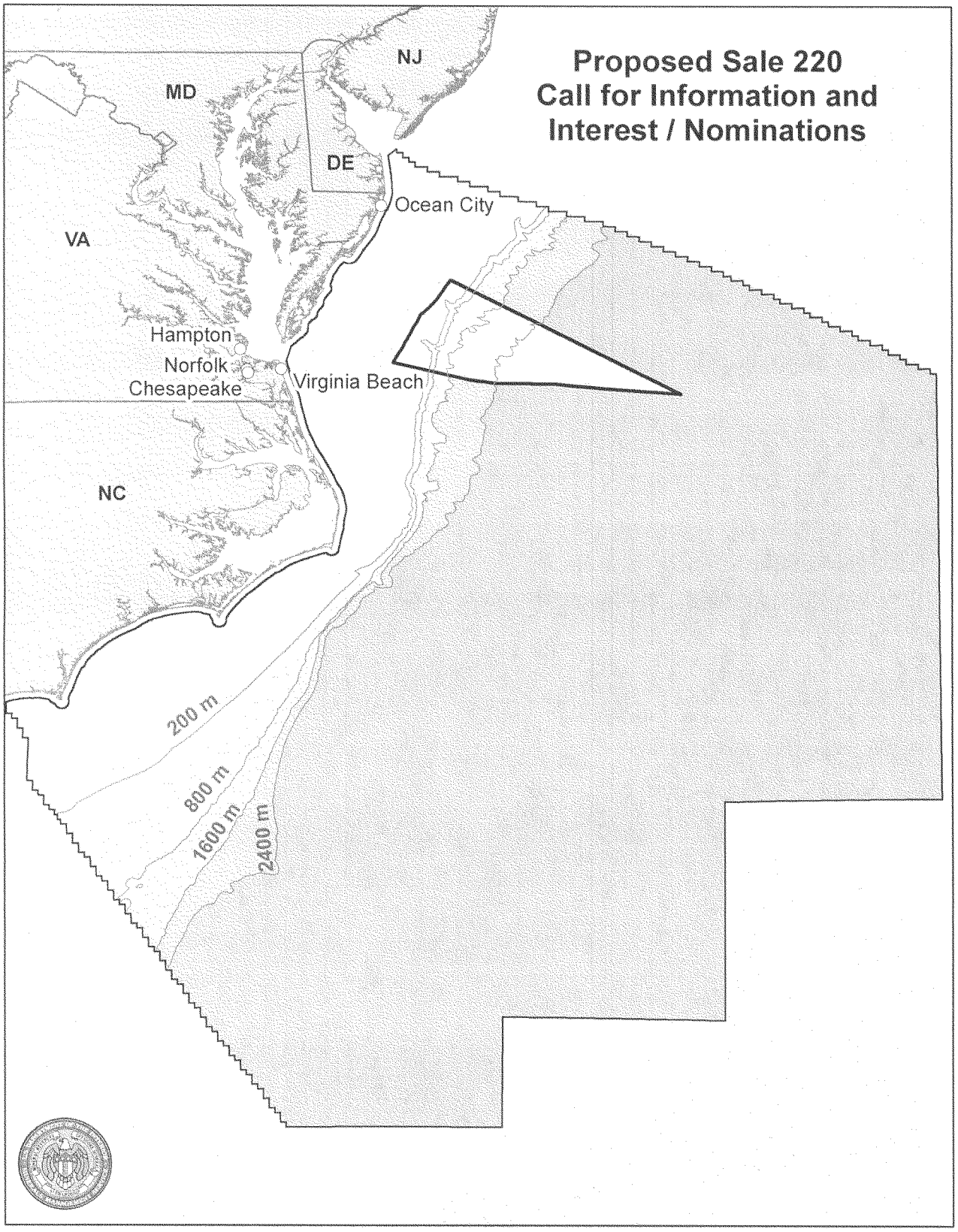
The last lease sale in the Mid-Atlantic Planning Area was Sale 76 held on April 26, 1983. In the period between 1976 and 1983 when lease sales were conducted in the Mid-Atlantic Area, including the offshore Virginia program area, a total of 32 exploration wells were drilled resulting in no commercial hydrocarbon discoveries. One OCS block was leased off of the Commonwealth of Virginia in this period but was never drilled. Based on the 2006 National Assessment, we estimate the mean Undiscovered Technically Recoverable Resources contained in the Sale 220 area to be 130 million barrels of oil and 1,140 billion cubic feet of gas.

The MMS has developed an overview of the leasing process titled Leasing Oil and Natural Gas Resources which can be found at the following link: *http://www.mms.gov/ld/PDFs/GreenBook-LeasingDocument.pdf*, or you may request a hard copy by contacting the MMS Leasing Division, at 703–787–1215.

If the decision is made to conduct the sale and leases are acquired, a company would then need to submit an exploration plan (EP) to MMS proposing to drill wells on specific sites. Upon acquiring a lease, any lessee who wants to drill an exploration well must submit an extensive EP application containing an array of environmental, monitoring, and mitigation information that must demonstrate to MMS that the proposed EP activities ''do[es] not cause undue or serious harm or damage to the human, marine, or coastal environment. See 30 CFR 250.202, 250.212–228. The MMS would review the EP to determine any potential impacts on the environment and ensure engineering safety. Affected States would also review the EP and determine its consistency with the

State's coastal zone program. After all reviews, MMS would approve the EP, if acceptable. Other Federal agencies also review and issue permits for aspects of the activities. For example the Environmental Protection Agency issues the water discharge permits. Before any development or production activities can begin, a development plan must be submitted to MMS for review and approval. Again, the proposed development plan must contain a full array of environmental, monitoring, and mitigation information that must demonstrate to MMS that the proposed activities do not harm the environment. See 30 CFR 250.202, 250.241–262. Specific environmental, archaeological, and biological information must be submitted in support of the plans. The plans and supporting information are evaluated for seafloor or drilling hazards; air and water quality impacts; hydrocarbon resource conservation; appropriate mitigation of potential impacts; and compliance with NEPA, MMS operating regulations, and other requirements. Other Federal agencies and the designated coastal zone management agencies in Atlantic Coast states may take part in the review process.

BILLING CODE 4310–MR–P




z:\nrsgis\maps\5yr_option\Maps\VA_ProgramArea3.mxd 10/30/08

Dated: November 6, 2008.

**Randall B. Luthi,**

*Director, Minerals Management Service.*

[FR Doc. E8–26995 Filed 11–12–08; 8:45 am]

**BILLING CODE 4310–MR–C**

## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

## Minidoka Dam Spillway Replacement; Minidoka County, ID

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare an Environmental Impact Statement (EIS) on the proposed Minidoka Dam Spillway Replacement. Alternatives currently being considered are No Action as required under NEPA, total replacement of the spillway and headgate structures, or replacement of just the spillway.

Reclamation is requesting early public comment and agency input to help identify significant issues or other alternatives to be addressed in the EIS. Information obtained during the scoping period will help in developing information to be included in the EIS. A draft EIS is expected to be provided to the public for review by winter, 2009 followed by opportunities to provide written and oral comments. The final EIS is scheduled for completion in winter, 2010. A Record of Decision, describing which alternative is selected for implementation, and the rationale for its selection, would then be issued following a 30-day waiting period.

**DATES:** Scoping meetings will be held on the following dates and times:

- *Idaho Falls, ID: December 3, 2008:* Open House Meeting 6 pm to 9 pm.
- *Burley, ID: December 4, 2008:* Open House Meeting 6 pm to 9 pm.

Written comments will be accepted through December 19, 2008 for inclusion in the scoping summary document. Please direct requests for sign language interpretation for the hearing impaired or other auxiliary aids, to Ms. Allyn Meuleman by November 24, 2008, at the telephone or fax numbers listed under the **FOR FURTHER INFORMATION** section of this notice.

**ADDRESSES:** Comments and requests to be added to the mailing list may be submitted to Bureau of Reclamation, Snake River Area Office, Attention: Allyn Meuleman, Activity Manager, 230 Collins Road, Boise, ID 83702–4520. Comments may also be submitted electronically to *minidoka_dam_eis@pn.usbr.gov.*

The scoping meetings will be held at the following locations which are physically accessible to people with disabilities.

- Red Lion Hotel, 475 River Park Way, Idaho Falls, ID 83402
- Burley Best Western Inn, 800 North Overland Avenue, Burley, ID 83318

**FOR FURTHER INFORMATION:** Contact Allyn Meuleman, (208) 383–2258, fax: (208) 383–2237 for additional information. Information on this project can also be found at: *http://www.usbr.gov/pn/programs/eis/minidokadam/index.html.*

**SUPPLEMENTARY INFORMATION:** The purpose of the proposed spillway replacement action is to prevent a structural failure of the Minidoka Dam spillway and associated structures.

Minidoka Dam impounds Lake Walcott and is a feature of Reclamation's Minidoka Project. They are located on the main stem Snake River about 18 miles northeast from the city of Burley, ID within the Minidoka Wildlife Refuge. After over 103 years of continued use, the over 2000 feet long concrete spillway at the Minidoka Dam has reached the end of its functional lifespan. The concrete that forms the spillway crest and the piers of the pier-and-stoplog structure shows extensive visible deterioration at numerous locations. In addition, the potential for ice damage to the stoplog piers requires that reservoir water levels be dropped each winter. The headgate structures at the North Side Canal and South Side Canal also show serious concrete deterioration similar to that seen along the spillway. The current conditions of the Minidoka Dam spillway and headgate structures present increasingly difficult reliability and maintenance problems. If structural problems are not corrected there is potential of partial or complete failure of the spillway and headgates. If these failures occur, Reclamation may not be able to meet contractual obligations for water delivery, power generation and Reclamation's commitments to deliver flow augmentation water under the Nez Perce Settlement Agreement and the Endangered Species Act.

A related action which may be considered is a structural raise (to be determined) of Minidoka Dam to accommodate a 5-foot raise in the Reservoir Water Surface (RWS) elevation. The Idaho Water Resource Board (IWRB) is funding a special study that explores the feasibility and costs associated with this action. The purpose of the dam raise is to increase the storage capacity of Lake Walcott by approximately 50,000 acre-feet as one element of efforts to address water supply concerns in the Eastern Snake River Plain Aquifer area. The IWRB anticipates the additional supplies of stored water could be used to help address surface and groundwater demands by implementing improvement measures being considered by the State. If the IWRB decides to pursue this action, a supplemental EIS will be developed to evaluate impacts.

### Public Involvement

Reclamation will conduct public scoping meetings to solicit input on the alternatives developed to address replacement of the Minidoka Dam Spillway and associated structures and the impacts associated with those alternatives. Reclamation will summarize comments received during the scoping meetings and written comments received during the scoping period, identified under **DATES**, into a scoping summary document which will be made available to those who have provided comments. It will also be available to others upon request and will be posted on the Web site listed under **FOR FURTHER INFORMATION**.

If you wish to comment, you may provide your comments as indicated under the **ADDRESSES** section. Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**J. William McDonald,**

*Regional Director, Pacific Northwest Region.*

[FR Doc. E8–26990 Filed 11–12–08; 8:45 am]

**BILLING CODE 4310–MN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,897]**

### IAC Canton, Inc., A Subsidiary of International Automotive Components Group, North America, Inc., Canton, OH; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated October 29, 2008, United Steelworkers of America AFL–CIO, Local 550–L requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on September 22, 2008. The Notice of Determination was published in the **Federal Register** on September 8, 2008 (73 FR 58982).

The initial investigation resulted in a negative determination based on the finding that imports of rubber sheets, dash insulators, and all rubber floor mats did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information pertaining to a shift in subject plant production of rubber sheets, dash insulators, and all rubber floor mats to Canada.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

### Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 6th day of November 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–26893 Filed 11–12–08; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Information Collection Request for the ETA 204, Experience Rating Report: Extension Without Change, Comment Request

**AGENCY:** Employment and Training Administration.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before January 12, 2009.

**ADDRESSES:** Send comments to Edward M. Dullaghan, U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Frances Perkins Bldg. Room S–4231, Washington, DC 20210, telephone number (202) 693–2927 (this is not a toll-free number) or by email: *Dullaghan.edward@dol.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The data submitted annually on the ETA–204 report enables the Employment and Training Administration to project revenues for the Unemployment Insurance (UI) program on a state-by-state basis and to measure the variations in assigned contribution rates which result from different experience rating systems. Used in conjunction with other data, the ETA–204 assists in determining the effects of certain factors (e.g., seasonality, stabilization, expansion or contraction in employment, etc.) on the unemployment experience of various groups of employers. The data also provide an early signal for potential solvency problems and are useful in analyzing factors which give rise to these potential problems and permit an evaluation of the effectiveness of the various approaches available to correct the detected problems. Further, the data are key components to the ''Significant Tax Measures Report'' which provides the information necessary to evaluate and compare state UI tax systems.

### II. Desired Focus of Comments

Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA–204, Experience Rating Report which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

### III. Current Actions

*Type of Review:* Extension without change.

*Agency:* Employment and Training Administration (ETA).

*Title:* Experience Rating Report.

*OMB Number:* 1205–0164.

*Agency Number:* ETA 204.

*Affected Public:* State Governments.

*Total Respondents:* 53.

*Frequency:* Annual.

*Total Responses:* 53.

*Average Time per Response:* 15 minutes.

*Estimated Total Burden Hours:* 13 Hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $0.

Comments submitted in response to this notice will be summarized and/or

included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 6, 2008.

**Cheryl Atkinson,**

*Administrator, Office of Workforce Security.*

[FR Doc. E8–26943 Filed 11–12–08; 8:45 am]

**BILLING CODE 4510–FW–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of October 27, 2008 through October 31, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

*TA–W–63,919; Varian, Inc., Liquid Chromatography & Gas, Walnut Creek, CA: August 21, 2007*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

*None.*

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–63,968; Overhead Door Corporation, Shenandoah, VA: August 29, 2007.*

*TA–W–64,063; XP Power, Inc., Anaheim, CA: September 15, 2007.*

*TA–W–64,120; Columbia Falls Aluminum Company, LLC, Subsidiary of Glencore USA, Columbia Falls, MT: September 25, 2007.*

*TA–W–64,213; Stanley Fastening Systems, L.P., a/k/a Stanley-*

*Bostitch, Div. of Stanley Works, Inc., East Greenwich, RI: September 19, 2008.*

*TA–W–64,216; Volvo Penta Marine Products LLC, Dyer's Employment Agency, Lexington, TN: October 9, 2007.*

*TA–W–64,267; Stevens Linen Associates, Inc., Dudley, MA: October 21, 2007.*

*TA–W–63,957; Phillips Plastics Corporation, Precision Decorating, Medford, WI: July 27, 2007.*

*TA–W–64,081; Emerson Appliance Controls, A Subsidiary of Emerson Electric, Frankfort, IN: September 15, 2007.*

*TA–W–64,089; Bill Sills Sportswear, Inc., PACA, Lexington, TN: September 17, 2007.*

*TA–W–64,147; Mahle Engine Components USA, Inc., R&D Center, Muskegon, MI: September 30, 2007.*

*TA–W–64,149; Sanmina-SCI Corporation, New Product Introduction Div, Adecco & Spherion, Pleasant Prairie, WI: October 1, 2007.*

*TA–W–64,176; Leggett and Platt, Cerritos, CA: October 6, 2007.*

*TA–W–64,189; Dura Automotive, Lawrenceburg, TN: September 16, 2007.*

*TA–W–64,234; Lumax Industries, Inc., Altoona, PA: October 15, 2007.*

*TA–W–63,941; General Motors Corporation, Vehicle Mfg. Div., Doraville Assembly, Allegis Staff, Doraville, GA: August 26, 2007.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–63,988; Porter Engineered Systems, Inc., Westfield, IN: September 3, 2007.*

*TA–W–64,051; Pacific Consolidated Industries, Fabrication Department, Riverside, CA: September 3, 2007.*

*TA–W–64,119; Tex Tech, Inc., Brattleboro, VT: September 26, 2007.*

*TA–W–64,139; Filtrona Greensboro, Inc., Greensboro, NC: September 29, 2007.*

*TA–W–64,150; Andritz, Inc., PS and Manufacturing Divisions, Muncy, PA: October 1, 2007.*

*TA–W–64,187; Coupled Products LLC (Formerly known as Dana Corporation), Columbia City, IN: October 7, 2007.*

*TA–W–64,237; Cone Denim White Oak Plant, Greensboro, NC: March 4, 2008.*

*TA–W–64,243; Clear Plas LLC, Formerly C-Plastics Corp, Leominster, MA: October 13, 2007.*

*TA–W–64,256; STMicroelectronics, Phoenix, AZ: October 17, 2007.*

*TA–W–64,301; Window Fashions, Inc., National Heights, PA: October 22, 2007.*

*TA–W–63,931; Melco Engraving, Rochester Hills, MI: August 21, 2007.*

*TA–W–64,103; Entegris, Inc., San Diego, CA: September 18, 2007.*

*TA–W–64,114; Advanced Energy Industries, Inc., Adecco, Volt and ResourceMFG, Fort Collins, CO: September 24, 2007.*

*TA–W–64,132; JDS Uniphase, Job Store Staffing, Louisville, CO: September 26, 2007.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–63,982A; Jamestown Moraine, Inc., Moraine, OH: September 2, 2007.*

*TA–W–63,982; Moraine Sequencing Center, Inc., Moraine, OH: September 2, 2007.*

*TA–W–63,993; Stanley Fastening Systems, L.P., aka Stanley-Bostitch /Div. of the Stanley Works, Inc., Clinton, CT: September 15, 2008.*

*TA–W–64,046; Guilford Performance Textiles, Kenansville, NC: September 4, 2007.*

*TA–W–64,058; Meridian Automotive Systems, Ionia, MI: September 8, 2007.*

*TA–W–64,060; Ai-Shreveport LLC, Shreveport, LA: August 29, 2007.*

*TA–W–64,090; Yuhshin USA Limited dba Ortech, DBA Ortech, Kirksville, MO: September 16, 2008.*

*TA–W–64,222; TRW Automotive U.S. LLC, Global Electronics Div., Volt & Manpower, Marshall, IL: October 13, 2007.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*None.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

*None.*

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*TA–W–63,919; Varian, Inc., Liquid Chromatography & Gas, Walnut Creek, CA.*

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

*None.*

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

*None.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–63,995; Wyeth, Biotech Division, Andover, MA.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–63,820; Blue Water Automotive Systems, Inc., Caro, MI.*

*TA–W–64,142; St. Lawrence Zinc Company, LLC, Governeur, NY.*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–63,438; GMAC Insurance Management Corporation, Information Technology Group, Maryland Heights, MO.*

*TA–W–64,110; UAW, Local #110, Fenton, MO.*

*TA–W–64,228; Miami Strategic Repair Center, Subsidiary of Rockwell Collins, Inc, Miami, FL.*

*TA–W–64,262; Classic Components Corporation, Torrence, CA.*

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

*None.*

I hereby certify that the aforementioned determinations were issued during the period of October 27 through October 31, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: November 5, 2008.

**Erin Fitzgerald,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E8–26892 Filed 11–12–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,910]**

### Magna Services of America, Inc. Magna Aftermarket, Inc. A Subsidiary of Magna International Greenville, MI; Notice of Revised Determination on Reconsideration

On October 10, 2008, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on October 22, 2008 (73 FR 63021).

The previous investigation initiated on August 20, 2008, resulted in a negative determination issued on September 3, 2008, was based on the finding that imports of outdoor home speakers and lights did not contribute importantly to worker separations at the subject firm and no shift in production to a foreign source occurred. The denial notice was published in the **Federal Register** on September 18, 2008 (73 FR 54174).

In the request for reconsideration, the petitioner provided additional information regarding imports of outdoor home speakers and lights and also requested the Department of Labor conduct further analysis of imports of outdoor home speakers and lights.

The Department reviewed a major customer's survey response conducted during the initial investigation. On further analysis, and contact with the customer it has been determined that the customer increased imports of outdoor home speakers and lights while decreasing their purchases from the subject firm during January through July 2008 over the corresponding 2007 period.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

### Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Magna Services of America, Inc., Magna Aftermarket, Inc., a subsidiary of Magna International, Greenville, Michigan, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Magna Services of America, Inc., Magna Aftermarket, Inc., a subsidiary of Magna International, Greenville, Michigan, who became totally or partially separated from employment on or after August 18, 2007, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC this 5th day of November 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E8–26891 Filed 11–12–08; 8:45 am]

**BILLING CODE 4510–FN–P**

## MARINE MAMMAL COMMISSION

### Sunshine Act Notice

**TIME AND DATE:** The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet on Tuesday, 9 December 2008, from 8:30 a.m. to 5:45 p.m.; Wednesday, 10 December 2008, from 8:30 a.m. to 5 p.m.; and Thursday, 11 December 2008, from 8:30 a.m. to 12:30 p.m. The Commission and the Committee will meet in executive session on Thursday, 11 December 2008, from 2:15 p.m. to 4 p.m.

**PLACE:** Caribe Hilton Hotel, Los Rosales Street, San Geronimo Grounds, San Juan, Puerto Rico 00901; telephone: 787–721–0303; fax: 787–722–2910.

**STATUS:** The executive session will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and applicable regulations. The session will be for internal discussions of process, personnel, and the budget of the Commission. All other portions of the meeting will be open to the public. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

**MATTERS TO BE CONSIDERED:** The Commission and Committee will meet in public session to discuss a broad range of marine ecosystem and marine mammal matters with a focus on the wider Caribbean area and the Gulf of Mexico. Although subject to change, major issues that the Commission plans to consider at the meeting include the Marine Mammal Action Plan for the Caribbean region, risk factors and management and research needs for marine mammals in both the Caribbean and the Gulf of Mexico, and the role of the Marine Mammal Commission in international research and management efforts.

**CONTACT PERSON FOR MORE INFORMATION:** Timothy J. Ragen, Ph.D., Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814, 301–504–0087; e-mail: *tragen@mmc.gov.*

Dated: November 6, 2008.

**Timothy J. Ragen,**

*Executive Director.*

[FR Doc. E8–26878 Filed 11–10–08; 11:15 am]

**BILLING CODE 6820–31–M**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Information Security Oversight Office

### Public Interest Declassification Board (PIDB); Notice of Meeting

Pursuant to Section 1102 of the Intelligence Reform and Terrorism Prevention Act of 2004 which extended and modified the Public Interest Declassification Board (PIDB) as established by the Public Interest Declassification Act of 2000 (Pub. L. 106–567, title VII, December 27, 2000, 114 Stat. 2856), announcement is made for the following committee meeting:

*Name of Committee:* Public Interest Declassification Board (PIDB).

*Date of Meeting:* Friday, November 21, 2008.

*Time of Meeting:* 9:30 a.m. to 11:30 a.m.

*Place of Meeting:* National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 105, Washington, DC 20408.

*Purpose:* To discuss the declassification, archival processing, and release of the 9/11 Commission records, the National Declassification Initiative, and the Electronic Records Archive (ERA).

This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Wednesday, November 19, 2008. ISOO will provide additional instructions for gaining access to the location of the meeting.

*For Further Information Contact:* A.J. Lutz, PIDB Staff, Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408, telephone number (202) 357–5017.

Dated: November 7, 2008.

**William J. Bosanko,**

*Director, Information Security Oversight Office.*

[FR Doc. E8–27009 Filed 11–12–08; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that ten meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

*Learning in the Arts* (application review): December 2–5, 2008 in Room 714. A portion of this meeting, from 2:45 p.m. to 3:45 p.m. on December 4th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on December 2nd, 9 a.m. to 6 p.m. on December 3rd, 9 a.m. to 2:45 p.m. and 3:45 p.m. to 6 p.m. on December 4th, and 9 a.m. to 4:30 p.m. on December 5th, will be closed.

*Folk & Traditional Arts* (application review): December 3–5, 2008 in Room 730. This meeting, from 9 a.m. to 6 p.m. on December 3rd and 4th and 9 a.m. to 5 p.m. on December 5th, will be closed.

*Media Arts/Arts on Radio and Television* (application review): December 4–5, 2008 in Room 716. This meeting, from 9 a.m. to 6 p.m. on December 4th and from 9 a.m. to 4:30 p.m. on December 5th, will be closed.

*Design* (application review): December 8–9, 2008 in Room 714. A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on December 9th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on December 8th and from 9 a.m. to 1:30 p.m. and 2:30 p.m. to 4:30 p.m. on December 9th, will be closed.

*Presenting* (application review): December 9–10, 2008 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on December 9th and 9 a.m. to 4:30 p.m. on December 10th, will be closed.

*Dance* (application review): December 10–12, 2008 in Room 714. This meeting, from 9 a.m. to 6 p.m. on December 10th and 11th, and from 9 a.m. to 3:30 p.m. on December 12th, will be closed.

*Literature* (application review): December 10–12, 2008 in Room 730. This meeting, from 9 a.m. to 6 p.m. on December 10th and 11th, and from 9 a.m. to 4:30 p.m. on December 12th, will be closed.

*Presenting* (application review): December 11–12, 2008 in Room 716. A portion of this meeting, from 1:15 p.m. to 2:15 p.m. on December 12th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on December 11th and from 9 a.m. to 1:15 p.m. on December 12th, will be closed.

*Museums* (application review): December 16–18, 2008 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on December 16th and 17th and from 9 a.m. to 4:30 p.m. on December 18th, will be closed.

*Theater* (application review): December 16–18, 2008 in Room 714. A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on December 18th, will be open to the public for a policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on December 16th, from 9 a.m. to 6 p.m. on December 17th, and from 9 a.m. to 1:30 p.m. on December 18th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: *November 7, 2008.*

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. E8–26935 Filed 11–12–08; 8:45 am]

BILLING CODE 7537–01–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** The National Endowment for the Humanities.

**ACTION:** Notice of Meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be

obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* December 2, 2008.
*Time:* 9 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for U.S. History and Culture IV in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008 deadline.

2. *Date:* December 2, 2008.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 402.
*Program:* This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities, at the October 8, 2008 deadline.

3. *Date:* December 4, 2008.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 402.
*Program:* This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities, at the October 8, 2008 deadline.

4. *Date:* December 4, 2008.
*Time:* 9 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for Visual Arts in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008 deadline.

5. *Date:* December 5, 2008.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 402.
*Program:* This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities, at the October 8, 2008 deadline.

6. *Date:* December 9, 2008.
*Time:* 9 a.m. to 5 p.m.
*Room:* 415.
*Program:* This meeting will review applications for World Studies II in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008 deadline.

7. *Date:* December 11, 2008.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 402.
*Program:* This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities, at the October 8, 2008 deadline.

8. *Date:* December 12, 2008.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 402
*Program:* This meeting will review applications for Digital Humanities Start-Up Grants, submitted to the Office of Digital Humanities, at the October 8, 2008 deadline.

9. *Date:* December 15, 2008.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 315.
*Program:* This meeting will review applications for Fellowship Programs at Independent Research Institutions, submitted to the Division of Research Programs, at the August 18, 2008 deadline.

10. *Date:* December 15, 2008.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 995 N, National Science Foundation, 4201 Wilson Blvd. Arlington, Virginia 22230.
*Program:* This meeting will review applications for Documenting Endangered Languages, submitted to the Division of Research Programs, at the September 15, 2008 deadline.

11. *Date:* December 16, 2008
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 995 N, National Science Foundation, 4201 Wilson Blvd. Arlington, Virginia 22230.
*Program:* This meeting will review applications for Documenting Endangered Languages, submitted to the Division of Research Programs, at the September 15, 2008 deadline.

12. *Date:* December 17, 2008.
*Time:* 8:30 a.m. to 5 p.m.
*Room:* 995 N, National Science Foundation, 4201 Wilson Blvd. Arlington, Virginia 22230.
*Program:* This meeting will review applications for Documenting Endangered Languages, submitted to the Division of Research Programs, at the September 15, 2008 deadline.

**Michael P. McDonald,**
*Advisory Committee, Management Officer.*

[FR Doc. E8–26899 Filed 11–12–08; 8:45 am]
BILLING CODE 7536–01–P

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Cyberinfrastructure (25150).

*Date and Time:* December 16, 2008—10 a.m.–5 p.m.; December 17, 2008—8a.m.–12 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Kristen Oberright, Office of the Director, Office of Cyberinfrastructure (OD/OCI), National Science Foundation, 4201 Wilson Blvd., Suite 1145, Arlington, VA 22230, Telephone: 703–292–8970.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs and activities on the CI community. To provide advice to the Director/NSF on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

*Agenda:* Report from the Director. Discussion of CI research initiatives, education, diversity, workforce issues in CI and long-range funding outlook.

Dated: November 7, 2008.

**Susanne Bolton,**
*Committee Management Officer.*

[FR Doc. E8–26903 Filed 11–12–08; 8:45 am]
BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 04000341]**

## Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Source Materials License No. Stc-133 Authorizing the Use of Site-Specific Derived Concentration Guideline Levels When Determining if Unrestricted Release Criteria Has Been Met for the Defense Logistics Agency, Defense Nuclear Supply Center Depot in New Haven, IN

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

**FOR FURTHER INFORMATION CONTACT:** Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5269 or by e-mail: *dennis.lawyer@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Source Materials License No. STC–133. This license is held by Defense Logistics Agency (DLA or the Licensee) at multiple sites. The site at issue is its Defense National Stockpile Center located at U.S. Highway 469, in New Haven, Indiana (the Facility). Issuance of the amendment would authorize the licensee to use site-specific Derived Concentration Guideline Levels (DCGLs) in a survey of the Facility to determine if the Facility can be released for unrestricted use under the criteria in 10 CFR 20.1402. The Licensee requested this action in a letter dated February 27, 2008. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

### II. Environmental Assessment

*Identification of Proposed Action*

The proposed action would approve the Licensee's February 27, 2008, license amendment request to use site-specific DCGLs as part of a later request (not yet submitted) to release the Facility for unrestricted use under the criteria in 10 CFR 20.1402. License No. STC–133 was issued on July 23, 1983, pursuant to 10 CFR Part 40, and has been amended periodically since that time. This license authorized the Licensee to use unsealed source material for purposes of storage, sampling, repackaging, and transfer.

Based on the approved DCGLs, the Licensee will conduct surveys of the Facility and provide information to the NRC to demonstrate that the Facility meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

*Need for the Proposed Action*

The Licensee has ceased conducting licensed activities at the Facility, and seeks the approval of site-specific DCGLs. The licensee needs these site specific DCGL values for determining if the Facility meets the criteria for unrestricted use. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a timely decision on a proposed license amendment that ensures protection of public health and safety and the environment.

*Environmental Impacts of the Proposed Action*

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: natural uranium and thorium mixtures.

An amendment specifying the site specific DCGLs is required before the Licensee can use such DCGL values to later demonstrate compliance with unrestricted release criteria. The Licensee conducted site-specific dose modeling using input parameters specific to the Facility and a conservative assumption that all residual radioactivity is in equilibrium. The Licensee has selected a resident farmer to be a reasonable conservative scenario to bound the doses to future individuals. The Licensee utilized the RESRAD Version 6.3 computer code to calculate the resulting dose. The Licensee modified a number of parameters based on site-specific information and provided documentation of the hierarchy of informational sources used to derive data values consistent with the site-specific information from general literature values. The Licensee's report provides justification for the selection of each of its parameters. The NRC has reviewed the Licensee's methodology and proposed DCGLs and finds that the proposed DCGLs are acceptable for use at the Facility.

Based on its review, the staff has concluded that the proposed action will not have a significant effect on the quality of the human environment.

*Environmental Impacts of the Alternatives to the Proposed Action*

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. Denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative are therefore similar, and the no-action alternative is accordingly not further considered.

*Conclusion*

The NRC staff has concluded that the site specific DCGLs identified by the Licensee are acceptable for use at its Facility. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

*Agencies and Persons Consulted*

NRC provided a draft of this Environmental Assessment to the State of Indiana's Department of Health for review on October 2, 2008. On October 16, 2008, the State of Indiana's Department of Health responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

### III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental

impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

**IV. Further Information**

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. Defense Logistics Agency letter dated February 27, 2008 (ML080860268);
5. Site-Specific Derived Concentration Guideline Levels for Soils, Defense National Stockpile Center, New Haven Depot, New Haven, Indiana (ML082630683); and
6. Appendix A & B for Site-Specific Derived Concentration Guideline Levels for Soils, Defense National Stockpile Center, New Haven Depot, New Haven, Indiana (ML082390288).

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia. PA this 4th day of November 2008.

For the Nuclear Regulatory Commission.

**James P. Dwyer,**

*Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E8–26982 Filed 11–12–08; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### PPL BELL Bend, LLC; Notice of Receipt and Availability of Application for a Combined License

On October 10, 2008, PPL Bell Bend LLC (PPL) filed with the Nuclear Regulatory Commission (NRC, the Commission) pursuant to Section 103 of the Atomic Energy Act and Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' an application for a combined license (COL) for an evolutionary power reactor (US EPR) nuclear power plant at their Berwick site (adjacent to the Susquehanna Steam Electric Station) in Luzerne County, Pennsylvania. The reactor is to be identified as the Bell Bend Nuclear Power Plant.

An applicant may seek a COL in accordance with Subpart C of 10 CFR Part 52. The information submitted by the applicant includes certain administrative information such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79.

Subsequent **Federal Register** notices will address the acceptability of the tendered COL application for docketing and provisions for participation of the public in the COL review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.*

The accession number for the application letter is ML082880580. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.* The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html.*

Dated at Rockville, Maryland, this 24th day of October 2008.

For the Nuclear Regulatory Commission.

**Michael A. Canova,**

*Project Manager, U.S. EPR Projects Branch, Division of New Reactor Licensing, Office of New Reactors.*

[FR Doc. E8–26980 Filed 11–12–08; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. WTO/DS379]**

### WTO Dispute Settlement Proceeding Regarding United States—Definitive Anti-Dumping and Countervailing Duties on Certain Products From China

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (''USTR'') is providing notice that on September 19, 2008, the People's Republic of China (''China'') requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning final anti-dumping and countervailing duty determinations and orders by the Department of Commerce on imports of the following products from China: Circular Welded Carbon Quality Steel Pipe (Investigations A–570–910 and C–570–911); Certain New Pneumatic Off-the-Road Tires (Investigations A–570–912 and C–570–913); Light-Walled Rectangular Pipe and Tube (Investigations A–570–914 and C–570–915); and Laminated Woven Sacks (Investigations A–570–916 and C–570–917). That request may be found at *www.wto.org* contained in a document designated as WT/DS379/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before December 12, 2008 to be assured of timely consideration by USTR.

**ADDRESSES:** Comments should be submitted (i) electronically to *www.regulations.gov,* docket number USTR–2008–0035, or (ii) by fax, to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Arun Venkataraman, Associate General Counsel, Office of the United States

Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–5694.

**SUPPLEMENTARY INFORMATION:** USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

**Major Issues Raised by China**

On September 19, 2008, China requested consultations regarding the Department of Commerce's final antidumping and countervailing duty determinations and orders regarding the following products from China: Circular Welded Carbon Quality Steel Pipe (Investigations A–570–910 and C–570–911); Certain New Pneumatic Off-the-Road Tires (Investigations A–570–912 and C–570–913); Light-Walled Rectangular Pipe and Tube (Investigations A–570–914 and C–570–915); and Laminated Woven Sacks (Investigations A–570–916 and C–570–917). These final determinations and orders are available at the following Web pages of the Department of Commerce: *http://ia.ita.doc.gov/frn/0806frn/index.html#CHINA, http://ia.ita.doc.gov/frn/0807frn/index.html#CHINA, http://ia.ita.doc.gov/–frn/0808frn/index.html#CHINA, http://ia.ita.doc.gov/frn/0809frn/index.html#CHINA.*

With respect to certain of the aforementioned determinations, China alleges that the Department of Commerce acted inconsistently with particular provisions of the *General Agreement on Tariffs and Trade 1994,* WTO Agreement on Anti-Dumping (''Anti-Dumping Agreement''), and *Agreement on Subsidies and Countervailing Measures* (''SCM Agreement'') when it (i) erroneously concluded that certain State-owned enterprises are ''public bodies,'' (ii) failed to determine whether such enterprises had been ''entrusted or directed'' to provide a ''financial contribution,'' (iii) erroneously concluded that a ''benefit'' had been conferred, and (iv) failed to demonstrate ''specificity.'' China also alleges that the United States acted inconsistently with particular provisions of the Anti-Dumping Agreement and SCM Agreement in connection with the Department of Commerce's use of a non-market economy (NME) methodology for the purpose of determining the existence and amount of alleged dumping under Article VI of the GATT 1994 and the AD Agreement, simultaneously with the determination of subsidization and imposition of countervailing duties on the same subject merchandise. Finally, China alleges actions inconsistent with the Anti-Dumping Agreement and the SCM Agreement in connection with the Department of Commerce's conduct of the underlying anti-dumping and countervailing duty investigations, including its failure to inform interested parties of certain issues and the use of adverse inferences and facts available.

**Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments either (i) electronically to *www.regulations.gov,* docket number USTR–2008–0035, or (ii) by fax, to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to *www.regulations.gov.*

To submit comments via *www.regulations.gov,* enter docket number USTR–2008–0035 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''General Comments'' field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''*See* attached'' in the ''General Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding, accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments may be viewed on the *www.regulations.gov* Web site by entering docket number USTR–2008–0035 in the search field on the home page.

**Daniel Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

[FR Doc. E8–26978 Filed 11–12–08; 8:45 am]

BILLING CODE 3190–W9–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 17f–1; SEC File No. 270–236; OMB Control No. 3235–0222.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–1 (17 CFR 270.17f–1) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a) is entitled: ''Custody of Securities with Members of National Securities Exchanges.'' Rule 17f–1 provides that any registered management investment company (''fund'') that wishes to place its assets in the custody of a national securities exchange member may do so only under a written contract that must be ratified initially and approved annually by a majority of the fund's board of directors. The written contract also must contain certain specified provisions. In addition, the rule requires an independent public accountant to examine the fund's assets in the custody of the exchange member at least three times during the fund's fiscal year. The rule requires the written contract and the certificate of each examination to be transmitted to the Commission. The purpose of the rule is to ensure the safekeeping of fund assets.

Commission staff estimates that each fund makes 1 response and spends an average of 3.5 hours annually in complying with the rule's requirements. Commission staff estimates that on an annual basis it takes: (i) 0.5 hours for the board of directors [1] to review and ratify the custodial contracts; and (ii) 3 hours for the fund's controller to assist the fund's independent public auditors in verifying the fund's assets. Approximately 5 funds rely on the rule annually, with a total of 5 responses.[2] Thus, the total annual hour burden for rule 17f–1 is approximately 17.5 hours.[3]

Funds that rely on rule 17f–1 generally use outside counsel to prepare the custodial contract for the board's review and to transmit the contract to the Commission. Commission staff estimates the cost of outside counsel to perform these tasks for a fund each year is $800.[4] Funds also must have an independent public accountant verify the fund's assets three times each year and prepare the certificate of examination. Commission staff estimates the annual cost for an independent public accountant to perform this service is $4000.[5] Therefore, the total annual cost burden for a fund that relies on rule 17f–1 would be approximately $4800.[6] As noted above, the staff estimates that 5 funds rely on rule 17f–1 each year, for an estimated total annualized cost burden of $24,000.[7]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by rule 17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The Commission requests written comments on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: November 5, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–26955 Filed 11–12–08; 8:45 am]

**BILLING CODE 8011–01–P**

[1] Estimates of the number of hours are based on conversations with representatives of mutual funds that comply with the rule. The actual number of hours may vary significantly depending on individual fund assets. The hour burden for rule 17f–1 does not include preparing the custody contract because that would be part of customary and usual business practice.

[2] Based on a review of Form N–17f–1 filings in 2006 and 2007, the Commission staff estimates that an average of 5 funds rely on rule 17f–1 each year.

[3] This estimate is based on the following calculation: (5 respondents x 3.5 hours = 17.5 hours. The annual burden for rule 17f–1 does not include time spent preparing Form N–17f–1. The burden for Form N–17f–1 is included in a separate collection of information.

[4] This estimate is based on the following calculation: (2 hours of outside counsel time x $400 = $800). The staff has estimated the average cost of outside counsel at $400 per hour, based on information received from funds, fund intermediaries, and their counsel.

[5] This estimate is based on information received from fund representatives estimating the aggregate annual cost of an independent public accountant's periodic verification of assets and preparation of the certificate of examination.

[6] This estimate is based on the following calculation: ($800 + $4000 = $4800).

[7] This estimate is based on the following calculation: (5 funds × $4800 = $24,000).

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 11a–3; SEC File No. 270–321; OMB Control No. 3235–0358.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 11(a) of the Investment Company Act of 1940 (''Act'') (15 U.S.C. 80a–11(a)) provides that it is unlawful for a registered open-end investment company (''fund'') or its underwriter to make an offer to the fund's shareholders or the shareholders of any other fund to exchange the fund's securities for securities of the same or another fund on any basis other than the relative net asset values (''NAVs'') of the respective securities to be exchanged, ''unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the

Commission may have prescribed in respect of such offers.'' Section 11(a) was designed to prevent ''switching,'' the practice of inducing shareholders of one fund to exchange their shares for the shares of another fund for the purpose of exacting additional sales charges.

Rule 11a–3 (17 CFR 270.11a–3) under the Act is an exemptive rule that permits open-end investment companies (''funds''), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund's shareholders a sixty-day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

The staff estimates that there are approximately 1958 active open-end investment companies registered with the Commission as of September 2008. The staff estimates that 25 percent (or 490) of these funds impose a non-nominal administrative fee on exchange transactions. The staff estimates that the recordkeeping requirement of the rule requires approximately 1 hour annually of clerical time per fund, for a total of 490 hours for all funds.[1]

The staff estimates that 5 percent of these 1958 funds (or 98) terminate an exchange offer or make a material change to the terms of their exchange offer each year, requiring the fund to comply with the notice requirement of the rule. The staff estimates that complying with the notice requirement of the rule requires approximately 1 hour of attorney time and 2 hours of clerical time per fund, for a total of approximately 294 hours for all funds to comply with the notice requirement.[2] The recordkeeping and notice requirements together therefore impose a total burden of 784 hours on all funds.[3] The total number of respondents is 588, each responding once a year.[4] The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden(s) of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: November 5, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–26956 Filed 11–12–08; 8:45 am]

BILLING CODE 8011–01–P

[1] This estimate is based on the following calculations: (1958 funds × 0.25% = 490 funds); (490 × 1 (clerical hour) = 490 clerical hours).

[2] This estimate is based on the following calculations: (1958 (funds) × 0.05% = 98 funds); (98 × 1 (attorney hour) = 98 total attorney hours); (98 (funds) × 2 (clerical hours) = 196 total clerical hours); (98 (attorney hours) + 196 (clerical hours) = 294 total hours).

[3] This estimate is based on the following calculations: (294 (notice hours) + 490 (recordkeeping hours) = 784 total hours).

[4] This estimate is based on the following calculation: (490 funds responding to recordkeeping requirement + 98 funds responding to notice requirement = 588 total respondents).

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*
Form N–17f–1, SEC File No. 270–316, OMB Control No. 3235–0359.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form N–17f–1 (17 CFR 274.219) is entitled ''Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges.'' The form serves as a cover sheet to the accountant's certificate that is required to be filed periodically with the Commission pursuant to rule 17f–1 (17 CFR 270.17f–1) under the Act, entitled ''Custody of Securities with Members of National Securities Exchanges,'' which sets forth the conditions under which a fund may place its assets in the custody of a member of a national securities exchange. Rule 17f–1 requires, among other things, that an independent public accountant verify the fund's assets at the end of every annual and semi-annual fiscal period, and at least one other time during the fiscal year as chosen by the independent accountant. Requiring an independent accountant to examine the fund's assets in the custody of a member of a national securities exchange assists Commission staff in its inspection program and helps to ensure that the fund assets are subject to proper auditing procedures. The accountant's certificate stating that it has made an examination, and describing the nature and the extent of the examination, must be attached to Form N–17f–1 and filed with the Commission promptly after each examination. The form facilitates the filing of the accountant's certificates,

and increases the accessibility of the certificates to both Commission staff and interested investors. Commission staff estimates that on an annual basis it takes: (i) 1 hour of clerical time to prepare and file Form N–17f–1; and (ii) 0.5 hour for the fund's chief compliance officer to review Form N–17f–1 prior to filing with the Commission, for a total of 1.5 hours. Each fund is required to make 3 filings annually, for a total annual burden per fund of approximately 4.5 hours.[1] Commission staff estimates that an average of 5 funds currently file Form N–17f–1 with the Commission 3 times each year, for a total of 15 responses annually.[2] The total annual hour burden for Form N–17f–1 is therefore estimated to be approximately 22.5 hours.[3]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Compliance with the collections of information required by Form N–17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

The Commission requests written comments on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: November 5, 2008.

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–26958 Filed 11–12–08; 8:45 am]

**BILLING CODE 8011–01–P**

[1] This estimate is based on the following calculation: (1.5 hours × 3 responses annually = 4.5 hours).

[2] This estimate is based on a review of Form N–17f–1 filings made with the Commission over the last three years.

[3] This estimate is based on the following calculations: (4.5 hours × 5 funds = 22.5 total hours).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58904; File No. 4–533]**

## Joint Industry Plan; Order Approving the National Market System Plan for the Selection and Reservation of Securities Symbols Submitted by the Chicago Stock Exchange, Inc., The Nasdaq Stock Market, Inc., National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.), National Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc.

November 6, 2008.

### I. Introduction

On July 17, 2007, the Commission published for comment [1] a detailed summary of two proposed plans for the purpose of the selection and reservation of securities symbols: the Five-Characters Plan and the Three-Characters Plan. On January 25, 2008, the Commission published Amendment No. 1 to the Three-Characters Plan for public comment.[2] The proposed plans were filed jointly by two different groups of self-regulatory organizations (''SROs'') pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 (''Act'') (''Rule 608'').[3] The Chicago Stock Exchange, Inc. (''CHX''), The Nasdaq Stock Market, Inc. (''Nasdaq''), National Association of Securities Dealers, Inc. (''NASD'') (n/k/a Financial Industry Regulatory Authority, Inc. (''FINRA'')),[4] National Stock Exchange, Inc. (''NSX''), and Philadelphia Stock Exchange, Inc. (''Phlx'') filed the Five-Characters Plan.[5] The American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, LLC (''ISE''), the New York Stock Exchange LLC (''NYSE''), and NYSE Arca, Inc. (''NYSE Arca'') filed the Three-Characters Plan.[6]

Although the two plans are identical in many respects, they differ on several significant matters. The primary difference between the two plans is their scope. The Three-Characters Plan would only cover one-, two-, and three-character symbols; the Five-Characters Plan would cover one-, two-, three-, four-, and five-character symbols. In addition, the plans differ with regard to the parties that are eligible to join the plan; the reservation rights for perpetual and limited-time reservations; the portability of symbols for issuers that move their listing from one market to another; the allocation of costs relating to the plan; and the process of withdrawing from the plan.

The Commission received 61 comments on the proposed plans from 56 commenters.[7] Twenty-two

[1] *See* Securities Exchange Act Release No. 56037 (July 10, 2007), 72 FR 39096 (File Nos. 4–533 and 4–534) (''Symbology Notice''). The full text of each plan is also available to interested persons on the Commission's Web site at *http://www.sec.gov/rules/sro/nms.shtml#4-534* and *http://www.sec.gov/rules/sro/nms.shtml#4-533*, respectively.

[2] *See* Securities Exchange Act Release No. 57171 (January 18, 2008), 73 FR 4645.

[3] 17 CFR 242.608.

[4] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR–NASD–2007–053).

[5] FINRA, Nasdaq, NSX, and Phlx filed the Five-Characters Plan with the Commission on March 23, 2007. CHX, FINRA, Nasdaq, NSX, and Phlx filed a Supplement to this proposed plan on April 23, 2007. In the Supplement, CHX joined as a party proposing the Five-Characters Plan.

[6] On March 23, 2007, Amex, NYSE and NYSE Arca filed the Three-Characters Plan with the Commission. In Amendment No. 1 to the Three-Characters Plan, filed on August 3, 2007, CBOE and ISE joined as parties to the proposed plan.

[7] Letters to the Commission from Edward F. Tancer, Vice President & General Counsel, FPL Group, Inc., dated March 28, 2007 (''FPL Letter''); Jason Korstange, SVP, Director of Corporate Communications, TCF Financial Corporation, dated March 28, 2007 (''TCF Letter''); Timothy J. O'Donovan, Chairman of the Board, Chief Executive Officer, Wolverine World Wide, Inc., dated March 28, 2007 (''Wolverine Letter''); Leo Liebowitz, Chairman and Chief Executive Officer, Getty Realty Corp., dated March 29, 2007 (''Getty Letter''); Edward W. Moore, Vice President, General Counsel & Secretary, RPM International Inc., dated March 29, 2007 (''RPM Letter''); Cathy Burzik, President and Chief Executive Officer, Kinetic Concepts, Inc., dated March 30, 2007 (''KCI Letter''); Clifton H. Morris, Jr., Chairman, AmeriCredit Corp., dated April 2, 2007 (''AmeriCredit Letter''); David M. Brain, President and CEO, Entertainment Properties Trust, dated April 3, 2007 (''Entertainment Properties Letter''); Steven S. Fishman, Chairman, Chief Executive Officer and President, Big Lots, Inc., dated April 4, 2007 (''Big Lots Letter''); Mary J. McGinn, Secretary and Deputy General Counsel, The Allstate Corporation, dated April 5, 2007 (''Allstate Letter''); Eric W. Nodiff, Sr. V.P. and General Counsel, Cantel Medical Corp., dated April 9, 2007 (''Cantel Letter''); James C. Smith, Chairman and CEO, Webster Financial Corporation, dated April 16, 2007 (''Webster Letter''); Michael Tenenbaum, PE, Trustee, Strategic Technologies Employees Pension Fund Trust, dated May 2, 2007 (''Strategic Technologies Letter''); Craig D. Mallick, Corporate Secretary, United States Steel

commenters generally supported the Three-Characters Plan or aspects thereof,[8] while 22 commenters generally supported the Five-Characters Plan or aspects thereof.[9] The remaining 12 commenters did not expressly support one plan or another.[10]

This order approves the Five-Characters Plan, with changes and subject to conditions as the Commission deems necessary or appropriate, thus authorizing CHX, FINRA, Nasdaq, NSX, and Phlx to act jointly to implement the Five-Characters Plan, as modified herein, as a means of facilitating a national market system in accordance with the requirements of Section 11A of the Act.[11] This order also requires, within 60 days of this approval order, that any SRO that chooses to list securities or to designate securities for quoting on a quotation medium to join the Five-Characters Plan, as modified herein, and to act jointly with CHX, FINRA, Nasdaq, NSX, and Phlx to implement the approved plan.[12] The approved Five-Characters Plan is attached here as *Appendix A.*

## II. Background

### *A. Section 11A of the Act*

In 1975, Congress directed the Commission, through the enactment of Section 11A of the Act,[13] to facilitate the establishment of a national market system to link together the individual markets that trade securities. Congress found the development of a national market system to be in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among the exchange markets.[14] Section 11A(a)(3)(B) of the Act directs the Commission, ''by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities.'' [15] The Commission's approval of a national market system plan is conditioned upon a finding that the proposed plan is ''necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [16]

### *B. Limited Symbol Supply*

Pursuant to Rule 601 of Regulation NMS under the Act,[17] all SROs are required to report every trade in listed equity securities [18] and Nasdaq securities [19] made through their facilities, and to make such information public. Each SRO reports every transaction to the ticker tape using the ticker symbol for that security, the volume of the trade, and the price of the trade. Currently, there are three ticker tapes: Tape A reports the stocks that are listed on NYSE, Tape B reports the

Corporation, dated May 4, 2007 (''U.S. Steel Letter''); Bart J. Ward, Chief Executive Officer, Ward & Company, dated May 8, 2007 (''Ward Letter''); Jack Sennott, Senior Vice President and Chief Financial Officer, Darwin Professional Underwriters, Inc., dated May 8, 2007 (''Darwin Letter''); James J. Angel, Ph.D., CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated May 9, 2007 (''Angel Letter I''); M. Farooq Kathwari, Chairman, President and CEO, Ethan Allen Interiors, Inc., dated May 9, 2007 (''Ethan Allen Letter''); Carol Kaufman, Sr. VP Legal Affairs, The Cooper Companies, Inc., dated May 14, 2007 (''Cooper Letter''); Jack R. Hartung, Chief Finance and Development Officer, Chipotle Mexican Grill, Inc., dated May 15, 2007 (''Chipotle Letter''); Larry A. Mizel, Chairman of the Board and Chief Executive Officer, M.D.C. Holdings, Inc., dated May 17, 2007 (''MDC Letter''); Will Matthews, dated May 21, 2007 (''Matthews Letter''); Stephen M. Klein, J.D., Chairman and Chief Executive Officer, Omni National Bank, dated May 21, 2007 (''Omni Letter''); Edward J. Resch, Executive Vice President, Chief Financial Officer and Treasurer, State Street Corporation, dated May 21, 2007 (''State Street Letter''); Faith Pomeroy-Ward, Manager, Investor Relations, Adams Respiratory Therapeutics, dated May 22, 2007 (''Adams Letter''); Shayn Carlson, Director of Investor Relations, G&K Services, dated May 22, 2007 (''G&K Letter''); Alan R. Spachman, dated May 22, 2007 (''Spachman Letter''); Mark L. Heimbouch, Chief Financial Officer and EVP, Jackson Hewitt Tax Service Inc., dated July 10, 2007 (''Jackson Hewitt Letter''); Daniel R. Coker, President & CEO, Amerigon Incorporated, dated July 31, 2007 (''Amerigon Letter''); Betsy Atkins, dated August 2, 2007 (''Atkins Letter''); Eric A. Blanchard, Senior Vice President, General Counsel and Secretary, United Stationers Supply Company, dated August 3, 2007 (''United Stationers Letter''); Albert A. Pimentel, Executive Vice President and Chief Financial Officer, Glu Mobile Inc., dated August 3, 2007 (''Glu Letter''); Ryan Ellis, Executive Director, American Shareholders Association, dated August 3, 2007 (''ASA Letter''); Rick Stewart, CEO, Amarin Corporation plc, dated August 9, 2007 (''Amarin Letter''); Steve Bene, Senior Vice President and General Counsel, Electronic Arts Inc., dated August 9, 2007 (''Electronic Arts Letter''); Bing Yeh, President & CEO, Silicon Storage Technology, Inc., dated August 10, 2007 (''Silicon Storage Letter''); Kathy Lanterman, Senior Vice President and Chief Financial Officer, Silicon Graphics, Inc., dated August 9, 2007 (''SGI Letter''); Paul Jennings, President and CEO, Innospec Inc., dated August 10, 2007 (''Innospec Letter''); Harry W. Kellogg, Jr., Vice Chairman, SVB Financial Group, dated August 10, 2007 (''SVB Letter''); Arlen W. Gelbard, Chief Administrative Officer and General Counsel, E*Trade, dated August 10, 2007 (''E*Trade Letter''); MDS Office, Sobha Developers Ltd, dated August 10, 2007 (''Sobha Letter''); John Ritchie, Chief Financial Officer, Electronics For Imaging, dated August 10, 2007 (''EFI Letter''); Adi Bar-Lev, Director of IR, Top Image Systems Ltd., dated August 13, 2007 (''Top Image Letter''); Lonnie R. Brock, CFO, Double Eagle Petroleum Co., dated August 13, 2007 (''Double Eagle Letter''); Joe Ovsenek, Senior Vice President, Corporate, Silver Standard Resources Inc., dated August 15, 2007 (''Silver Standard Letter''); James J. Angel, Ph.D., CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated August 16, 2007 (''Angel Letter II''); Manisha Kimmel, Executive Director, Financial Information Forum, dated August 23, 2007 (''FIF Letter I''); Patrick J. Healy, Issuer Advisory Group, dated September 6, 2007 (''Issuer Advisory Letter''); S. Lee Clifford, President and CEO, SFB Market Systems, dated September 25, 2007 (''SFB Letter''); Joan C. Conley, Senior Vice President and Corporate Secretary, The NASDAQ Stock Market LLC, dated November 2, 2007 (''Nasdaq Letter I''); Barbara Sweeney, Senior Vice President and Corporate Secretary, The Financial Industry Regulatory Authority, Inc., dated November 27, 2007 (''FINRA Letter''); Mary Yeager, Assistant Secretary, New York Stock Exchange, LLC, dated January 15, 2008 (''NYSE Letter''); James J. Angel, Ph.D., CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated February 13, 2008 (''Angel Letter III''); Manisha Kimmel, Executive Director, Financial Information Forum, dated February 14, 2008 (''FIF Letter II''); Marianne Brown, Chief Executive Officer, Omgeo, LLC, dated February 15, 2008 (''Omgeo Letter''); Joan Conley, Senior Vice President & Corporate Secretary, The NASDAQ Stock Market LLC, dated February 26, 2008 (''Nasdaq Letter II''); John Panchery, Managing Director, Art Trager, Vice President, and Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 28, 2008 (''SIFMA Letter''); Julian Rainero, Partner, Bracewell & Guiliani LLP, dated March 10, 2008 (''Bracewell & Guiliani Letter''); Jamie Shay, Head of SWIFT Standards, Society for Worldwide Interbank Financial Telecommunication, dated March 18, 2008 (''SWIFT Letter''); Scott Atwell, FPL Global Steering Committee Co-Chair, FIX Protocol, dated March 24, 2008 (''FIX Letter''); and Thomas P. Moran, Associate Vice President & Associate General Counsel, Nasdaq, dated March 26, 2008 (''Nasdaq Letter III'').

[8] *See* FPL Letter, TCF Letter, Wolverine Letter, Getty Letter, Kinetic Concepts Letter, AmeriCredit Letter, Entertainment Properties Letter, Big Lots Letter, Allstate Letter, Cantel Letter, Webster Letter, Strategic Technologies Letter, U.S. Steel Letter, Ward Letter, Darwin Letter, Ethan Allen Letter, Cooper Letter, Chipotle Letter, MDC Letter, State Street Letter, Jackson Hewitt Letter, and NYSE Letter.

[9] *See* Matthews Letter, Omni Letter, Adams Letter, G&K Letter, Amerigon Letter, Atkins Letter, United Stationers Letter, Glu Letter, ASA Letter, Amarin Letter, Electronic Arts Letter, Silicon Storage Letter, SGI Letter, Innospec Letter, SVB Letter, E*Trade Letter, Sobha Letter, EFI Letter, Top Image Letter, Double Eagle Letter, Silver Standard Letter, Nasdaq Letter I, and Nasdaq Letter II.

[10] *See* RPM Letter, Angel Letter I, Angel Letter II, Angel Letter III, Spachman Letter, FIF Letter I, FIF Letter II, Issuer Advisory Letter, SFB Letter, FINRA Letter, Omgeo Letter, SIFMA Letter, Bracewell & Guiliani Letter, SWIFT Letter, and FIX Letter.

[11] 15 U.S.C. 78k–1. *See* also 17 CFR 242.608(b)(2).

[12] 15 U.S.C. 78k–1(a)(3)(B).

[13] 15 U.S.C. 78k–1.

[14] 15 U.S.C. 78k–1(a)(1)(C).

[15] 15 U.S.C. 78k–1(a)(3)(B).

[16] 17 CFR 242.608(b)(2). *See* also 15 U.S.C. 78k–1(a).

[17] 17 CFR 242.601.

[18] 17 CFR 242.600(b)(34) defines ''listed equity security'' as ''any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange.''

[19] 17 CFR 242.600(b)(41) defines ''Nasdaq security'' as ''any registered security listed on The Nasdaq Stock Market, Inc.''

stocks that are listed on Amex, as well as securities listed on any other national securities exchange (except securities also listed on NYSE and Nasdaq), and Tape C reports the stocks that are listed on Nasdaq. Tapes A and B disseminate market information pursuant to the Consolidated Tape Association Plan (''CTA Plan''), while Tape C disseminates market information pursuant to the Nasdaq Unlisted Trading Privileges Plan.

Securities symbols are a key element in the operation of a national market system and essential to the dissemination of trade information in a common format. The term ''ticker symbol'' originates from the ticker tape.[20] Prior to the introduction of the ticker, it was customary for messengers to manually disseminate quotations.[21] In 1867, an employee of the NYSE developed the stock ticker.[22] A system of symbols and abbreviations developed as the only practical method for reporting transactions, because the full description of the issuer, security, number of shares sold, the price, and other market data would slow the dissemination of trade information so that the ticker would fall behind the market.[23] In December 1966, the ticker tape was fully automated.[24]

Recently, concerns about the scarcity of available symbols have highlighted the need for a symbol reservation national market system plan to efficiently and fairly manage symbol supply. As the securities markets have grown over the years, the availability of one-, two-, and three-character symbols has diminished.[25] Several factors have been increasing the demand for one-, two-, and three-character symbols. In recent years, exchanges have begun listing new and innovative products, such as exchange-traded funds, that are now competing with listed companies for symbols.

In addition, Nasdaq, which when operated as a facility of NASD (n/k/a FINRA)[26] only listed securities with four- and five-character symbols, has begun using two- and three-character symbols and has expressed its desire to use one-character symbols as well for Nasdaq-listed issuers. It has been the practice of the NYSE to list companies using one-, two-, and three-character symbols and of other exchanges (including Amex and regional exchanges) to list companies using two- and three-character symbols. Until recently, Nasdaq was the only listing market that did not assign securities one-, two-, or three-character symbols; instead, Nasdaq had assigned securities it listed four- and five-character symbols. In November 2005, however, Nasdaq announced its intention to begin listing companies with one-, two-, and three-character symbols.[27] Since that time, Nasdaq has made a series of announcements detailing its plans, and has worked with the industry to test trading systems to ensure the proper functionality for such symbols.[28] In March 2007, Nasdaq filed with the Commission a proposed rule change to allow companies transferring their listings to Nasdaq to retain their three-character symbols.[29] And, in April 2008, Nasdaq filed with the Commission an immediately effective proposed rule change to allow an issuer with a two-character symbol to transfer its listing to Nasdaq and retain its two-character symbol.[30]

Finally, the proliferation of standardized options has decreased the availability of three-character symbols.[31] Developing a formal process to reserve, select, and allocate symbols fairly and efficiently among the listing markets should help promote a fair and orderly national market system and protect investors.

*C. Weaknesses in the Existing Reservation System*

Currently, the listing markets assign securities symbols under an informal understanding among the markets. Under this system, each SRO keeps its own records of reserved symbols. If an SRO wishes to reserve a particular symbol, the SRO will consult its own list of reserved symbols and then, if it believes that the symbol is available, will notify the other SROs that it is reserving that symbol. If no other SRO objects, then the listing SRO has successfully reserved that symbol and each SRO would be responsible for updating its own records of reserved symbols accordingly.

There are several weaknesses in the current informal system. The absence of universal reservation records may lead to confusion about the availability of certain symbols and may result in disputes between listing markets about the availability of particular symbols. Any such confusion or disagreement between the listing markets could disrupt the listing process or raise the potential for symbol duplication and investor confusion.

In addition, under the existing system, listing markets may reserve an excess amount of symbols indefinitely, which could exacerbate the strain on symbol supply. Market fears about supply constraints and competition for listings could drive listing markets to reserve an excess amount of symbols, either to protect their interests in the event of needing such symbols in the future or to give themselves advantages over their competitors in securing future listings. For example, a listing market could use the existing symbol reservation system to withhold unused symbols from their competitors, trade reserved symbols only with certain, allied exchanges, or use their power to

[20] The ticker tape started in 1867, when all trades made on an exchange were sent out by telegraph and printed on a piece of paper. Although the process is now automated, the securities industry participants continue to refer to the electronic reporting of information as the ''tape.'' *See* Hal McIntyre, How the US Securities Industry Works, 194–95 (The Summit Group Press) (2000).

[21] *See* S. S. Huebner, Ph.D., Sc.D., The Stock Market, 218 (Appleton-Century-Crofts, Inc.) (1934).

[22] E.A. Calahan. *See* George L. Leffler, Ph.D., The Stock Market, 162 (The Ronald Press Company) (1951).

[23] *See* note 21 *supra* at 222. The first ticker was very slow and not practical, until Thomas A. Edison, another employee of the NYSE, improved its speed and efficiency. See note 22 *supra* at 162.

[24] *See* Richard J. Teweles and Edward S. Bradley, The Stock Market, 148 (John Wiley & Sons, Inc.) (1998).

[25] There are 26 combinations for one-character symbols, 676 combinations for two-character symbols, and 17,576 combinations for three-character symbols, for a total of 18,278 one-, two-, and three-character symbols.

[26] Nasdaq began operations as a national securities exchange in Nasdaq-listed securities on August 1, 2006, and in non-Nasdaq-listed securities on February 12, 2007. *See http://www.nasdaq.com/about/FAQsExchange.stm. See also* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

[27] *See* Head Trader Alert 2005–133 (November 14, 2005), available at *http://www.nasdaqtrader.com.*

[28] *See e.g.*, Nasdaq Head Trader Alerts 2006–144 (September 29, 2006), 2006–193 (November 16, 2006), 2006–201 (December 6, 2006), and 2007–008 (January 25, 2007), each available at *http://www.nasdaqtrader.com.*

[29] *See* Securities Exchange Act Release No. 55563 (March 30, 2007), 72 FR 16391 (April 4, 2007) (SR–NASDAQ–2007–031) (notice for the proposal to allow three-character symbol portability for companies transferring their listings to Nasdaq). The Commission approved this proposal in July 2007. *See* Securities Exchange Act Release No. 56028 (July 9, 2007), 72 FR 38639 (July 13, 2007) (''Nasdaq Three-Character Portability Order''). *See also* Securities Exchange Act Release No. 55519 (March 26, 2007), 72 FR 15737 (April 2, 2007) (SR–NASDAQ–2007–025) (allowing a single company, Delta Financial Corp., to retain its three-character symbol upon transferring its listing from Amex to Nasdaq).

[30] *See* Securities Exchange Act Release No. 57696 (April 22, 2008), 73 FR 22987 (April 28, 2008) (SR–NASDAQ–2008–034). The Commission notes that its approval of the Five-Characters Plan, as modified herein, is consistent with this change and with its approval of the Nasdaq Three-Character Portability Order. *See id.* As discussed further below, *see infra* notes 105–117 and accompanying text, the approved plan would allow the automatic portability of all one-, two-, three-, four-, and five-character symbols of issuers transferring their listing from one exchange to another.

[31] The options exchanges have expressed their intention to shift to a different symbology. *See http://www.theocc.com/initiatives/symbology/default.jsp.*

withhold desired symbols to compel other listing markets not to trade symbols with their direct competitors.

Finally, the existing system does not universally permit issuers transferring their listing to a new exchange to keep their ticker symbols. Thus, the original listing market and the new listing market for a transferred listing could become embroiled in a dispute over the right to use the issuer's ticker symbol, which could disrupt trading in that security, and such uncertainty could affect an issuer's decision in selecting a listing venue or moving from one venue to another.

Disagreements over the use of securities symbols have arisen in the past. For example, in 1999, NYSE, Amex, and Nasdaq were involved in a dispute regarding the symbol ''Q,'' which Amex and Nasdaq planned to use for the Nasdaq 100 Trust. However, NYSE claimed that it had reserved that symbol and sued to enjoin the use of that symbol. Amex and Nasdaq eventually agreed to use a different symbol for the Nasdaq 100 Trust.[32]

These weaknesses in the existing informal symbol reservation system could potentially have significant market consequences as exchanges compete more aggressively for listings and the supply of available symbols becomes more restricted over time. For this reason, the Commission believes that it is necessary to adopt a national market system plan for reserving and allocating symbols among the SROs to maintain fair and orderly markets. Consistent with the principles of Section 11A of the Act, in February 2005, Commission staff requested the listing markets to commence joint discussions to develop such a national market system plan.[33] A national market system plan for symbology should mitigate confusion or disagreement about the rights to particular securities symbols and should allow symbols to be used in a manner that is efficient and promotes competition between the listing markets.

## III. Discussion

In the notice publishing for comment both the Three-Characters Plan and the Five-Characters Plan, the Commission asked for comments on whether it should approve one or two plans. Four commenters provided feedback on this issue and each supported the approval of a single symbology plan.[34] One of these commenters stated that having two different plans for short and long tickers adds needless complexity to an already complex market structure and that the additional complexity of two plans would create increased costs for SROs as well as additional costs to the Commission to regulate two plans, which would be borne ultimately by taxpayers and investors.[35] The Commission agrees with these commenters that approving two plans for the reservation of symbols would place undue costs and burdens on listing SROs, including new entrants. The Commission also notes that, currently, the proposed plans both establish a process for the selection and reservation of one-, two-, and three-character securities symbols. Therefore, approval of both plans would establish two competing, inconsistent systems for selecting and reserving one-, two-, and three-character symbols, which the Commission believes would not be in furtherance of the purposes of the Act. The Commission finds that approving a single plan, rather than both plans, is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market system and is in furtherance of the purposes of the Act because a single plan would promote the smooth and orderly operation of the marketplace.

After carefully considering the proposed plans and the issues raised by the comment letters, the Commission has determined to approve, pursuant to Section 11A(a)(3)(B) of the Act[36] and Rule 608,[37] the Five-Characters Plan, with changes and subject to conditions set forth herein as the Commission has deemed necessary or appropriate.[38] As discussed in detail below, in approving the Five-Characters Plan, the Commission finds that the Five-Characters Plan is necessary and appropriate in the public interest and in furtherance of the purposes of the Act. The Five-Characters Plan is more comprehensive than the Three-Characters Plan because it covers one-, two-, three-, four-, and five-character symbols. The Commission also believes it would better promote fair competition among exchanges that list securities because it does not constrain the portability of symbols (as the Three-Characters Plan does), but instead makes all symbols automatically portable when a listed issuer transfers its listing to another exchange. This portability would enable issuers to make listing decisions based on factors that relate to the quality of the listing markets such as trading quality, costs, and branding, rather than on considerations of symbol portability. In summary, the Five-Characters Plan provides a system for reserving and allocating securities symbols that should provide clarity and order to the symbol reservation process, mitigate the current constraints on symbol supply, and promote fair competition between the various SROs.

This order authorizes CHX, FINRA, Nasdaq, NSX, and Phlx to act jointly to implement the Five-Characters Plan, as modified herein, as a means of facilitating a national market system in accordance with the requirements of Section 11A of the Act.[39] This order also requires any SRO that chooses to list securities on its market or to designate securities for quoting on a quotation medium to join the Five-Characters Plan and to act jointly with other parties to the plan to implement the approved plan.[40]

In connection with requiring SROs that list, or designate for quoting, securities, the Commission is also modifying the plan to provide that, 90 days from the date of this Order, the Five-Characters Plan shall be the exclusive means of allocating and using symbols of one-, two-, three-, four-, or five-characters in length. In addition, for clarity, the Commission is specifying that there will be no difference between capital letters and lowercase letters,

[32] *See, e.g., Big Board Drops its Lawsuit Against Amex,* The New York Times, March 10, 1999, Section C, p. 10.

[33] *See* Letters from Annette L. Nazareth, then Director of the Division of Market Regulation, Commission, to Amex, Boston Stock Exchange (''BSE''), CBOE, CHX, ISE, Nasdaq, NASD, NSX, NYSE, Pacific Exchange (the predecessor to NYSE Arca) and Phlx, dated February 7, 2005 (''February 2005 Letters'').

[34] *See* FIF Letter I, FIF Letter II at 1, Angel Letter II at 3, Angel Letter III at 1, Omgeo Letter at 1, and SWIFT Letter.

[35] *See* Angel Letter II at 3 and Angel Letter III at 2.

[36] 15 U.S.C. 78k–1(a)(3)(B).

[37] 17 CFR 242.608.

[38] The Commission has modified the proposed Five-Characters Plan to make the following changes: (i) To modify the plan to state that, 90 days following the Commission's approval, it will be the exclusive means of allocating and using symbols of one-, two-, three-, four-, and five-characters in length and to specify that there is no difference between capital and lowercase letters (*see infra* note 41 and accompanying text); (ii) to modify the start date for the initial reservation process from upon Commission approval of the plan to 60 days following the Comission's approval (*see infra* notes 141–143 and 190–191 and accompanying text); (iii) to limit the use of one-, two-, and three-character symbols for securities listed on a national securities exchange and to restrict securities trading over-the-counter to using only four- or five-character symbols (*see infra* notes 85–89 and accompanying text); and (iv) to clarify that securities that de-list and trade on the over-the-counter market would not have portability rights for the original listing symbol (*see infra* notes 168–172 and accompanying text).

[39] 15 U.S.C. 78k–1.

[40] 15 U.S.C. 78k–1(a)(3)(B). The Commission did not receive any comments regarding whether it should require SROs to join an approved plan.

thus limiting the choices of letters to 26. The Commission believes these changes are necessary and appropriate for the dissemination of trade information in a common format.[41]

*A. Five-Characters Plan's Consistency With Section 11A of the Act*

Many of the provisions of the proposed Five-Characters Plan are similar or identical to parallel provisions in the proposed Three-Characters Plan. Particularly, the plans would establish the Intermarket Symbol Reservation Authority (''ISRA'') composed of plan participants and set forth how it would be administered. Both plans also have the same provisions regarding the use of a third-party processor and a symbol reservation database, the general process of reserving perpetual and limited-time reservations, the use of a waiting list, the right to reuse a symbol, the ability to request the release of a symbol, the terms of confidentiality, the non-transferability of rights under the plan, and the process of amending the plan.[42] Despite these significant areas of consensus, however, there are several important differences between the proposed plans.

Many of the commenters that favored the proposed Five-Characters Plan asserted that it would enhance competition among markets by putting all exchanges on a fair and level playing field and would reduce the potential for investor confusion by allowing a fair framework for symbol portability.[43] Several commenters stated that the proposed Five-Characters Plan would give all exchanges equal rights under the proposal.[44] Some of these commenters also stated that the proposed Five-Characters Plan would provide greater choice for public companies and cause less confusion for investors.[45] One commenter asserted that the proposed Five-Characters Plan is inherently more fair and reasonable than the proposed Three-Characters Plan.[46]

The Commission agrees with the commenters supporting the Five-Characters Plan and finds that, as discussed in greater detail below, the Five-Characters Plan, as modified herein, is consistent with Section 11A of the Act, and is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets.

1. Scope of Plan

One primary difference between the two proposed plans relates to scope: the proposed Three-Characters Plan would only cover one-, two-, and three-character symbols; the Five-Characters Plan, on the other hand, would cover the reservation and allocation of all one-, two-, three-, four-, and five-character symbols. Both of the proposed plans would cover only root symbols, without any suffix or special conditional identifier.[47]

The Commission believes that the Five-Characters Plan, which would establish a uniform system for the selection and reservation of symbols (''Symbol Reservation System'') of one-, two-, three-, four-, or five-character securities symbols,[48] is more comprehensive, and therefore offers a more efficient and effective mechanism for allocating symbols than the Three-Characters Plan.[49] The Three-Characters Plan would leave unanswered the appropriate methodology for allocating four- and five-character symbols.

Although Nasdaq is currently the primary listing exchange for issuers using four- and five-character symbols,[50] the Commission believes that it will further the purposes of the Act to approve a plan for the reservation and allocation of symbols with one-, two-, three-, four-, and five-character symbols in order to permit all exchanges to begin utilizing such symbols, particularly in light of the limited availability of one-, two-, and three-character symbols. Indeed, the Commission believes that allowing all exchanges to list four- and five-character securities symbols should help ensure that the supply of available securities symbols does not become constrained.

Some commenters urged a broader scope than that proposed in either plan. Seven commenters advocated the adoption of a national market system plan that provides a single suffix symbology across all SROs.[51] In response, Nasdaq had initially commented that the plan should only cover root symbols because the use of symbol suffixes is unique to individual markets.[52] Subsequently, however, Nasdaq urged that the Commission commence a process for adopting a uniform inter-market equity symbol suffix plan.[53] The Commission is supportive of considering such an initiative. To avoid a delay in the implementation of a symbology national market system plan for root symbols, however, the Commission believes it is appropriate to consider any such initiative separately following the approval of the Five-Characters Plan. Accordingly, the Commission finds the scope of the Five-Characters Plan in its focus on root symbols is appropriate in the public interest and that it will further the purposes of the Act.

2. Parties to the Plan

The proposed plans have different criteria for determining the eligibility for parties to join their plan. The

[41] The Commission notes that, while the proposed plans were silent on these points, this clarification is necessary to avoid the possibility of confusion regarding the scope of the approved plan.

[42] *See* discussion *infra* Part III(B) for a discussion of these provisions.

[43] *See* Amerigon Letter, United Stationers Letter, Glu Letter, Electronic Arts Letter, Silicon Storage Letter, Silicon Graphics Letter, Innospec Letter, SVB Letter, E*Trade Letter, EFI Letter, Top Image Letter, Double Eagle Letter, and Silver Standard Letter.

[44] *See* Adams Letter, Atkins Letter, and Sobha Letter. *See also* ASA Letter, which stated that fair and equal competition is the core of the Five-Characters Plan.

[45] *See* Amerigon Letter, United Stationers Letter, Glu Letter, Amarin Letter, Electronic Arts Letter, Silicon Graphics Letter, SVB Letter, E*Trade Letter, Top Image Letter, Double Eagle Letter, and Silver Standard Letter.

[46] *See* Matthews Letter.

[47] *See* Section IV(a) of the proposed plans.

[48] *See* Section I(b) of the Five-Characters Plan. The Five-Characters Plan would cover only root symbols (*i.e.,* without any suffix or special conditional identifier) that are NMS securities as currently defined in Rule 600(a)(46) of Regulation NMS under Act and any other equity securities quoted, traded, and/or trade reported through an SRO facility. *See* Preamble and Sections I(b) and IV(a) of the Five-Characters Plan. The Three-Characters Plan would cover only root symbols of one-, two- or three-characters for Network A and Network B Eligible Securities (as defined in the CTA Plan) and listed options reported to OPRA. The Three-Characters Plan states that, for listed equity securities, no such symbols would be allocated or used other than for Network A or Network B Eligible Securities. *See* Sections I(b) and IV(a) of the Three-Characters Plan.

[49] As discussed below, one commenter suggested expanding the length of securities symbols to 10 or 12 characters. *See* Angel Letter III at 3. Currently, the markets only use root symbols of one- through five-characters in length.

[50] The Commission notes that NYSE Arca currently lists an issuer with a four-character security symbol, namely Golden Cycle Gold Corporation (ticker symbol: GCGC).

[51] *See* FIF Letter I, FIF Letter II at 1, Angel Letter II at 3, Angel Letter III at 1, Omgeo Letter at 1, SIFMA Letter, Bracewell & Guiliani Letter, SWIFT Letter, and FIX Letter. One commenter also noted that current inconsistencies in suffix symbology and condition identifiers make it difficult for data vendors to pass through accurate data, which can cause confusion and loss for investors. *See* Angel Letter I at 8 and Angel Letter III at 1. This commenter also believed that the plan should cover, in addition to equity securities, options, futures, securities futures, mutual funds, and indices and that it should incorporate representation from the derivatives exchanges, issuers, investors, and brokers. *See* Angel Letter I at 10, Angel Letter II at 4, and Angel Letter III at 1. In addition, this commenter urged the development of a new symbology plan in what he anticipates will be a global trading environment. *See* Angel Letter III at 2.

[52] *See* Nasdaq Letter II at 3.

[53] *See* Nasdaq Letter III. *See* also Head Trader Alert 2008–36 (March 27, 2008), available at *http://www.nasdaqtrader.com.*

proposed Three-Characters Plan would only allow an SRO to join the plan if it maintains a market for the listing and trading of securities that are identified by one-, two-, or three-character symbols and if their listed equity securities are also ''Network A'' or ''Network B'' ''Eligible Securities'' as those terms are defined in the CTA Plan.[54]

The Five-Characters Plan, on the other hand, would allow any SRO to join the plan as long as it maintains a market for the listing and trading of securities that are identified by one-, two-, three-, four-, or five-character symbols.[55] A party would also be required to have the actual technical and physical capability through its facilities to immediately quote and report trades in securities either using one-, two-, or three-character symbols, if it seeks to reserve symbols of one-, two-, or three-characters in length, or using four-or five-character symbols, if it seeks to reserve symbols of four-or five-characters in length.[56] In addition, this plan would require, as conditions to becoming a new participant, that an SRO pay a proportionate share of the aggregate development costs and sign a current copy of the plan.[57]

Many commenters argued that Nasdaq should not be allowed to list one-, two-, and three-character symbols because such symbols are indicative of an NYSE listing.[58] Some of these commenters argued that an issuer's use of a one-, two-, or three-character symbol signaled the NYSE brand and ''companies listed on NYSE meet the highest corporate governance and financial standards in the world;'' [59] consequently, some stated, the Nasdaq issuers' use of such symbols could lead to investor confusion.[60] One such commenter, a trustee and portfolio manager of a small pension fund, stated that it relies on the use of one-, two-, and three-character symbols to identify NYSE securities and makes investment decisions based on such reliance, citing the financial reporting requirements and stability of earnings of NYSE securities; this commenter further stated that it generally performs ''an extra level of scrutiny in view of the longevity of firms that have been listed in the over the counter market'' because it presumes that those securities are not NYSE-listed securities.[61] NYSE also argued that Nasdaq's attempt to use three-character symbols exacerbates the existing supply problems without justification.[62]

Many other commenters, however, challenged these assertions and argued that Nasdaq should have the same rights to list one-, two-, or three-character symbols as NYSE and any other exchange.[63] One commenter noted that one-, two-, and three-character ticker symbols have previously been used by Amex and other regional exchanges and that commenters implying that one-, two-, and three-character symbols are associated only with NYSE ignore current practice and the historical record.[64] Another commenter stated that, due to the fact that markets can no longer claim a majority share of the trading in their listed securities, the correlation of the number of letters in a ticker symbol and its listing on a particular exchange is an increasingly obsolete consideration.[65] One commenter also noted that NYSE and Amex issuers, similarly, should have the flexibility to use longer ticker symbols that may be more readily identifiable with their company.[66]

The Commission believes that any SRO with the capacity to maintain a market for the listing of securities that are identified by one-, two-, three-, four-, or five-character symbols should be able to reserve those symbols.[67] As noted above, the Five-Characters Plan would permit any SRO that maintains a market for the listing and trading of plan securities to become a party to the plan.[68] The Commission believes that SROs that have listing standards for plan securities, though they may not be actively listing such securities, and that maintain a market for the trading of plan securities would satisfy this requirement and would be permitted, though not required, to become parties to the plan. Joining the plan would enable such SROs to reserve symbols in anticipation of beginning a listings business.[69] In addition, the Commission is requiring any SRO that chooses to list securities on its market or to designate securities for quoting on a quotation medium to join the approved plan.[70]

The Commission does not agree with commenters who believe that the use of one-, two-or three-character symbols by Nasdaq issuers will ''blur and diminish the financial and other significant achievements commonly associated with NYSE listed companies'' [71] or confuse investors who today purportedly identify such symbols as associated with NYSE. Many issuers not listed on NYSE utilize such symbols and have for a significant period of time and, therefore, any automatic association of such symbols with NYSE's listing standards or brand is mistaken.[72] Therefore, the Commission finds that the provision on eligible parties in the proposed Five-Characters Plan is preferable and is necessary and appropriate in the public interest, for the protection of investors and the

[54] The CTA Plan defines ''Network A Eligible Securities'' to mean Eligible Securities listed on NYSE and ''Network B Eligible Securities'' to mean, in relevant part, Eligible Securities listed on the Amex, BSE, CBOE, CHX, ISE, NSX, NYSE Arca, Phlx or on any other exchange other than Nasdaq, but not also listed on NYSE.

[55] *See also supra* note 48.

[56] *See* Section I(b) of the Five-Characters Plan.

[57] *See* Section I(c) of the Five-Characters Plan. For additional discussion regarding the plan's provision relating to costs, see discussion infra notes 118–124 and accompanying text.

[58] *See* FPL Letter, TCF Letter, Wolverine Letter, Getty Letter, KCI Letter, AmeriCredit Letter, Entertainment Properties Letter, Big Lots Letter, Allstate Letter, Cantel Letter, Webster Letter, Strategic Technologies Letter, U.S. Steel Letter, Ward Letter, Darwin Letter, Ethan Allen Letter, Cooper Letter, Chipotle Letter, State Street Letter, and Jackson Hewitt Letter. *See also* NYSE Letter at 2.

[59] *See* Allstate Letter; *see also, e.g.,* FPL Letter, TCF Letter, Wolverine Letter, Getty Letter, KCI Letter, AmeriCredit Letter, Entertainment Properties Letter, Big Lots Letter, Cantel Letter, Webster Letter, Strategic Technologies Letter, U.S. Steel Letter, Darwin Letter, Ethan Allen Letter, Cooper Letter, Chipotle Letter, State Street Letter, and Jackson Hewitt Letter. *See also* NYSE Letter at 4.

[60] *See* TCF Letter, Wolverine Letter, Big Lots Letter, Ward Letter. *See also* NYSE Letter at 3.

[61] *See* Strategic Technologies Letter. The NYSE Letter also argued that investors, securities issuers, and the public rely on the different symbol lengths to distinguish NYSE and Nasdaq securities. *See* NYSE Letter at 2.

[62] *See* NYSE Letter at 5.

[63] *See* G&K Letter, Amerigon Letter, United Stationers Letter, Glu Letter, Electronic Arts Letter, Silicon Graphics Letter, E*Trade Letter, Silicon Storage Letter, Innospec Letter, EFI Letter, and Nasdaq Letter I. *See also* SVB Letter, Top Image Letter, and Double Eagle Letter, which state that all exchanges and issuers should be able to list three- or fewer character symbols.

[64] This commenter stated that Amex, BSE, and other regional exchanges have used one- or two-character ticker symbols in the past. *See* Angel Letter I at 6, Angel Letter II at 2, and Angel Letter III at 2. This commenter also argued that shorter ticker symbols should go to the most actively-traded stocks, some of which are Nasdaq-listed, because the reduced typing and remembering effort required for such symbols would make it a more economically efficient solution. *See* Angel Letter I at 5.

[65] *See* Issuer Advisory Letter at 2. *See also* Angel Letter I at 4.

[66] *See* Angel Letter II at 3.

[67] The Commission notes that Nasdaq is no longer a facility of a national securities association and is now a national securities exchange. *See supra* note 26.

[68] *See* Section I(c) of the Five-Characters Plan.

[69] Parties to the plan are entitled to place up to 20 symbols on each of its perpetual reservation lists for one-, two-, or three-character symbols and four- or five-character symbols, respectively. *See infra* notes 90 and 93–95 and accompanying text. The Commission notes that, for limited-time reservations, the plan requires a party to have a reasonable basis for using a limited-time reservation within a 24-month period. *See infra* notes 91–92 and accompanying text.

[70] *See infra* notes 192 and 197–198 and accompanying text.

[71] *See* Big Lots Letter.

[72] *See supra* note 64 and accompanying text.

maintenance of fair and orderly markets, and that it assures fair competition among exchange markets, consistent with Section 11A(a)(1)(C)(ii) of the Act.[73]

The Commission also believes that the Five-Characters Plan will further the purposes of the Act because it promotes competition among listing markets, including potential new listing markets. As described in further detail below, and unlike the Three-Characters Plan, the Five-Characters Plan provides each party to the plan with an equal allotment of perpetual and limited-time reservations.[74] The Five-Characters Plan also permits the portability of an issuer's symbol from one SRO to another, allowing competing listing venues to attract transferred listings without requiring issuers to change their ticker symbol.[75] In addition, the Five-Characters Plan would allocate to any new party joining the plan a pro-rata portion of the initial development costs based upon the number of symbols initially reserved by such new party during its first twelve months as a party to the plan.[76]

3. Reservation and Use of Symbols

Both proposed plans have provisions allowing parties to the plan to reserve symbols in perpetuity (''perpetual reservations'') and for a limited time (''limited-time reservations''). Specifically, both proposed plans provide that, within 30 days of Commission approval of the plan (unless such time is extended by the Policy Committee),[77] parties may submit to the Processor[78] requests for initial reservation of symbols.[79] The proposed plans' differ as follows: (1) How reservation rights are allocated among the individual parties; (2) the number of symbols that may be reserved on the perpetual reservation and limited-time reservation lists, respectively; and (3) how limited-time reservations may be secured. These differences and the reasons the Commission finds that the Five-Characters Plan's provisions on reservation rights, as modified herein, are appropriate in the public interest for the maintenance of fair and orderly markets and fair competition between the markets, consistent with the Section 11A(a)(1)(C) of the Act,[80] are discussed below.

a. Allocation of Reservation Rights Among Parties

The proposed Three-Characters Plan awards greater reservation rights to NYSE and Amex than to the other parties to the plan. Specifically, the proposed Three-Characters Plan would allow NYSE and Amex each to reserve 200 symbols as perpetual reservations and 1,500 symbols as limited-time reservations, while other parties to the plan could only reserve 40 symbols as perpetual reservations and up to 500 limited-time reservations.[81] The Five-Characters Plan, on the other hand, awards equal reservation rights among all the parties—any eligible party to the plan could reserve 20 perpetual reservations and 1,500 limited-time reservations of one-, two-, and three-character symbols and 20 perpetual reservations and 1,500 limited-time reservations of four- and five-character symbols.[82] The Five-Characters Plan also requires a party intending to include a symbol on its limited-time reservations lists to have a reasonable basis for using such symbol within 24 months.

With respect to these provisions on reservation rights, the Commission finds that the Five-Characters Plan will further the purposes of the Act. The Five-Characters Plan allocates all reservation rights equally among all parties to the plan, consistent with fair competition principles. NYSE argued that the proposed Three-Characters Plan reservation provisions reflect the reality of its own likelihood to list a greater number of securities than the other markets.[83] Nasdaq, however, disputed this assertion and stated that the allocation of reservations in this provision of the Three-Characters Plan is out of proportion to historic symbol usage.[84] Nasdaq also argued that this provision would be discriminatory and that such discrimination is not compelled by market needs and is inconsistent with the equal regulation and pro-competition mandates of the Act. While the Commission recognizes that currently NYSE and Amex markets encompass the overwhelming majority of primary listings for issuers with one-, two-, and three-character symbols, the Commission does not believe that the dominance of any particular market should be enshrined in a national market system plan. Moreover, the Commission believes that the Five-Characters Plan's proposed allotments would permit active listing markets to reserve more than enough securities symbols for their listing business. The Five-Characters Plan, in contrast to the proposed Three-Characters Plan, would promote fair competition among the markets by providing all participants with the same number of reservations. Such equal reservation rights make it easier for an existing SRO or new entrant to compete on an equal basis with primary listing markets.

One commenter stated that OTC Bulletin Board (''OTCBB'')[85] and Pink Sheet[86] issuers should not have the same rights to use securities symbols as issuers listed on national securities exchanges.[87] The commenter noted that,

[73] *See* 15 U.S.C. 78k–1(a)(1)(C)(ii).

One commenter also argued that rights to ticker symbols should be allocated directly to issuers, rather than to the SROs. *See* Issuer Advisory Letter at 3. *See also* Angel Letter I at 3 and Angel Letter III at 4, arguing that issuers have stronger claims to symbols than their exchanges. The Commission believes, however, that developing a symbol reservation plan directly among the issuers would present significant challenges—including implementation and administrative challenges, and believes that continuing to allow listing markets to reserve and then allocate those symbols to qualified issuers is more workable and efficient.

Because the Five-Characters Plan, as filed, listed the name of all SROs, including those that were not signatories to the plan, the Commission has deleted the names of SROs listed in Section I(a) of the Five-Characters Plan who are not signatories to the plan at this time.

[74] *See* discussion *infra* notes 77–104 and accompanying text.

[75] *See* discussion *infra* notes 105–117 and accompanying text.

[76] *See* discussion *infra* notes 118–124 and accompanying text.

[77] ISRA will be administered by a Policy Committee, which will consist of one voting member and one alternate voting member representing each party. *See* Section II(a) and (c) of the Five-Characters Plan. *See also* Section II(a) and (c) of the Three-Characters Plan, which is identical to the corresponding provision of the Five-Characters Plan.

[78] The Processor will be an independent third party to which ISRA will delegate the operation of the Symbol Reservation System. *See* Section III of the Five-Characters Plan. *See also* Section III of the Three-Characters Plan, which is identical to the Five-Characters Plan.

[79] The Commission is modifying the Five-Characters Plan's provision on the timing for the initial reservation process. *See infra* notes 77–104 and accompanying text for the discussion of this modification.

[80] 15 U.S.C. 78k–1(a)(1)(C).

[81] The proposed Three-Characters Plan, as amended, provided that NYSE Arca and CBOE each may have 500 limited-time reservations and that ISE may have 200 limited-time reservations. The plan would leave the precise number of limited-time reservations for other SROs to be decided when such SROs join the proposed plan.

[82] *See* Section IV(b)(1)(A) and (B) of the Five-Characters Plan. The Commission notes that the reservation lists do not apply to securities symbols already in use, but rather relate to unused ticker symbols.

[83] *See* NYSE Letter at 6.

[84] *See* Nasdaq Letter II at 2.

[85] The OTCBB is a quotation service for over-the-counter equity securities run by FINRA, a national securities association.

[86] Pink Sheets is an interdealer electronic quotation system that displays quotes from market makers for many over-the-counter securities. To be quoted on the Pink Sheets, an issuer need only find one market maker to quote its shares, and Pink Sheets-traded issuers need not have audited financial statements. *See http://www.pinksheets.com.*

[87] *See* Angel Letter I at 10.

in the past, if a Nasdaq-listed firm desired to use a ticker symbol that was in use by an OTCBB or Pink Sheet issuer, it could usually get such a symbol. In addition, the commenter noted that such issuers have not paid any listing fees to be traded on those markets and that many of them are shell companies with no operations or defunct companies. The commenter believed that only ''legitimate'' SEC registrants that meet the listing standards of the exchanges should be able to establish rights to ticker symbols.

The Commission agrees and believes that significant investor confusion and harm could occur if such securities, which currently trade using four-or five-character symbols, were to begin trading with one-, two-, or three-character symbols. The Commission believes that it is important to distinguish between securities trading only on over-the-counter trading venues and those listed on national securities exchanges. Exchange listing standards are approved by the Commission and must include corporate governance requirements that comply with Rule 10A–3 under the Act.[88] Issuers traded on over-the-counter equity venues (including the OTCBB and Pink Sheets) are not subject to such listing standards. Therefore, such securities can be substantially different from those listed on a national securities exchange. The Commission does not believe any similar distinction exists among the national securities exchanges. Accordingly, the Commission believes that it is appropriate to limit securities not listed on a national securities exchange to using four-or five-character symbols, whereas it is not appropriate to similarly distinguish between exchange-listed securities. The Commission believes that issuers trading solely on the OTCBB, Pink Sheets, and any other over-the-counter venue should be limited to using four- and five-character symbols, as they do today, as any change from this current practice would unnecessarily confuse investors and could lead to investor harm. The Commission finds that it is necessary and appropriate in the public interest, and for the protection of investors and the maintenance of fair and orderly markets, that only issuers listed on a national securities exchange be allowed to use one-, two-, and three-character symbols.[89] Therefore, the Commission is modifying the Five-Characters Plan to prohibit an SRO from reserving or using one-, two-, and three-character symbols for any issuer not listed on a national securities exchange.

b. Number of Perpetual and Limited-Time Reservations

The Three-Characters Plan contemplates allocating some SROs as many as 200 perpetual reservations. In contrast, the Five-Characters Plan would allow no more than 40 perpetual reservations for each party.[90] The Commission believes that, because the Five-Characters Plan allows the overwhelming majority of unused symbols remain available for future use, exchanges would not be able to hold securities symbols in a manner that stifles or burdens competition. In this regard, the Commission believes that the perpetual reservation provisions of the Five-Characters Plan are more favorable to new entrants. The Commission also believes that the Five-Characters Plan's allotment of 1,500 limited-time reservations for one-, two-, and three-character symbols and 1,500 limited-time reservations for four- and five-character symbols should adequately offset the low number of permitted perpetual reservations, and allow SROs to reserve a sufficient number of symbols in the short-term for any pending use.

Both proposed plans permit limited-time reservations for a period of 24 months, after which time the Processor would release such symbols to be available for reservation by parties on the waiting list for a given symbol or, in the absence of a waiting list, for general availability.[91] The Five-Characters Plan requires a party to have a reasonable basis for using a limited-time reservation within such 24-month period while the Three-Characters Plan has no such comparable requirement.[92] Under the Five-Characters Plan, if a party does not use a limited-time reservation within the 24-month reservation period and no party reserves the symbol after the Processor releases it, then the original party would be able to subsequently reserve the symbol for an additional 24-month period, once again subject to the requirement that it has a reasonable basis for doing so. The Commission does not view the ''reasonable basis'' requirement in the Five-Characters Plan as mandating the usage of a symbol within 24 months, but believes that this requirement should help prevent the arbitrary reservation of symbols, particularly in an anti-competitive manner.

One commenter argued that there should be no perpetual reservations because having a perpetual reservation would allow an exchange to exclude others from ever using a symbol.[93] The Commission notes that, though they disagreed on the precise number of perpetual reservations each party should be able to reserve, the signatory SROs to both proposed plans agreed to the availability of perpetual reservations,[94] and believes that perpetual reservations are not inconsistent with Rule 608 under the Act, which requires that the plan be necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. Nonetheless, the Commission believes that the number of such perpetual reservations should be kept to a minimum and believes that the Five-Characters Plan's allocation of 40 perpetual reservations to each party is appropriate. The Commission acknowledges that new entrants that join the plan after the initial reservation process would have fewer options for selecting their perpetual reservations, as compared to the parties participating in the initial reservation process. But the Commission believes that, given the relatively low number of perpetual reservations allowed under the Five-Characters Plan (particularly as compared to the Three-Characters Plan), such new entrants would still have access to an adequate number of symbols and notes that they would also have the same right to have 40 perpetual reservations each. In addition, the Commission notes that, once an SRO assigns a symbol from its perpetual reservation list to an issuer, that symbol becomes portable to other listing markets if the issuer using the symbol were to transfer its listing to another

[88] 17 CFR 240.10A–3.

[89] 17 CFR 242.608.

[90] The Five-Characters Plan would allow each party to place 20 symbols on each of its perpetual reservation lists for one-, two-, or three-character symbols and four- or five-character symbols, respectively.

[91] *See* Sections IV(b)(1)(B) and IV(b)(5) of the proposed plans.

[92] Because ''reasonable basis'' was not defined in the Five-Characters Plan, the Commission requested comment about it in the Symbology Notice. No commenters specifically responded to this request. The Commission believes that it is necessary and appropriate in the public interest to have the Policy Committee determine the appropriate interpretation and application of terms used in the plan, such as the term ''reasonable basis.'' To the extent that any of the parties to the plan are aggrieved by the determination of the Policy Committee in this regard, the Commission notes that it has the authority to hear appeals by such parties. *See* Rule 608(d), 17 CFR 242.608(d); *see also supra* notes 133–137 and accompanying text.

[93] *See* Angel Letter I at 6, 9 and Angel Letter II at 3, and Angel Letter III at 4.

[94] *See* Section IV(b)(1)(A) of the proposed plans.

SRO.[95] Because the Five-Characters Plan would limit each party to no more than 40 perpetual reservations and because an issuer using such a symbol could transfer its listing to another SRO if it chose to do so, the Commission finds that the Five-Characters Plan's provisions with respect to perpetual reservations are not anticompetitive and are appropriate in the public interest.

Finally, one commenter also stated that symbols should be allocated on a ''first-come, first-served'' basis with a ''use it or lose it'' feature.[96] The Commission believes that the Five-Characters Plan's provisions relating to processing symbol requests for limited-time reservations incorporate this very principle.

c. Legacy Reservations

Under both proposed plans, during the initial reservation process, a party in reserving a symbol that it claims was properly reserved under the current informal system prior to the effective date of the plan would have priority over other parties also reserving such symbol.[97] Under the Five-Characters Plan, however, such party would have priority over other SROs to retain reservation of that symbol (a ''legacy reservation'') only if the party represents that it has a reasonable basis[98] to believe that it would utilize such symbol within the next six months. Moreover, such reservation would not count towards the party's perpetual reservations or limited-time reservations, but instead be reserved as a separate, additional legacy reservation.[99] If the party does not use such symbol within the allotted six-month period, it would lose the reservation unless the party requests an extension for an additional six-month period. In requesting such an extension, the party would have to have a reasonable basis to believe that it would utilize such symbol within the additional six-month period. If the symbol has not been used within the additional six-month period, the symbol would be released by the Processor.[100] The Three-Characters Plan also assigns priority for symbol reservations to parties that claim to have properly reserved such symbols under the current informal system prior to the effective date of the plan, but it does not place such reservations on a separate ''legacy reservation'' list nor does it establish a separate process for using such symbols.[101]

One commenter suggested establishing a 90-day remaining life to all symbols currently reserved by the exchanges, after which all symbol reservations by exchanges will cease to exist.[102] Another commenter endorsed an approach similar to that in the Five-Characters Plan, proposing a transitional provision allowing for an exchange to assert a legacy reservation for up to 12 months for a pending use.[103] The Commission finds that the legacy reservation provision in the Five-Characters Plan is in the public interest, consistent with Section 11A(a)(1)(C) of the Act, because it provides an appropriate transition period for symbol reservations held prior to the Commission's approval of the Five-Characters Plan.[104]

4. Portability of Symbols

Another key difference between the two proposed plans relates to the portability of symbols. In Amendment No. 1 to the proposed Three-Characters Plan, that plan was amended to allow for the automatic portability of three-character symbols (*i.e.*, allowing an issuer with a three-character ticker symbol to automatically continue to use that symbol upon transferring its listing to another SRO).[105] Nonetheless, the proposed Three-Characters Plan maintains that one- and two-character symbols would not be automatically portable if a listed issuer moves to another exchange. Under that proposed plan, the rights to a one-or two-character symbol of the issuer transferring to another exchange would remain with the former SRO unless the former SRO consents to the transfer of the symbol to the new SRO. The only exception would be, in the case of two-character symbols, if the new SRO demonstrates that it has a compelling business need that substantially outweighs the business needs of the former SRO. This determination would be made by the Processor and would be final. Under the proposed Three-Characters Plan, this exception would not apply to one-character symbols, which could not be transferred to a new SRO without the consent of the former SRO, even if the new SRO was able to demonstrate a compelling business need that substantially outweighed the business needs of the former SRO. In contrast, the Five-Characters Plan would provide the automatic portability of any symbol in the event that an issuer transfers its listing to another exchange (*i.e.*, without requiring the consent of the former SRO).[106]

Many commenters have supported the portability provision of the Five-Characters Plan.[107] Some commenters argued that the portability provision of the proposed Three-Characters Plan would create artificial restrictions on symbol use and portability that would not benefit listed companies or the investing public.[108] One commenter stated that disallowing symbol portability is an anti-competitive and unfair practice.[109] Another commenter argued that the inconvenience and transition costs involved with requiring a company to change its ticker symbol upon transferring from the NYSE to another exchange amount to an unfair restraint of trade.[110] Two commenters also likened securities symbols to telephone numbers and argued that they should belong to the issuer and be fully portable.[111]

One commenter noted that issuers expend more effort and resources to associate a particular symbol with their company than anyone else, and therefore should be allowed to take their symbol with them when they move to another exchange.[112] This commenter also stated that, over time, investors tend to associate a particular ticker symbol far more with a company than with a particular exchange and that, therefore, in terms of reducing investors' search and transaction costs, it makes

[95] *See* Section IV(f) of the Five-Characters Plan.

[96] *See* Angel Letter I at 9 and Angel Letter III at 4.

[97] *See* Section IV(b)(2)(A) of the proposed plans.

[98] *See supra* note 92.

[99] *See* Section IV(b)(2)(A) of the proposed plans.

[100] *See id.*

[101] *See* Section IV(b)(2)(A) of the Three-Characters Plan.

[102] *See* Issuer Advisory Letter at 3.

[103] *See* Sobha Letter.

[104] 15 U.S.C. 78k–1(a)(1)(C).

[105] Two commenters expressed concerns that an earlier proposed rule change of Nasdaq to allow the transfer of issuers with three-character symbols to Nasdaq (SR–NASDAQ–2007–031) could circumvent efforts to develop a national market system plan for symbology. *See* RPM Letter and MDC Letter. In the Nasdaq Three-Character Portability Order, *see supra* note 29, the Commission addressed this concern and noted that its approval of that proposed rule change was independent of its consideration of the proposed NMS plans. As the Commission stated then, ''[p]articipants in any such plan would be required to comply with its requirements, which could necessitate changes to SRO rules.'' *See* Nasdaq Three-Character Portability Order at 38641.

[106] *See* Section IV(f) of the Five-Characters Plan.

[107] *See* Omni Letter, Adams Letter, Amerigon Letter, Atkins Letter, United Stationers Letter, Glu Letter, ASA Letter, Electronic Arts Letter, Silicon Storage Letter, Silicon Graphics Letter, E*Trade Letter, Innospec Letter, SVB Letter, EFI Letter, Top Image Letter, and Double Eagle Letter, and Nasdaq Letter II at 3.

[108] *See* Amerigon Letter, United Stationers Letter, Glu Letter, Electronic Arts Letter, Silicon Storage Letter, Silicon Graphics Letter, Innospec Letter, E*Trade Letter, EFI Letter, Top Image Letter, Double Eagle Letter.

[109] *See* Issuer Advisory Letter at 2.

[110] *See* ASA Letter.

[111] *See* Spachman Letter, Angel Letter I at 5–6, Angel Letter II at 2, and Angel Letter III at 3 and 4.

[112] *See* Angel Letter I at 4.

sense to award the rights to a particular ticker symbol to the issuer that has been using the ticker symbol, rather than the exchange where it originally listed.[113] Furthermore, this commenter stated that changing an issuer's ticker symbol can result in confusion for investors and researchers and be the source of costly investment mistakes, noting that data vendors often do not catch a symbol change on time.[114] One issuer cited its own experience with transferring its listing from NYSE to Nasdaq and consequently changing its symbol; though it ultimately decided to switch listing venues, the issuer stated the need to change its ticker symbol was a negative factor because of the time and resources it had to expend to make sure its investors were aware of the symbol change.[115] Finally, one commenter also noted that allowing symbol portability would strengthen competition between markets.[116]

The Commission finds that allowing the automatic portability of a symbol in the event that an issuer transfers its listing to another exchange will further the purposes of the Act and should reduce investor confusion by allowing the symbol already associated with the issuer to continue to be used by the issuer on the new exchange. The Commission also finds that allowing automatic symbol portability would remove a burden on competition among markets not necessary or appropriate in furtherance of the purposes of the Act by making it easier for listed issuers to transfer their listings to another exchange, thereby enhancing competition among exchanges in the business of providing a listing venue. Eliminating the costs and administrative efforts associated with acquiring a new symbol for transferred listings should allow listed issuers to make decisions about listing based on factors such as listing costs and the quality of markets. The Commission believes that automatic symbol portability is preferable to allowing an issuer's former listing exchange to retain the rights to a symbol once a listed issuer has transferred to another market, particularly as the former market likely would not reuse the symbol in the near term without causing undue investor confusion. Therefore, the Commission finds that the automatic symbol portability provision in the Five-Characters Plan is in the public interest, appropriate for the protection of investors and the maintenance of fair and orderly markets, and assures fair competition among exchange markets, consistent with the Section 11A(a)(1)(C) of the Act.[117]

5. Allocation of Plan Costs

The two proposed plans also differ with respect to the allocation of the initial development costs and ongoing costs of the plan. The proposed Three-Characters Plan would have all initial and ongoing costs shared equally among all the parties.

The Five-Characters Plan provides that the parties would share the initial development costs pro-rata based on the number of symbols initially reserved by each party. Any new party that joins the plan would also be responsible for a pro-rata portion of the initial development costs based upon the number of symbols initially reserved by such new party during the first twelve months of the new party's membership in the plan.[118] The Five-Characters Plan also provides that the continuing costs and expenses of ISRA would be shared among the parties pro-rata based on the number of additional symbols reserved in each calendar year, estimated quarterly.[119] In addition, under the Five-Characters Plan, the Policy Committee [120] may develop alternative cost-allocation methodologies for special development projects outside the initial development period. One commenter expressed support for this provision in the Five-Characters Plan as it would require exchanges to bear the costs of the system only to the extent they reserve and use symbols.[121]

The Commission finds that the Five-Characters Plan's provision for the allocation of costs will further the purposes of the Act in that it establishes an equitable means of allocating costs among the plan parties.[122] The SROs supportive of the Three-Characters Plan anticipate that certain SROs, such as NYSE and Amex, would likely use the reservation system more than other SROs.[123] It is the proposed Five-Characters Plan, however, that recognized this likelihood by allocating costs based on an SRO's use of the reservation system. Moreover, the parties' usage of the system will likely vary as markets compete for listings. Under the Five-Characters Plan, the cost allocation will similarly vary with any changes in use of the reservations. Therefore, the Commission finds that the cost allocation provision of the Five-Characters Plan is in the public interest, appropriate for the protection of investors and the maintenance of fair and orderly markets, and assures fair competition among exchange markets, consistent with Section 11A(a)(1)(C) of the Act.[124]

*B. Similar Provisions Among the Proposed Plans*

Other than the areas of substantive differences between the proposed plans discussed above, the remaining provisions of the Five-Characters Plan are substantially similar or identical to parallel provisions in the proposed Three-Characters Plan. The Commission believes that such similarities evidence a broad consensus among the SROs as to the overall framework and most of the main provisions of the Five-Characters Plan, a result of the collaboration by and negotiations between the SROs following the issuance of the February 2005 Letters to discuss the terms of an appropriate national market system plan for the reservation and allocation of securities symbols. Therefore, the Commission believes that these aspects of the Five-Characters Plan represent a fair and workable symbol reservation system for the prospective parties to the plan.

The following section discusses the remaining provisions of the Five-Characters Plan, which are substantially similar or identical to provisions in the proposed Three-Characters Plan.

1. Administration of ISRA

The Five-Characters Plan would establish a body composed of the signatory SROs called the Intermarket Symbols Reservation Authority.[125] A Policy Committee, consisting of representatives of each of the signatory SROs, would administer the ISRA and, unless expressly provided otherwise in the plan, would make all policy decisions on behalf of the ISRA in furtherance of the functions and objectives of the ISRA under the Act and the plan. Specifically, the Policy

[113] *Id.*

[114] *See* Angel Letter I at 5. *See also* Nasdaq Letter II at 3.

[115] *See* E*Trade Letter. *See also* Nasdaq Letter II at 3.

[116] *See* Angel Letter II at 2.

[117] 15 U.S.C. 78k–1(a)(1)(C).

[118] *See* Section V(a) of the Five-Characters Plan.

[119] *See* Section V(b) of the Five-Characters Plan.

[120] *See infra* notes 125–137 and accompanying text.

[121] *See* Adams Letter.

[122] One commenter argued, based on its belief that the issuers have rights to the symbols, that issuers should pay for the plan in accordance with the Regulation NMS market data revenue formula. *See* Angel Letter II at 3. The Commission notes, however, that the listing markets charge initial and ongoing listing fees to issuers listed on their markets, and therefore issuers are likely to pay indirectly.

[123] This expectation is the basis for the proposed Three-Characters Plan providing more reservations to NYSE and Amex than the other SROs. *See* NYSE Letter at 6.

[124] 15 U.S.C. 78k–1(a)(1)(C).

[125] *See* Section II(a) of the Five-Characters Plan.

Committee would: (1) Oversee the operation of the Symbol Reservation System; (2) make all determinations pertaining to contracts with parties to the plan and persons who provide goods or services to the ISRA; and (3) determine all other questions pertaining to the planning, developing, and operating of the ISRA, including those pertaining to budgetary or financial matters.[126]

One voting member and one alternate voting member representing each party would compose the Policy Committee.[127] Each party would have one vote on all matters voted upon by the Policy Committee and actions of the ISRA under each plan would be authorized by a majority vote of the Policy Committee members, subject to Commission approval when required by applicable securities law.[128] Authorized actions under the plan would be binding upon all the parties. However, an aggrieved party may present contrary views to any regulatory body or in any other appropriate forum.[129] A meeting of the Policy Committee would be held at least annually and other meetings would be held as determined by the Policy Committee, subject to the notice provisions for regular and special meetings and the organization of the meetings.[130]

The Commission finds that the provisions of the Five-Characters Plan relating to the establishment of the ISRA and the administration of the ISRA by the Policy Committee will further the purposes of the Act and should assure fair competition between exchange markets, consistent with Section 11A(a)(1)(C) of the Act.[131] The Commission believes that, because the Policy Committee is composed of one voting member representing each party, that each party would be limited in its ability to act in an anti-competitive manner.[132]

Two commenters have recommended the adoption of a formal dispute resolution mechanism for the plan.[133] The Commission notes that Section 11A of the Act and Rule 608 require national market system plans to describe, to the extent applicable, the method by which disputes in connection with the operation of the plan will be resolved.[134] The Five-Characters Plan specifies a dispute resolution mechanism with respect to the initial reservation of securities symbols, where disagreements are most likely to arise.[135] With regard to the operation of the plan following the initial reservation period, the Commission believes that the likelihood of disputes among the parties arising under the plan is minimal because the plan specifies the methods relating to submitting reservation requests, requesting releases of symbols, the operation of waiting lists, the reuse of symbols, and all other aspects of reserving and allocating symbols.[136] To the extent that disputes nonetheless arise and the parties are not able to resolve them, the Commission notes that under Rule 608(d) of the Act, the Commission has broad discretion to review, either on its own motion or upon the application of any person aggrieved thereby, actions taken (or failures to act) by any person in connection with an effective national market system plan.[137] Therefore, the Commission finds that the Five-Characters Plan's provision on dispute resolution is appropriate in the public interest.

2. The Processor for the Symbol Reservation System

Under the Five-Characters Plan, the ISRA would delegate the operation of the Symbol Reservation System to an independent third party (the ''Processor'') and would enter into contracts with the Processor relating to the operation of the Symbol Reservation System.[138] The Processor would receive reservation requests from the parties and reserve and allocate symbols among the parties in accordance with the terms of the plan.[139] To this end, the Processor would create and maintain a symbol reservation database.[140] Parties to the Five-Characters Plan would determine the method and frequency of the evaluation of the Processor at a later time.

The Commission finds that provisions of the Five-Characters Plan relating to the Processor promote the maintenance of fair and orderly markets by ensuring that a symbol is used for only one security. The capacity and capability of the Processor to completely maintain processes and systems for the reservation and allocation of symbols under the plan is integral to this plan's effective implementation. Accordingly, the Commission expects the parties to the Five-Characters Plan to regularly evaluate the Processor's performance.

3. Symbol Reservation System

The Five-Characters Plan provides that, within 30 days of the Commission's approval of the Five-Characters Plan (unless such time is extended by the Policy Committee), a participant in the plan may submit to the Processor requests for the initial reservation of symbols.[141] A party may reserve symbols for: (i) The listing of common stock or any other security, including options; (ii) with respect to four- and five-character symbols,[142] the trading of any over-the-counter security; (iii) the dissemination of a securities index or other index information; or (iv) any other purpose authorized by a majority vote.

To provide sufficient time for SROs to join the plan and for the plan participants and the Processor to implement the Symbol Reservation System, the Commission is modifying Section IV(b)(1) of the plan to provide that the initial symbol reservation process will begin 60 days after the Commission's approval of the plan and will ensue for a 30-day period.[143]

a. Perpetual and Limited-Time Reservations

As noted earlier, under the Five-Characters Plan, a party may reserve a limited number of symbols in perpetuity.[144] There would be two perpetual reservation lists for each party—one list for one-, two-, and three-character symbols and one list for four- and five-character symbols. Each party could reserve up to 20 one-, two-, or three-character symbols as perpetual reservations, and up to 20 four- or five-

[126] *See* Section II(b) of the Five-Characters Plan.

[127] *See* Section II(c) of the Five-Characters Plan.

[128] *See* Section II(d) of the Five-Characters Plan.

[129] *Id.*

[130] *See* Section II(e) of the Five-Characters Plan.

[131] 15 U.S.C. 78k–1(a)(1)(C).

[132] *See* Section II(c) of the Five-Characters Plan.

[133] *See* Angel Letter I at 11. *See also* Issuer Advisory Letter at 3.

[134] *See* 17 CFR 242.608(a)(5)(iv).

[135] *See* Section IV(b)(2) of the Five-Characters Plan.

[136] *See* Sections IV(b)(6), IV(c), and IV(d), respectfully, of the Five-Characters Plan.

[137] *See* Rule 608(d)(1).

[138] *See* Section III of the Five-Characters Plan.

[139] One commenter suggested that the Commission could assign the rights to unused ticker symbols directly to issuers by auction. *See* Angel Letter III at 4–5. The Commission believes that the proposed allocation of symbol reservation rights using the Processor under the Five-Characters Plan is in furtherance of the purposes of the Act.

[140] *See infra* notes 175–178 and accompanying text for further discussion of the plan provisions on the database.

[141] *See* Section IV(b)(1) of the Five-Characters Plan.

[142] *See* discussion *supra* notes 85–89 and accompanying text relating to limiting the use of securities symbols by issuers traded other than on national securities exchanges to four- and five-character symbols.

[143] To conform to the Commission's modification of the initial reservation process, the Commission is also modifying Section IV(c)(1) of the Five-Characters Plan to clarify that the waiting list procedure applies during the initial reservation period rather than within 30 days of the effective date of the plan.

[144] *See* Section IV(b)(1)(A) of the Five-Characters Plan.

character symbols as perpetual reservations.

A party that requests perpetual reservations for more symbols than permitted would be required to place its symbols requests in priority ranking. A party could not add symbols to its perpetual reservation list after the initial reservation process, except when reserving a symbol for reuse.[145]

Symbols could also be reserved for a limited-time period of 24 months.[146] Each party would have two limited-time reservation lists—one list for one-, two-, and three-character symbols and one list for four- and five-character symbols. Each party could reserve up to 1,500 symbols under the one-, two-, or three-character limited-time reservations list and up to 1,500 symbols under the four-or five-character limited-time reservations list. A party may not make a limited-time reservation with respect to a particular symbol unless the party has a reasonable basis to utilize the symbol within the next 24 months.

As with perpetual reservation requests, a party that requests limited-time reservations for more symbols than permitted would be required to place its symbols requests in priority ranking.

b. Processing Reservation Requests

If there is only one party that claims a legacy reservation, such party would have priority over other SROs to retain its reservation of that symbol.[147] If more than one party lays claim to a single legacy reservation, the Five-Characters Plan provides a process for resolving such claims.[148] This process is as follows: First, the Processor would notify all such parties of the conflicting claims. Then the parties would have five business days to reach a mutually acceptable agreement as to which party would be permitted to reserve the symbol. In the absence of an agreement, the Policy Committee would resolve the issue by a majority vote of the parties not claiming the symbol. Where there is no agreement but the Policy Committee is able to determine which party has the earliest proper claim to such symbol, the plan would require it to resolve the disagreement in favor of such party. In the event of a tie vote, the Policy Committee would establish a random order of the parties to determine which party may reserve the symbol.[149] The Commission believes that the plan provisions with respect to resolving legacy reservation claims are consistent with Rule 608 under the Act which requires the plan be necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.

For the reservation of symbols other than legacy reservations, if only one party seeks to reserve a symbol, then the Processor would reserve such symbol for that party.[150] If multiple parties seek to reserve a symbol, the Processor would reserve the symbol based on a random ordering established by the Policy Committee.[151] If a symbol is not available for reservation, the Processor would place the requesting party on a wait list.[152] The Processor would process a party's symbol reservation requests by first reserving symbols up to the party's limit for its perpetual reservations list and then reserving the remaining requested symbols up to the limit for its limited-time reservations.[153]

After the initial reservation process, if a party submits to the Processor a request for a limited-time reservation and the symbol is available, the Processor would reserve such symbol, provided that the party has not already reached its maximum number of allowed limited-time reservations.[154] If a symbol requested is not available, the Processor would place the requesting party on the waiting list for such symbol.[155]

c. Non-Use or Release of Symbols Within Time Period

The Processor would release any limited-time reservation symbols not used within the 24-month time period.[156] A party could also voluntarily release a reserved symbol. In either case, upon the release of a symbol, the Processor would notify the parties on the waiting list, if any, of the symbol's availability. If there is no waiting list or if no party on the waiting list elects to reserve such symbol, the Processor would notify all parties to the plan of the availability of the symbol. Then, if more than one party requests the reservation of such symbol within two business days of the notice, the Processor would assign the symbol to one party and place the other parties on the waiting list pursuant to a random order of priority established by the Policy Committee.[157]

d. Request for Release of a Symbol

If a party has an immediate need to use a symbol that another party has reserved, the requesting party would ask the party that reserved the symbol and any other parties on the waiting list whether such parties would be willing to release the reserved symbol.[158] If the parties do not agree to release the symbol, the requesting party would not obtain the reserved symbol. If the parties do agree to release the symbol, the requesting party could include such symbol as one of its limited-time reservations. If the requesting party does not use a released symbol within the 24-month period, absent the consent of all parties initially required to be contacted, the reservation and waiting list priority in effect when the requesting party first made its request for the release of the symbol would again be in effect.[159]

e. Reserving Symbols after Reaching Maximum Number of Permitted Reservations

Paragraph (5) of Section IV(b) of the proposed plans states that a party may ''redesignate'' a security in certain

[145] *See infra* notes 166–174 and accompanying text for discussion of the plan provision on reusing a symbol.

[146] *See* Section IV(b)(1)(B) of the Five-Characters Plan.

[147] *See supra* notes 97–104 and accompanying text for a discussion of the legacy reservation process.

[148] *See* Section IV(b)(2)(B) of the Five-Characters Plan.

[149] *See id.* Because the ''random order'' process was not described in the proposed plans, the Commission requested comment about it in the Symbology Notice. No commenters specifically responded to this request. The Commission believes that it is necessary and appropriate in the public interest to have the Policy Committee determine the appropriate interpretation and application of the plan provisions relating to the ''random order'' process. However, the Commission believes that the Policy Committee must establish a random order process that will not be susceptible to gaming by parties to the plan. For example, the Policy Committee should not use a system which would allow SROs to know ahead of time if they are the party next in line to reserve a given symbol. To the extent that any of the parties to the plan are aggrieved by the determination of the Policy Committee in this regard, the Commission notes that it has the authority to hear appeals by such parties. *See* Rule 608(d), 17 CFR 242.608(d); *see also supra* notes 133–137 and accompanying text.

[150] *See* Section IV(b)(2)(C) of the Five-Characters Plan.

[151] *See* Section IV(b)(2)(D) of the Five-Characters Plan. *See also supra* note 149.

[152] *See* Section IV(b)(2)(E) of the Five-Characters Plan. *See also* infra notes 162–165 and accompanying text for a discussion on the waiting list plan provision.

[153] *See* Section IV(b)(2)(F) of the Five-Characters Plan.

[154] *See* Section IV(b)(3)(A) of the Five-Characters Plan.

[155] *See* Section IV(b)(3)(B) of the Five-Characters Plan.

[156] *See* Section IV(b)(5) of the Five-Characters Plan.

[157] *See supra* note 149.

[158] *See* Section IV(b)(6) of the Five-Characters Plan.

[159] *See infra* notes 160–161 and accompanying text for a discussion of ''redesignation'' relating to requests for release of symbols under Section IV(b)(6) of the Five-Characters Plan, which the Commission is modifying.

situations. Specifically, following the initial reservation process, if a party wishes to add a symbol to its limited-time reservations and such party already has the maximum number of reservations permitted, such party ''must voluntarily release or redesignate a symbol, as described in subparagraph (3)(A) above, before it can reserve the assigned symbol.'' [160] Similarly, if a party has an immediate need to use a symbol that another party has reserved, the requesting party would ask the party that reserved the symbol, and any other parties on the waiting list, whether such parties would be willing to release the reserved symbol.[161] Then, under paragraph (6) of Section IV(b) of the Five-Characters Plan, if the requesting party is already at the maximum number of limited-time reservations, the party could either surrender or redesignate a symbol as described in subparagraph (3)(A) of the Plan, before it can reserve the assigned symbol.

The Commission requested comment as to the meaning of ''redesignating'' a symbol when a party is at the maximum number of limited-time reservations, but did not receive any comments. Because subparagraph (3)(A) of Section IV(b) of either plan does not discuss redesignating symbols, the Commission finds it is necessary and appropriate in the public interest to remove the reference to ''redesignate'' in paragraphs (5) and (6) of Section IV(b) of the Five-Characters Plan. Thus, if a requesting party is already at the maximum number of limited-time reservations when reserving a requested symbol, such party would have to surrender another symbol in order to reserve the requested symbol.

f. Waiting Lists

When one or more parties request to reserve a symbol that another party has reserved, the Processor would place such parties on the waiting list for that symbol.[162] The waiting list would be based on time priority—that is, the earliest request would have precedence. However, as proposed, the Five-Characters Plans states that, if more than one party seeks to use a symbol already in use within either 30 days of the effective date of the plan or two business days of notice of a symbol's availability, the Policy Committee would establish a random order of such parties to determine priority on the waiting list.[163]

When a symbol becomes available, the Processor would notify the party with priority on the waiting list.[164] Such party would then have two business days to reserve that symbol; otherwise, the Processor would repeat the process as necessary with all parties on the waiting list, in order of priority. The maximum number of symbols for which a party may be on the waiting list at any time would be 100 symbols.[165]

g. Reuse of a Symbol and Portability of Symbols in Use

If a party ceases to use a symbol, such party automatically reserves that symbol, notwithstanding any other limits on the number of reserved symbols under the plan.[166]

However, there is an exception to this automatic reservation right when an issuer transfers its listing from one SRO to another. In this case, the SRO to which a listing is transferred would have the rights to that issuer's symbol.[167] One commenter, FINRA, noted that Section (IV)(f) of the Five-Characters Plan allows the portability of a symbol only when an issuer ''lists'' on a new SRO.[168] FINRA noted that this language may create some ambiguity in the case when a security delists from an exchange and is traded on an SRO's OTC equity market. A strict interpretation of the text of Section (IV)(f) of the Five-Characters, as proposed, could lead to the conclusion that an issuer that delists from an exchange and trades on an OTC market would lose its rights to its original symbol. FINRA asked that this provision of the Five-Characters Plan be amended to explicitly provide that the portability rights for an issuer transferring its listing to another exchange also be extended to issuers that delist from an exchange and trade on an OTC equity market.

NYSE, however, argued that securities have always lost their listed symbols after delisting for failure to meet continue listing standards, and that this practice is desirable because it alerts investors as to the failure of the issuer to meet those standards.[169] NYSE noted that, otherwise, investors might mistake the delisted security for a security that continues to meet exchange listing standards. The Commission agrees with NYSE's comments with respect to the potential for investor confusion and hereby clarifies that issuers that delist from an exchange and trade on an OTC equity market shall not have portability rights for their original symbol.[170] In such cases, Section IV(d) of the Five-Characters Plan would apply and the SRO from which the issuer delisted would automatically have such symbol reserved. At the same time, the Commission believes that the near-term reuse of a delisted security's original symbol while the delisted security trades on an OTC equity market could cause investor confusion.[171] A symbol could not be reused by a party to identify a new security unless the party reasonably determines that such use would not cause investor confusion.[172]

A symbol being reused pursuant to this provision could be reserved as a perpetual reservation if the party has not yet reserved the full number of perpetual reservations available to it.[173] Otherwise, such symbol would be

[160] *See* Section IV(b)(5) of the proposed plans.

[161] *See* Section IV(b)(6) of the Five-Characters Plan.

[162] *See* Section IV(c)(1) of the Five-Characters Plan.

[163] To ensure consistency with the Commission's modification of the initial reservation process timeline (*see* discussion *supra* notes 141–143 and accompanying text), the Commission is also modifying Section IV(c)(1) of the Five-Characters Plan to clarify that the waiting list procedure applies during the initial reservation process.

[164] *See* Section IV(c)(2) of the Five-Characters Plan.

[165] *See* Section IV(c)(3) of the Five-Characters Plan.

[166] *See* Section IV(d) of the Five-Characters Plan.

[167] *See* Section IV(f) of the Five-Characters Plan.

[168] *See* FINRA Letter at 2.

[169] *See* NYSE Letter at 7.

[170] As discussed above, *see supra* notes 85–89 and accompanying text, securities that trade solely over-the-counter, which are not subject to listing standards approved by the Commission, should be clearly distinguished from exchange-listed securities. The Commission believes that a change to an issuer's symbol following delisting is desirable to inform investors of the change in status of the issuer. Therefore, the Commission believes that it is appropriate to prohibit symbol portability rights for delisted issuers that trade on an OTC equity market with security symbols of any length, including symbols with four- or five-characters.

[171] *See* Section IV(d) of the Five-Characters Plan (providing that a symbol may not be reused by a party to the plan to identify a new security, other than the security that has been trading under such symbol, unless the party reasonably determines that such use would not cause investor confusion).

[172] *See* Section IV(d) of the Five-Characters Plan. One commenter stated that symbols should not be reassigned until six months after an issuer ceases to use such symbol in order to avoid customer confusion. *See* Angel Letter I at 9. The Commission notes that this plan provision, without providing a specific timeframe, prohibits an exchange from assigning a reused symbol at any time if doing so would cause investor confusion. The Commission does not believe that specifying a six-month timeframe to be appropriate as such a time period may, in some cases, be too short and the reuse of a security symbol in such cases may still cause investor confusion. Although the passage of time is one key factor, other factors may need to be considered as well. For example, whether the original issuer's securities are traded over-the-counter or have ceased trading altogether is another factor in evaluating the potential for confusion with regards to the original listing symbol.

[173] Section IV(d) of the Five-Characters Plan also provides that a party could move a symbol from its perpetual reservations list to its limited-time reservations list in order to place the symbol being reused on its perpetual reservations list.

reserved as a limited-time reservation and the additional symbol could exceed the limit of the maximum number of limited-time reservations permitted to a party under the plan.

The Commission finds that the foregoing symbol reservation system provisions of the Five-Characters Plan will further the purposes of the Act and that, in particular, they should maintain fair and orderly markets to assure fair competition between exchange markets, consistent with Section 11A(a)(1)(C) of the Act.[174]

4. Database

Under the Five-Characters Plan, the Processor would create and maintain a symbol reservation database.[175] The database would show all symbols currently in use and the party using such symbols.[176] A party would be required to notify the Processor when the party begins using a reserved symbol. In addition, the database would show all symbols reserved on the perpetual reservations and limited-time reservations lists, including the reserving party and the expiration date for limited-time reservations.[177] The database would also show the waiting list and the priority order of the waiting list for each symbol.[178]

The Commission finds that the provisions of the Five-Characters Plan relating to the symbols database will further the purposes of the Act because the database of symbols is essential to ensure that a symbol is used to identify only one security and therefore will help in the maintenance of fair and orderly markets.

5. Confidentiality

The Processor would maintain all information received from the parties in strictest confidence and the only information that the Processor would make available to the parties is the symbol reservation database.[179] The Processor would not make the symbol reservation database available to any person except the Commission or the parties, unless otherwise required by applicable law.

One commenter questioned the need for confidentiality of the information in this database, arguing that issuers may want to know if a symbol is available to reserve it in advance.[180] The Commission does not believe that the Act imposes any requirement to make this information available publicly.[181] Therefore, the Commission finds that the confidentiality provisions of the Five-Characters Plan are appropriate in the public interest.

6. Term of Plan Withdrawal—Non-Transferability of Rights under the Plan

A party wishing to withdraw from the plan would be required to provide at least six months prior written notice to the other parties.[182] The withdrawing party would remain liable for its proportionate share of costs and expenses during the time it was a party to the plan, but would have no further obligations after the withdrawal.

In addition, an SRO would cease to be a party to the plan when it ceases to maintain a facility for the quoting and trade reporting of securities transactions or ceases to use symbols subject to the plan, except upon the agreement of the remaining parties.[183] To be approved as a continuing party, the plan would require a majority vote of the remaining parties.

The right of a party to participate in the Symbol Reservation System under the plan is not transferable without the consent of the other parties.[184] However, if a party is subject to a merger, combination, or other reorganization or the sale of all or substantially all of its assets, including its registration as an SRO, the surviving entity would automatically become subject to the plan and could use the Symbol Reservation System.

The Commission finds that the provisions of the Five-Characters Plan relating to a party withdrawing from the plan will further the purposes of the Act because, by specifying a party's terms of withdrawal, the plan helps to ensure a fair and orderly market.

7. Amendments to the Plan

The plan may be amended from time to time when authorized by the affirmative vote of all the parties, subject to any required approval of the Commission.[185] One commenter questioned the efficacy of requiring unanimous approval for plan changes.[186] Although the Commission agrees that the plan's unanimity provision with respect to amendments may, in some cases, not be the most efficient method, the Commission notes that the signatory SROs to both proposed plans agreed to this required voting methodology and the Commission is reluctant to require a different voting methodology for plan amendments at this time.

The Commission finds that the provision of the Five-Characters Plan relating to amendments to the plan is in furtherance of the purposes of the Act in that it specifies the method by which the plan may be amended. The Commission will monitor this process to determine whether the unanimity provision is used for anti-competitive purposes or for any other purpose not consistent with the Act. The Commission notes that SROs proposing an amendment to a national market system plan must file such amendment with the Commission pursuant to Rule 608 under the Act.[187] The Commission also notes that it has the authority to amend any effective national market system plan under Rule 608 under the Act.[188]

8. Development and Implementation Phases of the Plan

The Five-Characters Plan states that it would be implemented upon the Commission's approval. Although the letters accompanying both proposed plans state that the parties will determine the development and implementation phase later or in accordance to a timetable to which the parties and the Processor will agree,[189] the plans as submitted to the Commission both provided that the parties would commence the initial reservation process upon Commission approval.[190] As discussed above, however, the Commission has modified the Five-Characters Plan to commence the initial reservation process 60 days from the Commission's approval of the plan.[191] The Commission has made this modification in order to give the SROs that are not signatories to the Five-Characters Plan time to obtain the

[174] 15 U.S.C. 78k-1(a)(1)(C).

[175] *See* Section IV(e) of the Five-Characters Plan. One commenter has expressed an interest in acting as the Processor for the adopted plan. *See* SFB Letter. Another commenter suggested that FINRA be the Processor. *See* Issuer Advisory Letter at 3.

[176] *See* Section IV(e)(1) of the Five-Characters Plan.

[177] *See* Section IV(e)(2) of the Five-Characters Plan.

[178] *See* Section IV(e)(3) of the Five-Characters Plan.

[179] *See* Section VI of the Five-Characters Plan.

[180] *See* Angel Letter II at 5.

[181] The Commission also notes that the confidentiality requirement under the plan applies only to the Processor, and that nothing under the plan requires confidentiality on the part of the parties. Therefore, to the extent an issuer wants to know if a symbol is available, it could request such information from one of the parties.

[182] *See* Section VII of the Five-Characters Plan.

[183] *See* Section I(d) of the Five-Characters Plan.

[184] *See* Section VII of the Five-Characters Plan.

[185] *See* Section VIII of the Five-Characters Plan.

[186] *See* Angel Letter II at 4. The Commission notes, however, that other national market system plans have similar provisions (*see, e.g.,* the Options Linkage Plan at *http://www.optionsclearing.com/initiatives/ola/ola.jsp*).

[187] *See* 17 CFR 242.608(a).

[188] *See* 17 CFR 242.608(a)(2) and (b)(2).

[189] *See* Paragraph 4 of the letters accompanying each proposed plan.

[190] *See* Sections IV(b)(1) of both proposed plans.

[191] *See* discussion *supra* notes 141–143 and accompanying text.

necessary approvals to join the approved plan. The Commission believes 60 days is a reasonable period of time to obtain such approval. The Commission notes that this approval order only requires SROs that choose to list securities or designate securities for quoting on a quotation medium to join the plan (and all such SROs were party to one of the two submitted plans); those SROs that do not intend to list or designate securities for quoting are not required to join the plan.[192]

The Commission finds that the modified implementation provision of the Five-Characters Plan will further the purposes of the Act because it allots additional time for non-signatory SROs to join the approved plan.

9. Terms and Conditions of Access

Any SRO that meets the eligibility standards of the plan may become a party thereto by signing a current copy of the plan and paying to the other parties a share of the aggregate development costs previously paid by such parties to the Processor.

The Commission finds that this provision of the Five-Characters Plan will further the purposes of the Act in that it should assure fair competition among exchange markets, in particular new SROs, consistent with Section 11A(a)(1)(C)(ii) of the Act.[193]

## IV. Conclusion

It is hereby ordered, that pursuant to Section 11A(a)(3)(B) of the Act1 [194] and Rule 608,[195] that the Five-Characters Plan submitted by CHX, FINRA, Nasdaq, NSX, and Phlx, as modified herein, is approved and declared effective,[196] and that CHX, FINRA, Nasdaq, NSX, and Phlx are authorized to act jointly to implement the Five-Characters Plan as a means of facilitating a national market system.

*It is hereby further ordered*, that, within 60 days from the date of this approval order, any SRO that chooses to list securities on its market or to designate securities for quoting on a quotation medium must join the Five-Characters Plan, as modified herein,[197] and act jointly with other parties to the plan to implement the approved Five-Characters Plan.[198]

By the Commission.

**Florence E. Harmon,**

*Acting Secretary.*

## Appendix A—National Market System Plan for the Selection and Reservation of Securities Symbols

The self-regulatory organizations (''SROs'') named below as the parties to this Plan (as defined below), and any other SROs that may subsequently become parties to this Plan, maintain facilities for the quoting and trade reporting of securities that: (i) Are NMS securities as currently defined in Rule 600(a)(46) under the Securities Exchange Act of 1934; and (ii) any other equity securities quoted, traded and/or trade reported through an SRO facility (collectively, ''Plan Securities''). These SROs have determined that in order to enhance the effectiveness and efficiency of the national market system and to provide for the fair competition between the SROs, they should establish a uniform system for the selection and reservation of securities symbols (the ''Symbol Reservation System''). These SROs therefore have jointly developed and agreed upon the following Plan for this purpose, and have agreed to file it with the Securities and Exchange Commission (''Commission'') as a national market system plan in accordance with and subject to Rule 608 under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''). The term ''Plan'' as used herein shall mean this plan as from time to time amended in accordance with the provisions hereof. As of 90 days from the Commission's approval of this Plan, this Plan will be the exclusive means of allocating and using symbols of 1, 2, 3, 4, or 5 characters in length, and there will be no difference between capital and lowercase letters under this Plan.

The Intermarket Symbols Reservation Authority (''ISRA'') shall mean the parties to the Plan acting jointly pursuant to the terms of the Plan. Pursuant to Section 11A(a)(3)(B) of the Exchange Act, the Commission's approval of the Plan and any amendments thereto shall authorize and require the parties to the Plan to act jointly with respect to matters as to which they share authority hereunder in planning, developing and operating the systems and facilities used for this purpose, provided that such joint action shall be limited to circumstances in which it is necessary in order to fulfill the purposes and objectives as stated in the Plan.

*I. Parties*

(a) The parties to the Plan are the following SROs:

Chicago Stock Exchange, Inc. (''CHX''), registered as a national securities exchange under the Exchange Act and having its principal place of business at 440 South LaSalle Street, Chicago, IL 60605.

Financial Industry Regulatory Authority, Inc., registered as a national securities association under the Exchange Act and having its principal place of business at 1735 K Street, NW., Washington, DC 20006.

The Nasdaq Stock Market LLC (''NASDAQ'') registered as a national securities exchange under the Exchange Act and having its principal place of business at One Liberty Plaza, New York, NY, 10006.

National Stock Exchange, Inc. (''NSX''), registered as a national securities exchange under the Exchange Act and having its principal place of business at 440 South LaSalle Street, Suite 2600, Chicago, IL 60605.

Philadelphia Stock Exchange, Inc. (''PHLX''), registered as a national securities exchange under the Exchange Act and having its principal place of business at 1900 Market Street, Philadelphia, Pennsylvania 19103.

(b) Each of the parties represents to the other parties that (i) at any time it seeks to reserve symbols using 1, 2 or 3 characters, it will have the actual technical and physical capability through its facilities to immediately quote and trade report in Plan Securities using 1, 2 or 3 characters, and (ii) at any time it seeks to reserve symbols using 4 or 5 letter characters, it will have the actual technical and physical capability through its facilities to immediately quote and trade report trades in Plan Securities using 4 or 5 characters. This Plan shall not apply in any respect to any suffix or special conditional identifier that may follow a ''root'' symbol of 1, 2, 3, 4 or 5 characters in length.

(c) Any other SRO that maintains a market for the listing or trading of Plan Securities, in accordance with rules approved by the Commission, which securities are identified by one, two or three character symbols, on the one hand, or four or five character symbols, on the other hand, in each case prior to any suffix or special conditional identifier (''Applicant''), may become a party to the Plan. An Applicant may become a party to the Plan by signing a current copy of the Plan and paying to the other parties a proportionate share of the aggregate development costs previously paid by such parties to the Processor (as defined in Section III below), which aggregate development costs totaled $[amount to be determined after Plan effectiveness and implementation, and filed with the Commission as an amendment to the Plan].

(d) Subject to Section VII below concerning the continuing liability of former parties for certain obligations under the Plan, an SRO that is a party to the Plan shall cease to be a party at such time as it ceases to maintain a facility for the quoting and trade reporting of securities transactions or ceases to use symbols subject to the Plan, unless such SRO asks to continue as a party and the other parties to the Plan, by a majority vote, approve such SRO to continue as a party.

*II. Administration of ISRA*

(a) *ISRA Policy Committee.* ISRA shall be administered by a Policy Committee, which shall be constituted as provided in paragraph II(c), below.

(b) *Authority of Policy Committee.* Except as otherwise expressly provided in the Plan, the ISRA Policy Committee shall make all policy decisions on behalf of ISRA in furtherance of the functions and objectives of ISRA under the Exchange Act and under the Plan, including but not limited to the following:

(1) Overseeing the operation of the Symbol Reservation System and making all administrative decisions necessary with

[192] *See supra* notes 68–70 and accompanying text.

[193] 15 U.S.C. 78k–l(a)(1)(C)(ii).

[194] 15 U.S.C. 78k–l(a)(3)(B).

[195] 17 CFR 242.608.

[196] The approved plan is attached here as Appendix A.

[197] *Id.*

[198] *See* 17 CFR 242.608(b)(2).

respect to the operation of the system in accordance with the Plan;

(2) Making all determinations pertaining to contracts with parties to the Plan or with other persons who provide goods or services to ISRA;

(3) Determining all other questions pertaining to the planning, developing and operating of ISRA, including those pertaining to budgetary or financial matters.

(c) *Composition and Selection of Policy Committee.* The Policy Committee shall consist of one voting member representing each party and one alternate voting member representing each party, with each alternate having a right to vote only in the absence of that party's voting member. Each of the voting and alternate voting members of the Policy Committee shall be appointed by the party that he or she represents, and shall serve at the will of the party appointing such member.

(d) *Action of Policy Committee.* Each of the parties shall have one vote on all matters voted upon by the Policy Committee and, except as otherwise provided herein, action of ISRA under the Plan shall be authorized by the affirmative vote of a majority of the members of the Policy Committee, subject to the approval of the Commission whenever such approval is required under applicable provisions of the Exchange Act and the rules of the Commission thereunder. Action authorized in accordance with the Plan shall be binding upon all of the parties, without prejudice to the rights of any party to present contrary views to any regulatory body or in any other appropriate forum.

(e) *Meetings of the Policy Committee.* Regular meetings of the Policy Committee may be attended by each party's voting representative or alternate voting representative, by one or more nonvoting representatives of the parties, and by such other persons that the Committee may invite to attend. Meetings of the Policy Committee shall be held at least annually and at such other times as shall from time to time be determined by the Policy Committee, on not less than ten (10) business days' notice. Special meetings of the Policy Committee may be called upon the request of two or more parties on not less than two (2) business days' notice. At each meeting of the Policy Committee, the Committee shall designate one of the representatives of the parties to preside as Chairman of the meeting and shall designate a person in attendance to act as Secretary to record the minutes thereof. The location of the regular and special meetings of the Policy Committee shall be determined by the Committee. Members of the Policy Committee may be present at a meeting by conference telephone or other electronic means that enables each of them to hear and be heard by all others present at the meeting, and action may be taken without a meeting if all of the members entitled to vote consent thereto in writing.

*III. Performance of Functions*

As determined by its Policy Committee, ISRA will delegate the operation of the Symbol Reservation System to an independent third party (the ''Processor''), and will enter into contracts with such party describing the functions to be performed by it and the service levels and other terms related thereto. The Processor shall be required to agree that any nonpublic information that becomes known to it shall be held in confidence, except as it may be shared with the Commission or other appropriate governmental regulatory authorities or as otherwise required by applicable law.

*IV. The Symbol Reservation System*

(a) *Scope of the Symbol Reservation System.* The Symbol Reservation System shall cover the allocation of all symbols used to identify Plan Securities. This Plan covers only the ''root'' symbol to be disseminated, which is the one through five character symbol, in each case prior to any suffix or special conditional identifier.

(b) *Reservation and Use of Symbols.*

(1) *Submission of Initial Reservation Requests.* Beginning 60 days after the Commission's approval of this Plan, for a period of 30 days, with respect to symbols for which a party meets the requirements of Section I.(b) at the time of approval, and within 45 days after a party meets the requirements of Section I.(b) with respect to other symbols (unless such time is extended by the Policy Committee), such party may submit to the Processor requests for the initial reservation of symbols as follows. A party may request a symbol for: (i) The listing of common stock or any other security, including options; (ii) with respect to four- and five-character symbols, the trading of any security over-the-counter; (iii) the dissemination of a securities index or other index information; or (iv) any other purpose authorized by a majority vote of the parties. However, no party may reserve or use a 1, 2 or 3 character symbol for a security not listed on a national securities exchange. All initial symbol requests must specify whether the party believes that it had ''reserved'' a requested symbol in the system in use prior to the Commission's approval of this Plan. Initial requests may be for perpetual as well as limited-time reservations as specified below.

(A) *Perpetual Reservations.* A requesting party may request to reserve a limited number of symbols without any time or other limitations or restrictions. A perpetual reservation is a ''List A reservation.'' A separate List A shall be maintained for symbols using one, two or three characters, on the one hand, and symbols using four or five characters, on the other hand, and this Plan shall be applied separately to each List A. For the avoidance of doubt, symbols under the List A for one, two or three characters and symbols under the List A for four or five characters are not interchangeable with one another for any purpose under this Plan. Subject to paragraph (d) below, a party may not add symbols to a given List A after the initial reservation process for that given list A. With respect to symbols using one, two or three characters, a party may not have more than 20 List A reservations. With respect to symbols using four or five characters, a party may not have more than 20 List A reservations. A party requesting to reserve more symbols than permitted pursuant to this paragraph must place its List A reservation requests in priority ranking.

(B) *Limited-Time Reservations.* In addition to List A reservations, a party may submit requests to reserve symbols for a limited time period (''List B reservations''). A separate List B shall be maintained for symbols using one, two or three characters, on the one hand, and symbols using four or five characters, on the other hand, and this Plan shall be applied separately to each List B. Symbols under the two lists are not interchangeable for any purpose under this Plan. With respect to symbols using one, two or three characters each party may have a total of up to 1,500 List B reservations at any given time. With respect to symbols using four or five characters, each party may have up to a total of 1,500 List B reservations. A party's permitted List B reservations shall be for 24 months. A party requesting to reserve more symbols than permitted pursuant to this paragraph must place its List B reservation requests in priority ranking. Notwithstanding anything else herein this sub-paragraph (B), no party shall make a List B reservation request with respect to a particular symbol unless said party has a reasonable basis to believe it will utilize such symbol within the next 24 months.

(2) *The Processing of Initial Reservation Requests.*

(A) If only one party claims that it had a symbol properly ''reserved'' prior to the effective date of this Plan (A ''Legacy Reservation''), the Processor shall reserve such symbol for that party, provided that party represents it has a reasonable basis to believe it will utilize such symbol within the next six (6) months. Legacy Reservations shall not be counted as List A or List B reservations for the purposes of sub-paragraphs (1)(A) and (1)(B) of this Section. Should the relevant party not use a symbol that is the subject of a Legacy Reservation within the six (6) month period, said symbol shall be released by the Processor pursuant to paragraph 5 below, provided that a party may request an extension of a Legacy Reservation for an additional six (6) month period provided said party has a reasonable basis to believe it will utilize such symbol within that period. If not so used within that period, said symbol shall be released by the Processor pursuant to paragraph 5 below.

(B) If multiple parties meeting the requirements of sub-paragraph (A) above claim to have properly reserved a symbol prior to the Commission's approval of this Plan, the Processor shall notify all parties making such claims of that fact, whereupon such parties shall have five business days in which to reach a mutually acceptable agreement as to which party shall be permitted to reserve such symbol. If the parties fail to reach agreement during such period, then the Policy Committee shall resolve such conflicting claims (in favor of the party with the earliest proper claim to such symbol, if that fact can be determined) by a majority vote of the parties not claiming such symbol, it being understood that proper reservation of a symbol includes reservation under the reservation system in effect prior to the adoption of this Plan. The Policy Committee shall provide each such party the

opportunity to provide evidence of how and when it reserved such symbol, and the members of the Policy Committee who vote in these matters shall in good faith consider such evidence in reaching their decision. In the event of a tie vote, the Policy Committee shall establish a random order of the parties to determine which party may reserve the symbol.

(C) If only one party seeks to reserve a symbol that no party has properly reserved prior to the Commission's approval of this Plan, then the Processor shall reserve that symbol for that party.

(D) If multiple parties seek to reserve a symbol, but no such party claims to have properly reserved the symbol prior to the Commission's approval of this Plan, then the Processor shall reserve such symbol pursuant to a random ordering of the parties that the Policy Committee shall establish.

(E) If a party requests a symbol that is not available because the symbol is in use or has properly been reserved by another party, the Processor will place all such parties on a waiting list for the symbol pursuant to paragraph (c) below.

(F) Using this methodology, the Processor will reserve for a party all requested symbols up to the limits specified above for List A and List B based on the requesting party's priority ranking. Once a party has reached its limit on the number of permitted List A reservations, the Processor will process all such party's remaining requests for List A symbols as List B requests before processing that party's requests for List B reservations.

(3) *Subsequent Reservations.* At any time following the initial allocation of symbols pursuant to paragraphs (1) and (2) above, a party may submit to the Processor a request for a List B reservation of one or more symbols as follows:

(A) If a requested symbol is available the Processor will reserve the symbol for the requesting party if at that time it does not hold the maximum number of List B reservations available to it. If necessary to stay within the maximum number of reservations permitted under subparagraph (1)(B) above, the party must provide the Processor with a List B symbol to release upon reservation of the new symbol.

(B) If a requested symbol is not available either because it is in use or because another party has reserved the symbol, the Processor will place the party on the waiting list pursuant to paragraph (c) below.

(4) *Notice of Use of Reserved Symbols.* A party shall notify the Processor when it begins to use a reserved symbol.

(5) *Non-Use or Release of Symbols Within Time Period.* If a symbol reserved on List B is not used within the specified 24-month time limit, the Processor shall release the symbol. In addition, a party at any time may voluntarily release a reserved symbol by so notifying the Processor. In either case, the Processor shall make the symbol available for reservation to those parties on the waiting list pursuant to subparagraph (c)(2) below. If there is no waiting list for the symbol, or if no party on such list decides to reserve the symbol, the Processor shall give reasonable notice to all parties of the availability of the symbol, and any party may request the reservation of such symbol. If more than one party requests the reservation of such symbol within two business days of such notice, the Processor shall assign the symbol to one such party and shall place the other parties on the waiting list pursuant to a random order of priority that the Policy Committee shall establish. If necessary to stay within the maximum number of reservations permitted under subparagraph (1)(B) above, the requesting party must voluntarily release a symbol, as described in subparagraph (3)(A) above, before it can reserve the assigned symbol.

(6) *Request for Release of a Symbol.* If a party has an immediate need to use a symbol that another party reserved, it can ask (i) the party that has the symbol reserved and (ii) any other parties on the waiting list with priority over the requesting party whether such parties are willing to release such symbols. If any such party does not agree to the release, the then-current reservation and waiting list priority shall remain unchanged. If all such parties agree to the release, then the requesting party may include such symbol as one of its List B reservations for 24 months. If necessary to stay within the maximum number of reservations permitted under subparagraph (1)(B) above, the requesting party must voluntarily release a symbol, as detailed in subparagraph (3)(A) above, before it can reserve the requested symbol. If the requesting party does not use the symbol within 24 months, absent the consent of all the parties initially required to be contacted, the reservation and waiting list priority in effect when the requesting party first made its request shall again be in force.

(c) *Waiting List.*

(1) *Placing a Party on a Waiting List.* Pursuant to subparagraphs (2)(D) and (3)(B) above, if one or more parties request to reserve a symbol that another party has under reservation, the Processor shall place such parties on a waiting list for such symbol. The Processor shall prioritize parties on the waiting list based on the earliest time that each requested the reservation from the Processor; provided, however, that if more than one party seeks to use a symbol already in use either (A) during the initial reservation period or (B) within two business days of notice of a symbol's availability under subparagraph (b)(5) above, the Policy Committee shall establish a random order of those parties to determine priority on the waiting list.

(2) *Availability of Symbols.* Subject to paragraph (d) below, if a symbol becomes available for any reason, the Processor shall provide the party with time priority on the waiting list as to that symbol with notice of such availability. Such party shall have two business days to reserve the symbol. If the party with priority does not reserve the symbol, the Processor shall repeat this process as needed with all parties on the waiting list in the order of their priority. If necessary to stay within the maximum number of reservations permitted under subparagraph (b)(1)(B) above, the reserving party must voluntarily release or redesignate a symbol, as detailed in subparagraph (b)(3)(A) above, before it can reserve the requested symbol.

(3) *Waiting List Limits.* No party may be on the waiting list for more than 100 symbols at any given time.

(d) *Reuse of a Symbol.* Subject to paragraph (f) below, if a party ceases to use a symbol (due, for example, but not limited to, the delisting of a security through merger or otherwise), such party automatically shall have that symbol reserved for a period of 24 months, notwithstanding any other limits on the number of reserved symbols specified in this Plan. If at the time it ceases to use a symbol that party does not then have reserved on List A the full number of symbols initially available to it pursuant to subparagraph (b)(1)(A) above, the party may place such symbol on List A. If the party has reserved on List A the full number of symbols available to it, that party may move a List A symbol to List B in order to place the symbol to be reused on List A, notwithstanding the fact that the party may then have the maximum number of symbols reserved on List B. If the party does not place the symbol on List A, and if the party does not use the symbol within 24 months, the symbol shall be released for use pursuant to subparagraph (b)(5) above. A symbol may not be reused by a party to identify a new security (other than the security that has been trading under such symbol), unless the party reasonably determines that such use would not cause investor confusion.

(e) *Database.* The Processor shall create and maintain a symbol reservation database (''Database''). All parties and the Commission (but no other person) shall have access to the Database except to the extent required by applicable law. The Database shall show:

(1) All symbols that are currently in use, identifying the party using a symbol;

(2) All symbols that are reserved on Lists A and B (separately for symbols using one, two or three characters on the one hand, and four or five characters on the other hand), including the party reserving each symbol and the date on which List B reservations will lapse if the symbol is not used; and

(3) Whether there is a waiting list for a symbol, and if so, the identities and priorities of the parties on the waiting list.

(f) *Portability of Symbols in Use.* If an SRO (a ''New SRO'') lists a security or product that previously was listed on another SRO (a ''Former SRO''), the New SRO shall have the rights to that symbol unless, in its discretion, it consents to the symbol being retained by the Former SRO.

*V. Financial Matters.*

(a) *Initial Development Costs.* The parties will share the initial development costs pro-rata based on the number of symbols initially reserved by each party pursuant to Section IV, paragraph B(1) hereof. Any new party that joins the plan shall be liable for a pro-rata portion of the initial development costs based upon the number of symbols reserved by said party during the first twelve (12) months of such party's membership.

(b) *Continuing Costs.* Costs and expenses of ISRA (other than development costs) will be shared among the parties pro-rata based on the number of additional symbols reserved in each calendar year, estimated quarterly. Notwithstanding the foregoing, the Policy

Committee may devise alternative cost-allocation methodology with respect to special non-initial development projects.

*VI. Confidentiality*

The Processor will maintain in the strictest confidence all of the information it receives from the parties. The only information the Processor will make available to the parties is the Database. The Processor will not make the Database available to any person other than the parties or the Commission, except to the extent required by applicable law.

*VII. Term of Plan Withdrawal; Non-Transferability of Rights Under the Plan*

The Plan shall remain in effect so long as there are two or more parties to the Plan. Any party may withdraw from the Plan at any time on not less than six months prior written notice to each of the other parties. Any party withdrawing from the Plan shall remain liable for its proportionate share of costs and expenses allocated to it pursuant to Section V above for the period during which it was a party, but it shall have no further obligations under the Plan or to any of the other parties with respect to the period following the effectiveness of its withdrawal. The right of a party to participate in the Symbol Reservation System under the Plan shall not be transferable without the consent of the other parties, provided, however, that if a party is subject to a merger, combination or other reorganization or the sale of all or substantially all of its assets, including it's registration as an SRO, the surviving or acquiring entity shall automatically become subject to the Plan and may use the Symbol Reservation System instead of the prior party and with its rights and subject to its liabilities under the Plan.

*VIII. Amendments to the Plan*

The Plan may be amended from time to time when authorized by the affirmative vote of all of the parties subject to any required approval of the Commission.

*IX. Applicability of Exchange Act*

The rights and obligations of the parties to the Plan shall at all times be subject to any applicable provisions of the Exchange Act and any rules and regulations promulgated hereunder.

*X. Notices*

Any notice given to any of the parties or to ISRA for purposes of the Plan shall be via electronic mail. All notices shall be deemed given immediately, unless the sender receives notification of a failure to deliver the electronic mail. Alternatively, a party may give notice in writing, and shall be deemed given 48 hours after being sent if sent by prepaid registered or certified United States mail, return receipt requested (if available), or by overnight mail with a nationally recognized overnight mail courier, addressed to the party at its address indicated below in the case of notice to one or more parties, or addressed to all of the parties at their addresses listed in Section I above.

*XI. Counterparts and Signatures*

The Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Plan has been executed as of the __ day of ____ by each of the parties hereto.

CHICAGO STOCK EXCHANGE, INC.
By: _____

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.
BY: _____

THE NASDAQ STOCK MARKET, LLC
By: _____

NATIONAL STOCK EXCHANGE, INC.
By: _____

PHILADELPHIA STOCK EXCHANGE, INC.
By: _____

[FR Doc. E8–26880 Filed 11–12–08; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58902; File No. SR–CBOE–2008–112]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

November 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 31, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (1) the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02'') and (2) the monthly access fee for Interim Trading Permit (''ITP'') holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02 [2] and the current access fee for ITP holders under Rule 3.27 [3] are both $10,118 per month. Both access fees are currently set at the indicative lease rate (as defined below) for October 2008. The Exchange proposes to adjust both access fees effective at the beginning of November 2008 to be equal to the indicative lease rate for November 2008 (which is $9,937). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $9,937 per month commencing on November 1, 2008.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate [4] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[5] The Exchange determined the indicative lease rate for November 2008 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member

[2] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[3] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) for a description of the Interim Trading Permits under Rule 3.27.

[4] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[5] The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of November 2008 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of October 2008 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of November 2008.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[6] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[7]

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–112 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–CBOE–2008–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2008–112 and should be submitted on or before December 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–26895 Filed 11–12–08; 8:45 am]

**BILLING CODE 8011–01–P**

[6] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[7] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58905; File No. SR–FINRA–2008–054]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 5280 (Trading Ahead of Research Reports) in the Consolidated FINRA Rulebook

November 6, 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 29, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Interpretive Material 2110–4 (Trading Ahead of Research Reports) as a FINRA rule, subject to certain amendments. The proposed rule change would renumber NASD IM–2110–4 as FINRA Rule 5280 in the consolidated FINRA Rulebook.

The text of the proposed rule change is available at FINRA, on its Web site (*http://www.finra.org*), and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

As part of the process of developing the new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt in the Consolidated FINRA Rulebook NASD Interpretive Material (''IM'') 2110–4 (Trading Ahead of Research Reports) with certain modifications.

IM–2110–4 states that it is conduct inconsistent with just and equitable principles of trade for a member to establish or adjust an inventory position in an exchange-listed security traded over-the-counter or a derivative of such security in anticipation of the issuance of a research report on that security. The IM further recommends—but does not require—that firms establish policies and procedures to develop and implement effective internal controls to isolate specific information within research and other relevant departments so as to prevent the trading department from utilizing advance knowledge of the issuance of research reports. Those members that choose not to establish such procedures bear the burden to show that changes in inventory positions in advance of research reports were not purposeful.[4]

The proposed rule change would amend the IM in three respects. First, it would extend the application of the IM to cover inventory positions with respect to any security—including debt—or derivative thereof, irrespective of whether the security is exchange-listed. FINRA believes the purpose of the IM—to prevent the manipulation of the supply of a security for the benefit of a firm and to the detriment of investors—applies equally to inventory positions in non-exchange-listed securities.

Second, the proposed rule change would apply the rule only to circumstances where a member establishes or adjusts its inventory based on *non-public* advance knowledge of the content or timing of a research report in that security. As such, it would not be a violation of the rule for a member to increase or decrease inventory of a security based on publicly available information regarding the likely timing of a research report. By way of example, when a member's trading desk adjusts an inventory position in anticipation of a research report because of a publicly discernible trend that a member's report tends to follow an earnings announcement, the prohibitions of the rule would not be triggered. However, having knowledge of a publicly discernible trend is not a viable alternative basis for the member's trading desk to adjust its inventory position when the trading desk is also the recipient of *non-public* advance knowledge of the content or timing of a research report in that security.

Finally, the proposal would eliminate the option to establish internal controls to manage the flow of information between the research and trading departments and instead mandate that firms establish policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the member or any other person.

FINRA believes that a member should have an affirmative obligation to manage conflicts of interest in its trading of securities. Moreover, this approach is more consistent with existing and proposed rules regarding supervision and the requirements of NASD Rule 2711 and NYSE Rule 472 to eliminate conflicts involving the publication and distribution of research reports.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[5] which

[3] The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] Incorporated NYSE Rule Interpretation 401/01 includes aspects similar to IM–2110–4. FINRA deleted that Interpretation as part of an earlier filing to transfer NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade) and 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) to the Consolidated FINRA Rulebook, as the conduct addressed in the Interpretation is subsumed by those rules. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR–FINRA–2008–028).

[5] 15 U.S.C. 78o–3(b)(6).

requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will protect the investing public by preventing firms from utilizing non-public advance knowledge of the timing or content of a research report to benefit its own trading to the detriment of its customers. The proposed rule change further would clarify and streamline NASD IM–2110–4 for adoption as a FINRA Rule in the new Consolidated FINRA Rulebook. NASD IM–2110–4 has previously have been found to meet the statutory requirements, and FINRA believes that rule has since proven effective in achieving the statutory mandates.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2008–054 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–FINRA–2008–054. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–054 and should be submitted on or before December 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–26883 Filed 11–12–08; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58898; File No. SR–ISE–2008–81]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to its Cancellation Fee

November 4, 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 31, 2008, International Securities Exchange, LLC (the ''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The ISE filed the proposal pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The ISE is proposing to amend its Schedule of Fees regarding its cancellation fee. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend the ISE's cancellation fee. The Exchange currently has a cancellation fee of $2.00 that applies to Electronic Access Members (''EAMs'') that cancelled at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member executed that month. Further, all orders from the same clearing EAM executed in the same series on the same side of the market at the same price within a 30 second period are aggregated and counted as one executed order for purposes of this fee. This fee is currently charged only to customer orders; broker-dealer orders, including non-member market maker (FARMM) orders, are excluded from this fee.

Recognizing that order cancellations often happen in large numbers, the purpose of this fee is to ease system congestion and to fairly allocate costs among members according to system use. Some members recently have sought to circumvent the fee by breaking up their orders into a range of deep out of the money options series in the same underlying name that trade at the same premium; in another [sic] words, executing multiple orders within 30 seconds, but in related—not the same—series of options. As noted above, ISE currently aggregates executions only in the same series, not related series. In order to prevent market participants from circumventing this fee, ISE proposes to amend the current execution-offset provision of the cancellation fee. Specifically, in calculating this fee, the Exchange will aggregate together and count as one cancelled order orders that are entered and traded within 30 seconds, at the same price, in the same underlying symbol. The Exchange believes this proposed fee change is justified to counter the level of cancellation activity and its effect on congestion.

This proposed fee change will be operative on November 3, 2008.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes amending the manner by which its cancellation fees are calculated is necessary to allow the Exchange to target cancellations that do not have a valid justification.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Act [5] and Rule 19b–4(f)(2) [6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2008–81 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–ISE–2008–81. 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–ISE–2008–81 and should be submitted on or before December 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–26884 Filed 11–12–08; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2) [sic].

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58906; File No. SR–Phlx–2008–76]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc. Relating to an Increase in the Maximum Number of Quoters Permitted in an Option

November 6, 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 November 4, 2008, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act [3] and Rule 19b–4 thereunder,[4] proposes to amend Exchange Rule 507, Application for Approval as an SQT or RSQT and Assignment in Options, which governs the assignment of options to Streaming Quote Traders (''SQTs'') [5] and Remote Streaming Quote Traders (''RSQTs''),[6] by establishing a higher maximum number of quoting participants (''Maximum Number of Quoters'' or ''MNQ'') in equity options that are not in the top 15% most actively traded based upon monthly national volume.

The Exchange further proposes to amend Commentary .05 to Rule 507 to reflect the current practice of announcing changes to the MNQ on its web site.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.phlx.com/regulatory/reg_rulefilings.aspx*.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to provide additional liquidity in equity options on the Exchange by increasing the MNQ in certain options.

Currently, the Exchange limits the number of participants that may be assigned to a particular equity option at any one time based upon each option's monthly national volume. Commentary .02 to Rule 507 sets forth tiered MNQ levels permitting 22 market participants for the top 5% most actively traded options; 17 market participants for next 10% most actively traded options, and 12 market participants for all other options.[7] The ranking is based upon the preceding month's national volumes. The Exchange proposes to increase the MNQ level for equity options that are not in the top 15% most actively traded from 12 market participants to 15.[8]

Finally, Commentary .05 to Rule 507 states that the Exchange will inform market participants of changes to the MNQ via Exchange circular. The Exchange proposes to amend Commentary .05 to Rule 507 to reflect its current practice of announcing changes to the MNQ on its Web site.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by adding depth and liquidity to the Exchange's markets in certain equity options.

The Exchange further believes that increasing the MNQ in certain equity options is pro-competitive, because it adds depth and liquidity to the Exchange's markets by permitting additional participants to compete on the Exchange.

### *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 not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

---

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit options quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[6] An RSQT is a ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[7] When initially adopted, Commentary .01 (a)–(c) established MNQ levels of 20 market participants for the top 5% most actively traded options; 15 market participants for next 10% most actively traded options; and 10 market participants for all other options. *See* Securities Exchange Act Release No. 55114 (January 17, 2007), 72 FR 3185 (January 24, 2007) (SR–Phlx–2006–81). These MNQ levels were subsequently increased to the current levels of 22, 17, and 12, respectively. *See* Securities Exchange Act Release No. 56261 (August 17, 2007), 72 FR 47112 (August 22, 2007) (SR–Phlx–2007–51).

[8] Commentary .05 to Rule 507 states that the Exchange may increase the MNQ levels established in this Commentary (meaning the 22, 17, and 12 numbers established in Commentary .01(a)–(c)) by submitting to the SEC a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act. The Exchange may decrease the MNQ levels established in this Commentary upon SEC approval of a rule filing submitted pursuant to Section 19(b)(2) of the Exchange Act.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange fulfilled this requirement.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2008–76 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–Phlx–2008–76. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–76 and should be submitted on or before December 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–26957 Filed 11–12–08; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58900; File No. SR–NYSE–2008–105]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Shorten the Time Period for Listed Companies To Issue a Press Release After Receipt of Notification That the Company Is Noncompliant With the Exchange's Price Test

November 5, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 28, 2008, New York Stock Exchange, LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') 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 to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 802.01C of the Exchange's Listed Company Manual (the ''Manual'') to provide that the Exchange will require a U.S. company, upon receiving written notification that it has fallen below the Exchange's $1.00 stock price requirement over a 30 trading-day average, to issue a press release within the same amount of time as allotted by the SEC for the company to disclose such an occurrence, but in any event no later than four business days after receipt of notification from the Exchange, and will require a non-U.S. company to issue a press release within 30 days of receiving written notification from the Exchange that it has fallen below the Exchange's $1.00 stock price requirement. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Section 802.01C of the Manual to provide that the Exchange will require a U.S. company, upon receiving written notification that it has fallen below the Exchange's $1.00 stock price requirement over a 30 trading-day average, to issue a press release within the same amount of time as allotted by the SEC for the company to disclose such an occurrence, but in any event no later than four business days after receipt of notice from the company. The Exchange will require a non-U.S. company to issue a press release within 30 days of receiving written notification from the Exchange that it has fallen below the Exchange's $1.00 stock price requirement. By doing so, the Exchange is conforming its requirements under Section 802.01C to the press release requirements in relation to other notifications of events of noncompliance as set forth in Section 802.02 (for domestic companies) and Section 802.03 (for foreign private issuers).[4]

[1] 15 U.S.C. 78s(b)(1).

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

[3] 17 CFR 240.19b–4.

[4] *See* Exchange Act Release No. 58487 (September 8, 2008), 73 FR 53303 (September 15, 2008) (SR–NYSE–2008–59). Nothing in this proposal affects a company's obligations to disclose material news in a timely fashion. *See* Section 202.05 of the Manual. There are currently no companies that have received notifications from the Exchange regarding non-compliance with the Exchange's stock price continued listing requirements and that have not already issued the required press release. As such, the revised time periods this filing establishes for companies that are non-compliant under Sections 802.01C (including foreign companies) will apply only to those companies that receive a notice of

Continued

Currently, Section 802.01C of the Manual requires a U.S. company to issue a press release within 45 days of receiving written notification from the Exchange that it has fallen below the Exchange's stock price requirement. Section 802.01C also provides that, if the company fails to issue a press release by the deadline specified by the rule, the Exchange will itself issue the requisite press release. However, SEC rules require the company to file a Form 8–K giving notice of that event within four business days of being notified by the Exchange.[5] The Exchange believes that its own requirement is too long in light of the much earlier public notice required by the Form 8–K rule and that it is appropriate for the Exchange to issue a press release on the subject itself if the company has not acted within the period provided by Form 8–K and in any event no later than four business days after receipt of notification from the Exchange. The Exchange notes that companies that are incorporated in jurisdictions outside the United States but that do not qualify as foreign private issuers are treated as domestic companies for purposes of Section 802.01C.

Currently, Section 802.01C of the Manual requires a non-U.S. company to issue a press release within 90 days of receiving written notification from the Exchange that it has fallen below the Exchange's stock price requirement. Section 802.01C also provides that, if the company fails to issue a press release by the deadline specified by the rule, the Exchange will itself issue the requisite press release. While foreign private issuers are not subject to the Form 8–K requirement imposed on domestic issuers, the Exchange believes that 90 days is an excessive period to give companies to make such a material disclosure. Based on our experience with these companies, 30 days would be more than sufficient. As such, the Exchange proposes to shorten from 90 to 30 days the period within which foreign private issuers must issue a press release with regard to a notification by the Exchange of noncompliance. If the issuer does not issue a press release within that 30 day period, the Exchange will do so.

While Section 802.01C establishes maximum time periods for the issuance of press releases, the Exchange believes that companies should issue their press releases concerning any notice of noncompliance they receive from the Exchange as soon as possible after receipt of such notification and should not wait until close to the end of the permitted period before doing so.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'')[6] for this proposed rule change is the requirement under Section 6(b)(5)[7] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that the proposed amendment protects investors and the public interest by ensuring the prompt disclosure of material information with respect to listed companies.

*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 purpose of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to immediately conform the press release timing requirements for companies that are noncompliant with the Exchange's $1.00 stock price test in Section 802.01C of the Manual with the press release timing requirements in Sections 802.02 and 802.03 of the Manual that apply to companies that are noncompliant with the Exchange's other continued listing standards.[12] Because the Commission recently approved these similar timing requirements in Sections 802.02 and 802.03 of the Manual,[13] the Commission believes that the proposed rule change raises no new regulatory issues. The Commission also notes that the prior changes to these other sections of the Manual were subject to full notice and comment, and the Commission received one comment in support of that proposal. Further, the Commission notes that the proposed rule change will provide investors with earlier press release notification that a company has fallen out of compliance with the Exchange's stock price requirement and also avoids any confusion for domestic companies by conforming the time periods in the NYSE rules with current Commission requirements for the filing of the Form 8–K. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is

non-compliance subsequent to the submission of this filing.

[5] Item 3.01 of Form 8–K requires a registrant to file a Form 8–K within four business days of receipt of notice from the national securities exchange that maintains the principal listing for any class of the registrant's common equity that the registrant or such class of the registrant's securities does not satisfy a rule or standard for continued listing on the exchange.

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See* continued listing standards in Section 802.01 of the Manual.

[13] *See supra* note 4.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–105 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–NYSE–2008–105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–105 and should be submitted on or before December 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–26894 Filed 11–12–08; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–58899; File No. SR–NYSEArca–2008–116]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Exchange Rule 6.39—Securities Accounts of Market Makers

November 5, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 3, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 6.39—Securities Accounts of Market Makers. The text of the proposed rule change is attached as Exhibit 5, is available on the Exchange's Web site at *www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to amend Rule 6.39 by modifying the terms under which a clearing firm reports trade information to the Exchange on behalf of a Market Maker.

Presently, with respect to transactions to be cleared into all accounts carried for Market Makers, each clearing firm shall, on the business day following order entry date report to the Exchange every executed order entered by the Market Maker for the purchase or sale of a security underlying options traded on the Exchange, as well as opening and closing positions in all such securities held in each account.

The Exchange does, on occasion, find the need to review Market Maker order records in conjunction with an investigation, inquiries regarding a specific trade, or a routine examination. However, since this is not information that the Exchange typically uses on a daily basis, there is no need for the Exchange to collect such information, on a daily basis. Requiring this information to be reported on a daily basis, instead of ''upon request'' creates an unnecessary burden on Market Makers, clearing firms and the Exchange alike.

The Exchange hereby proposes to amend Rule 6.39 by removing the obligation for a clearing firm to report such trades on a daily basis, and instead require the firms to report such trades only upon request of the Exchange. Supplying the Exchange with trade information, when requested instead of on a daily basis, is consistent with the requirements at both the International Securities Exchange (''ISE'')[4] and the Boston Options Exchange (''BOX'').[5]

2. Statutory Basis

This rule change is designed merely to create a more efficient mechanism for clearing firms to report market maker trade information to the Exchange. NYSE Arca believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, because it is

[1] 15 U.S.C. 78s(b)(1).

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

[3] 17 CFR 240.19b–4.

[4] *See* ISE Rule 807(b)—Reports of Orders.

[5] *See* BOX Trading Rules Chapter VI Sec. 7(b)—Reports of Orders.

[6] 15 U.S.C. 78f (b).

[7] 15 U.S.C. 78f (b)(5).

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6)[9] thereunder, NYSE Arca has designated this proposed rule change as one that does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.

The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–116 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–2008–116. 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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com*. 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–2008–116 and should be submitted on or before December 4, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E8–26885 Filed 11–12–08; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 15 U.S.C. § 78s(b)(3)(A).

[9] 17 CRF 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11469 and #11470]**

### Illinois Disaster Number IL–00019

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1800–DR), dated 10/03/2008.

*Incident:* Severe storms and flooding.

*Incident Period:* 09/13/2008 through 10/05/2008.

*Effective Date:* 11/03/2008.

*Physical Loan Application Deadline Date:* 12/02/2008.

*EIDL Loan Application Deadline Date:* 07/03/2009.

**ADDRESSES:** Submit completed loan applications to : U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Illinois, dated 10/03/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Woodford.

Contiguous Counties: (Economic Injury Loans Only):

Illinois: McLean, Peoria, Tazewell.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E8–26927 Filed 11–12–08; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11418 and #11419]**

### Louisiana Disaster Number LA–00019

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 6.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1786–DR), dated 09/02/2008.

*Incident:* Hurricane Gustav.

*Incident Period:* 09/01/2008 through 09/11/2008.

*Effective Date:* 10/22/2008.

*Physical Loan Application Deadline Date:* 12/03/2008.

*EIDL Loan Application Deadline Date:* 06/02/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Louisiana, dated 09/02/2008 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/03/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E8–26925 Filed 11–12–08; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11430 and #11431]**

### TEXAS Disaster Number TX–00308.

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 3.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of TEXAS (FEMA–1791–DR), dated 09/13/2008.

*Incident:* Hurricane Ike.

*Incident Period:* 09/07/2008 through 10/02/2008.

*Physical Loan Application Deadline Date:* 12/12/2008.

*EIDL Loan Application Deadline Date:* 06/15/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of TEXAS, dated 09/13/2008 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/12/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E8–26930 Filed 11–12–08; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 6425]**

### 60-Day Notice of Proposed Information Collection: Form DS–1622, and Form DS–1843, Medical History and Examination for Foreign Service, OMB 1405–0068

**ACTION:** Notice of request for public comments.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Medical History and Examination for Foreign Service.
- *OMB Control Number:* 1405–0068.
- *Type of Request:* Revision of Currently Approved Collection.
- *Originating Office:* Office of Medical Services, M/MED/C/MC.
- *Form Number:* DS–1622 and DS–1843.
- *Respondents:* Foreign Service Officers, State Department Employees, Other Government Employees and Family Members.
- *Estimated Number of Respondents:* 7,234 per year.
- *Estimated Number of Responses:* 7,234 per year.
- *Average Hours per Response:* 1.0 hours per response.
- *Total Estimated Burden:* 7,234 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Mandatory.

**DATES:** The Department will accept comments 60 days from date of in the **Federal Register**.

**ADDRESSES:** You may submit comments by any of the following methods:

- *E-mail: harperSE2@state.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Department of State, Office of Medical Services, SA–1 Room L–101, 2401 E St., NW., Washington, DC 20522–0101.
- *Fax:* 202–663–1934.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

- FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Samual E. Harper, Department of State, Office of Medical Services, SA–1 Columbia Plaza Room L101, 2401 E St., NW., Washington, DC 20052–0101, who may be reached on 202–663–1754 or *harperSE2@state.gov.*

**SUPPLEMENTARY INFORMATION:** We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

*Abstract of proposed collection:* Form DS–1622 and DS–1843 are designed to collect medical information to provide medical providers with current and adequate information to base decisions on medical suitability for a federal employee and family members for assignment abroad. DS–1622 is for Children 11 years and under. DS–1843 is for Children 12 years and older. Both forms will allow medical personnel to verify that there are sufficient medical resources at a diplomatic mission abroad to maintain the health and fitness of the individual and family members within the Department of State medical program.

*Methodology:* The information collected will be collected through the use of an electronic forms engine or by hand written submission using a pre-printed form.

Dated: October 31, 2008.

**Sharon Ludan,**

*Executive Director, Office of Medical Services, Department of State.*

[FR Doc. E8–26950 Filed 11–12–08; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice 6347]**

### Overseas Security Advisory Council (OSAC) Renewal

The Department of State has renewed the Charter of the Overseas Security Advisory Council. This advisory council will continue to interact on overseas security matters of mutual interest between the U.S. Government and the American private sector. The Council's initiatives and security publications provide a unique contribution to protecting American private sector interests abroad. The Under Secretary for Management has determined that the Council is necessary and in the public interest.

The Council consists of representatives from four (4) U.S. Government agencies and thirty (30) American private sector companies and organizations. The Council will follow the procedures prescribed by the Federal Advisory Committee Act (FACA) (Pub. L. 92–463). Meetings will be open to the public unless a determination is made in accordance with Section 10(d) of the FACA, 5 U.S.C. 552b(c)(1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Bureau of Diplomatic Security, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: October 28, 2008.

**Gregory B. Starr,**

*Director of the Diplomatic Security Service, Department of State.*

[FR Doc. E8–26949 Filed 11–12–08; 8:45 am]

**BILLING CODE 4710–43–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[OMB Control #: 2105–0538; Docket Number: OST–95–177]**

### Agency Information Collection; Request for Comments; Clearance and Renewal of a Previously Approved Collection; Disclosure of Change-of-Gauge Services

**AGENCY:** Office of the Secretary (OST).

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. 3501 *et seq.*) this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for renewal and comment. The ICR describes the nature of the information collection and its expected cost burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 9, 2008 [FR Vol. 73, pages 51547—51548]. No comments were received.

**DATES:** Written comments on this notice should be received on or before [December 15, 2008 and submitted to the attention of the DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503 with the associated OMB Approval Number 2105–0538 and Dockets OST–95–177.

**FOR FURTHER INFORMATION CONTACT:** Aleta Best, Office of the Assistant Secretary for Aviation and International Affairs, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, 20590, (202) 493–0797.

**SUPPLEMENTARY INFORMATION:**

*Title:* Disclosure of Change-of-Gauge Services.

*OMB Control Number:* 2105–0538.

*Expiration Date:* December 31, 2008.

*Type of Review:* Renewal and Approval of a previously approved collection.

*Respondents:* All U.S. air carriers, foreign air carriers, computer reservations systems (CRSs), and travel agents doing business in the United States, and the traveling public.

*Number of Respondents:* 16,000, excluding air travelers

*Number of Responses:* 18,200,000

*Total Annual Burden:* 227,288 hours

*Abstract:* Change-of-gauge service is scheduled passenger air transportation for which the operating carrier uses one single flight number even though passengers do not travel in the same aircraft from origin to destination but must change planes at an intermediate stop. In addition to one-flight-to-one-flight change-of-gauge services, change-of-gauge services can also involve aircraft changes between multiple flights on one side of the change point and one single flight on the other side. As with one-for-one change-of-gauge services, the carrier assigns a single flight number for the passenger's entire itinerary even though the passenger changes planes, but in addition, the single flight to or from the exchange point itself has multiple numbers, one for each segment with which it connects and one for the local market in which it operates.

The Department recognizes various public benefits that can flow from change-of-gauge services, such as a lowered likelihood of missed connections. However, although change-of-gauge flights can offer valuable consumer benefits, they can be confusing and misleading unless consumers are given reasonable and timely notice that they will be required to change planes during their journey.

Section 41712 of Title 49 of the U.S. code authorizes the Department to decide if a U.S. air carrier or foreign air carrier or ticket agent (including travel agents) has engaged in unfair or deceptive practices. Under this authority, the Department has adopted various regulations and policies to prevent unfair or deceptive practices or unfair methods of competition. The Department requires as a matter of policy that customers be given notice of aircraft changes for change-of-gauge flights. (See Department Order 89–1–31, page 5.) The Department proposed to adopt the extant regulations, however, because it was not convinced that these rules and policies resulted in effective disclosure all of the time.

*Comments are invited on:* (a) 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; (b) the accuracy of the Department's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques

or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Todd M. Homan,**

*Director, Office of Aviation Analysis.*

[FR Doc. E8–26962 Filed 11–12–08; 8:45 am]

BILLING CODE 4910–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2008–46]**

### Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received.

**SUMMARY:** This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before December 3, 2008.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2008–0906 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

**FOR FURTHER INFORMATION CONTACT:** Tyneka Thomas (202) 267–7626 or Ralen Gao (202) 267–3168, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 7, 2008.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

### Petitions for Exemption

*Docket No.:* FAA–2008–0906.

*Petitioner:* MN Airlines, LLC. d.b.a Sun Country Airlines.

*Section of 14 CFR Affected:* 14 CFR 121.619

*Description of Relief Sought:* MN Airlines, LLC. d.b.a Sun Country Airlines (Sun Country) seeks relief from § 121.619 to allow Sun Country to conduct domestic operations using a reduced weather requirement for the application of an alternate airport of landing from the present requirement of at least 2,000 feet ceiling and at least 3 miles visibility to at least 1,000 foot ceiling and at least 3 miles visibility.

[FR Doc. E8–26908 Filed 11–12–08; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[Docket No: FTA–2008–0035]**

### National Transit Database: Natural Disaster Adjustments for Urbanized Area Apportionments

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Final Natural Adjustment Policy for Urbanized Area Apportionments.

**SUMMARY:** This notice announces the Federal Transit Administration's (FTA) National Transit Database (NTD) policy on natural disaster adjustments for data used in urbanized area apportionments. On August 14, 2008, FTA proposed a new policy allowing transit systems suffering a marked decrease in transit service data due to a natural disaster to use their transit service data from a prior year in the urbanized area apportionments. FTA received three comments on this policy change and is now formally adopting the new policy.

**DATES:** *Effective Date:* November 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** For program issues, John D. Giorgis, Office of Budget and Policy, (202) 366–5430 (telephone); (202) 366–7989 (fax); or *john.giorgis@dot.gov* (e-mail). For legal issues, Richard Wong, Office of the Chief Counsel, (202) 366–0675 (telephone); (202) 366–3809 (fax); or *richard.wong@dot.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:**

### I. Background

The National Transit Database (NTD) was established by Congress ''to help meet the needs of * * * the public for information on which to base public transportation service planning * * *'' (49 U.S.C. 5335). To support this goal, recipients or beneficiaries of Urbanized Area Formula Grants (Section 5307) or Other Than Urbanized Area Formula (Section 5311) Grants are required to report to the NTD. Some other providers of transit service in urbanized areas report voluntarily to the NTD for purposes of benefitting their local urbanized area in the urbanized area apportionments. Currently, over 650 transit agencies in urbanized areas report to the NTD through an Internet-based reporting system. Each year, performance data from these submissions are used to apportion over $6 billion of FTA funds under the Urbanized Area Formula Grants and Fixed-Guideway Modernization Grants Programs. These data are also used in the annual National Transit Summaries and Trends report, the biennial Conditions and Performance Report to Congress, and in meeting FTA's obligations under the Government Performance and Results Act.

FTA currently allows a transit provider that is severely impacted by a natural disaster to request a waiver from reporting to the NTD for the current year. This policy is based on the NTD Rule (49 CFR Part 630.10), which provides for a waiver from the mandatory NTD reporting requirements if reporting to the NTD would cause ''unreasonable expense or inconvenience.'' When FTA grants such

a waiver to an urbanized area recipient that has previously reported to the NTD, FTA automatically includes data from the last-available NTD report year for that recipient in the apportionment of formula grants for urbanized areas. However, FTA does not currently have policies or procedures that would allow it to use NTD data from a prior report year in the apportionment of urbanized area formula grants for a transit provider that is able to report for the current year. This Notice establishes such a policy for urbanized area reporters. This policy would not currently apply to NTD reporters from rural areas, however, as NTD data are not used in the apportionment of Other Than Urbanized Area Formula Grants (Section 5311 Grants). These Grants are apportioned solely on the basis of geographic data and population data from the U.S. Census Bureau.

## II. Comments and FTA Response to Comments

On August 14, 2008, FTA published a notice in the **Federal Register** (73 FR 47641) inviting comments on its proposed policy for natural disaster adjustments. FTA received three comments on this proposed policy change. One comment supported the policy change. Two commenters also supported the policy change and requested that FTA expand this policy to include not just natural disasters, but also man-made disasters, such as terrorist attacks, criminal activity, forest fires, or disruptions to utilities. These commenters also requested that the policy be made applicable for multiple years, rather than only the year in which the disaster occurs.

*Response:* FTA agrees to make this policy applicable to all disasters, both natural and man-made. FTA also notes that it always intended for its proposed policy to be applicable for multiple years, at FTA's discretion, and will clarify this in the final policy below.

## III. Final Policy

If a transit provider suffers a marked decrease in transit service due to a natural or man-made disaster, either the transit provider or the designated recipient for an urbanized area may make a request to be ''held harmless'' in the apportionment of formula grants for urbanized areas. If FTA approves the request, FTA will use data for the affected providers from the NTD report year before the disaster occurred in place of data for the current report year in the urbanized area apportionments. FTA would continue to use data from the current NTD report year for all other transit providers in the urbanized area apportionment.

This adjustment would not be automatic and must be requested in writing. FTA will approve or deny each request at its discretion based on the following factors: (1) Whether a Federal disaster declaration was in place for all or part of the current report year, for either all or part of the transit provider's service area; (2) whether the request demonstrates that the decrease in transit service from the report year before the disaster is in large part due to the ongoing impact of the disaster; and (3) whether the request demonstrates that the decrease in transit service reasonably appears to be temporary, and not reflective of the true transit needs of the urbanized area. FTA will not grant adjustment requests that do not address all three factors. Adjustment requests should include sufficient documentation to allow FTA to evaluate the request based on these factors. FTA may request additional information from an applicant for an adjustment to evaluate the request based on these factors. A request for an adjustment may only be made for one year at a time. Requests for adjustment related to the same disaster may be made in subsequent years, provided that the applicant can continue to support its request based on the above factors. If the adjustment request is granted, the NTD data in all publicly-available data sets and data products would remain unadjusted, and would reflect the actual NTD submission for the transit provider. The only adjustment would be in the data sets used for the apportionments of formula grants for urbanized areas.

This policy will take effect for the 2007 NTD Report Year, which is the data used in the FY 2009 apportionments of formula grants for urbanized areas. This policy will remain in effect for the 2008 NTD Report Year, which has already begun, and will be included in the NTD Annual Manual for the 2009 Report Year.

Issued in Washington, DC, this 31st day of October 2008.

**James S. Simpson,**

*Administrator.*

[FR Doc. E8–26888 Filed 11–12–08; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2008–0170]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before January 12, 2009.

**ADDRESSES:** You may submit comments (identified by DOT Docket No. NHTSA–2008–0170) to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. Alternatively, you may submit your comments electronically by logging onto the Docket management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should identify the Docket number of this document. You may call the docket at (202) 647–5527. Docket hours are 9 a.m. to 5 p.m., Monday though Friday, except Federal holidays.

*Instructions:* All Submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http: //www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may

review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Ann Burton, NHTSA, 1200 New Jersey Avenue, SE., W46–492, NTI 200, Washington, DC 20590. Ms. Burton's telephone number is (202) 366–2685. Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

*Title:* 23 CFR, Part 1313, Alcohol-Impaired Driving Countermeasures Section 410.

*OMB Control Number:* 2127–0501.

*Affected Public:* 50 States, District of Columbia and Puerto Rico.

*Form Number:* NA.

*Abstract:* An impaired driving incentive grant is available to States that have an alcohol fatality rate of 0.5 or less per 100 million vehicle miles traveled as determined by using the most recent Fatality Analysis Reporting System (FARS) data or that are one of the ten States that have the highest alcohol related fatality rates as determined by using the most recent FARS data. States designated as a high fatality rate State must submit a comprehensive plan for conducting high visibility enforcement and a report on the previous year's activities.

States may also qualify through meeting specified program criteria. To demonstrate compliance using program criteria a State must submit an application that shows how they met three of eight criteria in FY 2006, four of eight criteria in FY 2007 and five of eight criteria in FY 2008 and FY 2009.

*Estimated Annual Burden:* 1350.

*Number of Respondents:* 50 States, District of Columbia and Puerto Rico.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Marlene Markison,**

*Associate Administrator, Regional Operations and Program Delivery.*

[FR Doc. E8–27012 Filed 11–12–08; 8:45 am]

BILLING CODE 4910–59–P

---

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2008–0172]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before January 12, 2009.

**ADDRESSES:** You may submit comments [identified by DOT Docket No. NHTSA–2008–0172] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251.

*Instructions:* All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Jack Oates, NHTSA, 1200 New Jersey Avenue, SE., W46–308, NTI–200,Washington, DC 20590. Mr Jack Oates' telephone number is (202) 366–2730. Please identify the

relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

*Title:* Uniform Criteria for State Observational Surveys of Seat Belt Use.

*OMB Control Number:* 2127–0597.

*Affected Public:* The 50 States, the District of Columbia, Puerto Rico and the territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam and the Virgin Islands.

*Form Number:* N/A.

*Abstract:* This collection would require the respondents, which are the States, the District of Columbia, Puerto Rico and the territories, to provide seat belt use survey information to NHTSA before they receive grant money. The Secretary of Transportation may not approve a State highway safety program which does not provide satisfactory assurance that the State will implement an annual statewide safety belt use survey in accordance with criteria established by the Secretary for the measurement of State safety belt use rates to ensure that the measurements are accurate and representative. The surveys must be completed by the end of the calendar year and submitted to NHTSA by March 1 of the following calendar year.

*Estimated Annual Burden:* 19,354.

*Estimated Number of Respondents:* 56.

*Comments are invited on:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

**Marlene Markison,**

*Associate Administrator for Regional Operations and Program Delivery.*

[FR Doc. E8–27013 Filed 11–12–08; 8:45 am]

**BILLING CODE 4910–59–P**

---

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35189]**

### Sierra Northern Railway—Acquisition and Operation Exemption—BNSF Railway Company

Sierra Northern Railway (SNR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire, by purchase from BNSF Railway Company (BNSF), and to operate two rail lines, totaling approximately 6.5 miles of rail line in Riverbank and Oakdale, Stanislaus County, CA. SNR will acquire: (1) The Oakdale Branch located between milepost 1.0, in Riverbank, and the end of BNSF's line at milepost 7.1, in Oakdale (including the Hershey Spur); and (2) the Riverbank Industrial Park Lead, Track 7959, between Engineer's Station 8+60 and Engineer's Station 38+02, at the end of BNSF's line at the plant gate, including BNSF's sidings and related trackage.

Pursuant to the purchase agreement,[1] BNSF will grant to SNR limited overhead rights to operate over segments of BNSF's rail corridor between the two acquired lines and within the Riverbank Yard complex. BNSF will also assign to SNR certain trackage rights of Union Pacific Railroad Company (UP) over the Oakdale Branch between BNSF's Riverbank Yard and Oakdale, to the extent such UP trackage rights and obligations are related to the subject lines. SNR has disclosed that the purchase agreement contains a provision that may limit future interchange with a third-party connecting carrier. SNR states that the affected interchange point is Riverbank, CA.

The transaction is scheduled to be consummated on or shortly after the effective date of this exemption. The earliest this transaction can be consummated is November 27, 2008, the effective date of the exemption (30 days after the exemption is filed).

SNR certifies that its projected annual revenues as a result of this transaction will not result in SNR becoming a Class II or Class I rail carrier and will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 20, 2008 (7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35189 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on David Magaw, President, Sierra Northern Railway, 341 Industrial Way, Woodland, CA 95776.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: November 6, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. E8–26923 Filed 11–12–08; 8:45 am]

**BILLING CODE 4915–01–P**

[1] SNR's purchase agreement was filed under seal pursuant to 49 CFR 1150.43(h)(ii).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–32 (Sub-No. 85X); STB Docket No. AB–355 (Sub-No. 37X)]**

### Boston and Maine Corporation—Abandonment Exemption—in Middlesex County, MA; Springfield Terminal Railway Company—Discontinuance of Service Exemption—in Middlesex County, MA

The Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (collectively, applicants) have jointly filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for B&M to abandon, and for ST to discontinue service over, a 1.27-mile portion of the Lowell Industrial Track between station 1304+77, and station 1372+00 in Lowell, Middlesex County, MA. The line traverses United States Postal Service Zip Codes 01851 and 01852.

Applicants have certified that: (1) No traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 13, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 24, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 3, 2008, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Michael Q. Geary, Boston & Maine Corporation, Springfield Terminal Railway Company, 1700 Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Applicants have filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 18, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0303. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by B&M's filing of a notice of consummation by November 13, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 4, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Jeff Herzig,**

*Clearance Clerk.*

[FR Doc. E8–26799 Filed 11–12–08; 8:45 am]

**BILLING CODE 4915–01–P**

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Effective July 18, 2008, the filing fee for an OFA increased to $1,500. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 update*, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35087 [1]]**

### Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Board meeting.

**SUMMARY:** The Board will hold a meeting on Tuesday, November 18, 2008, to receive a briefing from and discuss with the Section of Environmental Analysis (SEA) staff the Environmental Impact Statement (EIS) being prepared in STB Finance Docket No. 35087. The meeting will be open for public observation but not public participation.

**DATES:** The meeting will take place on Tuesday, November 18, 2008, beginning at 10 a.m.

**ADDRESSES:** The meeting will be held in the Hearing Room on the first floor of the Board's headquarters at Patriot's Plaza, 395 E Street, SW., Washington, DC 20423–0001.

A video broadcast of the hearing will be available via the Board's Web site at *http://www.stb.dot.gov*, under ''Information Center''/''Webcast''/''Live Video'' on the home page.

**FOR FURTHER INFORMATION CONTACT:** A. Dennis Watson, Office of Public Assistance, Governmental Affairs, and Compliance, Telephone: (202) 245–0234, FIRS: (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** On October 30, 2007, the Canadian National

[1] This decision also embraces *Elgin, Joliet and Eastern Railway Company—Corporate Family Exemption—EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 1); *Chicago, Central & Pacific Railroad Company—Trackage Rights Exemption—EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 2); *Grand Trunk Western Railroad Incorporated—Trackage Rights Exemption—EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 3); *Illinois Central Railroad Company—Trackage Rights Exemption—EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 4); *Wisconsin Central Ltd.—Trackage Rights Exemption—EJ&E West Company*, STB Finance Docket No. 35087 (Sub-No. 5); *EJ&E West Company—Trackage Rights Exemption—Chicago, Central & Pacific Railroad Company*, STB Finance Docket No. 35087 (Sub-No. 6); and *EJ&E West Company—Trackage Rights Exemption—Illinois Central Railroad Company*, STB Finance Docket No. 35087 (Sub-No. 7).

Railway Company (CN) and Grand Trunk Corporation (collectively, CN or the Applicants) filed an application with the Board, seeking the Board's approval to acquire control of EJ&E West (EJ&EW) Company, a wholly owned noncarrier subsidiary of the Elgin, Joliet and Eastern Railway Company (EJ&E). EJ&E is a Class II railroad that currently operates approximately 200 miles of track in Northeastern Illinois and Northwestern Indiana.

On November 26, 2007, the Board issued Decision No. 2 announcing that SEA will prepare an EIS to assess the potential environmental impacts that may result from the proposed acquisition. The Draft EIS was served on July 25, 2008, and public comments on the Draft EIS were due by September 30, 2008. SEA is currently preparing the Final EIS in response to comments on the Draft EIS.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: November 7, 2008.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. E8–26919 Filed 11–12–08; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Ex Parte No. 680]**

### Study of Competition in the Freight Railroad Industry

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice.

**SUMMARY:** The Surface Transportation Board seeks written public comments on the independent study prepared by Christensen Associates, Inc., entitled, *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals That Might Enhance Competition.*

**DATES:** Comments are due on or before December 22, 2008.

**ADDRESSES:** The Study may be accessed via the Board's Web site at *http://www.stb.dot.gov*. Comments may be submitted either via the Board's e-filing format or in traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site at *http://www.stb.dot.gov*. Any person submitting a filing in the traditional paper format should send an original and 10 copies referring to STB Ex Parte No. 680 to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Timothy Strafford, (202) 245–0356. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.]

**SUPPLEMENTARY INFORMATION:** In September 2007, the Board awarded a contract to Christensen Associates to conduct an independent study that provides a comprehensive analysis of a wide range of issues including competition, capacity, and the interplay between the two. The report also includes an examination of various regulatory policy alternatives that could lead to changes in the Board's regulatory approach if necessary.

On November 6, 2008, the Board held a public meeting with Christensen Associates to discuss the study. The Board has made the report available to the public via its Web site and now seeks public comments from all interested persons.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: November 6, 2008.

By the Board, Anne K. Quinlan, Acting Secretary.

**Jeff Herzig,**

*Clearance Clerk.*

[FR Doc. E8–26944 Filed 11–12–08; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Open Meeting of the Advisory Committee on the Ten-Year Framework for Energy and Environment Cooperation With China

**AGENCY:** Office of the Special Envoy to China and the SED, Department of the Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Treasury's Advisory Committee on the Ten-Year Framework for Energy and Environment Cooperation with China will convene its first meeting on Monday, December 1, 2008, in the Cash Room of the main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 10 a.m. Eastern Time. The meeting will be open to the public.

**DATES:** The meeting will be held on Monday, December 1, 2008 at 10 a.m. Eastern Time.

**ADDRESSES:** The Advisory Committee will convene its first meeting in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements with the Advisory Committee by any of the following methods:

*Electronic Statements*

- Please use the following e-mail address to submit electronic copies of your written statements: *SED.TYF@do.treas.gov.*

*Paper Statements*

- Send paper statements in triplicate to Advisory Committee on the Ten-Year Framework for Energy and Environment Cooperation with China, Office of the Special Envoy to China and the SED, Room 1308, Department of Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Katherine Casey Delhotal, Environmental and Economic Policy Advisor to the SED, Department of Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–6780.

**SUPPLEMENTARY INFORMATION:** In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, section 10(a), and the regulations thereunder, Katherine Casey Delhotal, Designated Federal Officer of the Advisory Committee, has ordered publication of this notice that the Advisory Committee will convene its first meeting on Monday, December 1, 2008, in the Cash Room in the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220 beginning at 10 a.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of the Special Envoy to China and

the SED at (202) 622–6780, by 5 p.m. Eastern Time on Tuesday, November 25, 2008, to inform the Department of the desire to attend the meeting and to provide the information that will be required to facilitate entry into the Main Department Building. The purpose of this meeting is to discuss general organizational matters of the Advisory Committee and begin discussing the issues impacting the Ten-Year Framework for Energy and Environment Cooperation with China.

Dated: November 7, 2008.

**Taiya Smith,**

*Executive Secretary, Treasury Department.*

[FR Doc. E8–26984 Filed 11–12–08; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

### United States Mint

### Notification of Citizens Coinage Advisory Committee November 2008 Public Meeting

**ACTION:** Notification of Citizens Coinage Advisory Committee November 2008 public meeting.

**SUMMARY:** Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for November 24, 2008.

**DATES:** November 24, 2008.

*Time:* 12 p.m. to 2 p.m.

*Location:* The Hotel Thayer at West Point, 674 Thayer Road, West Point, NY 10996.

*Subject:* Review candidate designs for the Director Edmund C. Moy Medal; review reverse design theme for the 2010 Native American $1 Coin; review candidate designs for the Henry M. Paulson, Jr., 74th Secretary of the Treasury Medal; review candidate designs for Congressional Gold Medal for former Prime Minister of the United Kingdom Tony Blair; and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location. Picture ID required.

In accordance with 31 U.S.C. 5135, the CCAC,

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

**FOR FURTHER INFORMATION CONTACT:** Cliff Northup, United States Mint Liaison to the CCAC, 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

**Authority:** 31 U.S.C. 5135(b)(8)(C).

Dated: November 5, 2008.

**Edmund C. Moy,**

*Director, United States Mint.*

[FR Doc. E8–26938 Filed 11–12–08; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Thursday,
November 13, 2008

# Part II

# Department of the Interior

## Bureau of Indian Affairs

**25 CFR Parts 15, 18, and 179**

**43 CFR Parts 4 and 30**

**Indian Trust Management Reform; Final Rule**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Parts 15, 18, 179**

**Office of the Secretary**

**43 CFR Parts 4, 30**

**RIN 1076–AE59**

## Indian Trust Management Reform

**AGENCY:** Bureau of Indian Affairs, Office of the Secretary, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends several Bureau of Indian Affairs (BIA) and Office of the Secretary regulations related to Indian trust management in the areas of probate, probate hearings and appeals, tribal probate codes, and life estates and future interests in Indian land. This rule allows the Secretary to further fulfill his fiduciary responsibilities to federally recognized tribes and individual Indians and to meet the Indian trust management policies articulated by Congress in the Indian Land Consolidation Act (ILCA), as amended by the American Indian Probate Reform Act of 2004 (AIPRA).

**DATES:** This rule is effective on December 15, 2008.

**FOR FURTHER INFORMATION CONTACT:** Michele Singer, Office of Regulatory Management, U.S. Department of the Interior, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104, phone: (505) 563–3805; e-mail: *Michele_F_Singer@ios.doi.gov*.

**SUPPLEMENTARY INFORMATION:**

I. Statutory Authority
II. Background
A. History of the Rule
B. The Need for This Rulemaking
C. Development of Regulatory Language
III. Overview of Final Rule
IV. Overview of Public Comments
V. Part-by-Part Discussion
A. 25 CFR Part 15—Probate of Indian Estates
1. Public Comments
a. Applicability to Alaska
b. Definitions
c. Claims
d. Timeframes
e. AIPRA
f. Will Drafting and Storage
g. Miscellaneous
2. Changes From the Proposed Rule
3. Distribution Table—25 CFR Part 15
B. 25 CFR Part 18—Tribal Probate Codes
1. Public Comments
a. Applicability to Alaska
b. Adjudication Functions
c. 180-Day Time Periods
d. Single Heir Rule
e. Miscellaneous
2. Changes From the Proposed Rule
C. 25 CFR Part 179—Life Estates and Future Interests
1. Public Comments
2. Changes From the Proposed Rule
3. Distribution Table—25 CFR Part 179
D. 43 CFR Part 4, Subpart D—Department Hearings and Appeals Procedures, Rules Applicable in Indian Affairs Hearings and Appeals
E. 43 CFR Part 30—Indian Probate Hearings Procedures
1. Public Comments
a. Applicability to Alaska
b. Claims
c. Timeframes
d. AIPRA
e. Purchase at Probate
f. Purchase at Probate—Valuation
g. Consolidation Agreements
h. Formal and Summary Proceedings
i. Resources
j. Miscellaneous
2. Changes From the Proposed Rule
3. Distribution Table—43 CFR Part 4, Subpart D, and 43 CFR 4 Part 30
VI. Procedural Requirements
A. Regulatory Planning and Review (Executive Order 12866)
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement and Fairness Act of 1996
D. Unfunded Mandates Reform Act of 1995
E. Governmental Actions and Interference With Constitutionally Protected Property Rights (Executive Order 12630)
F. Federalism (Executive Order 13132)
G. Civil Justice Reform (Executive Order 12988)
H. Paperwork Reduction Act
I. National Environmental Policy Act (NEPA)
J. Government-to-Government Relationship With Tribes (Executive Order 13175)
K. Energy Effects (Executive Order 13211)
L. Information Quality Act

## I. Statutory Authority

Regulatory amendments to these parts are promulgated under the general authority of the American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. 4001 *et seq.*, and the Indian Land Consolidation Act of 2000 (ILCA) as amended by the American Indian Probate Reform Act of 2004 (AIPRA), 25 U.S.C. 2201 *et seq.* The following table provides additional statutory authority specific to each CFR part.

25 CFR part 15 5 U.S.C. 301, 503–504; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.*; 44 U.S.C. 3101 *et seq.*

25 CFR part 18 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.*; 44 U.S.C. 3101 *et seq.*

25 CFR part 179 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201 *et seq.*

43 CFR part 4 5 U.S.C. 301, 503–504; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457; Pub. L. 99–264, 100 Stat. 61, as amended.

43 CFR part 30 5 U.S.C. 301, 503; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457.

## II. Background

This rulemaking is a result of a collaborative, multi-year undertaking to identify a comprehensive strategy for improving Indian trust management. The Department of the Interior manages Indian trust assets in accordance with its trust relationship with tribes and individual Indians. The term ''tribes'' is used in this preamble to refer to federally recognized tribes. The purpose of today's final rulemaking is to allow the Department of the Interior to better meet its trust responsibilities and to carry out the policies established by Congress to strengthen tribal sovereignty. This rulemaking will provide the Department with the tools to more effectively and consistently manage trust assets and better serve its trust beneficiaries (i.e., Indian tribes and individual Indians).

### *A. History of the Rule*

The Department of the Interior has been examining ways to better meet its trust responsibilities since 1994, when Congress passed the Trust Fund Management Reform Act. Throughout this time, the Department has sought the participation and input of tribal leaders and individual Indian beneficiaries to identify ways in which the Department can better serve its beneficiaries.

In July 2001, the Secretary of the Interior (Secretary) issued Secretarial Orders 3231 and 3232. These orders created the Office of Historical Trust Accounting (OHTA) to perform historical accounting of trust assets and created a temporary Office of Indian Trust Transition (OITT), which was charged with reorganizing the agency to better meet beneficiaries' needs. These Secretarial Orders also stated the Secretary's policy to take a more coordinated approach to ensure the overall success of trust reform.

In accordance with this policy, the Department reevaluated its approach to trust reform and, in January 2002, embarked on an examination and reengineering of its Indian trust management processes. This effort differed from prior trust reform efforts because it took a comprehensive approach to trust reform, linking individual trust reform issues to an overall strategy. To ensure that the strategy fully considered tribal concerns, the Department assembled a task force to work on trust reform and reorganization efforts.

From members of this task force, a subcommittee of both tribal

representatives and Department representatives was formed. The subcommittee met regularly to review the ''As-Is'' processes for performing major trust functions at that time. From this ''As-Is'' model, the subcommittee identified business goals and objectives the Department should meet in fulfilling its trust responsibilities and providing improved services to trust beneficiaries. These business goals and objectives provided strategic direction for development of the ''To-Be'' model, known as the Fiduciary Trust Model (FTM). The FTM redesigns trust processes into more efficient, consistent, integrated, and fiscally responsible business processes. In developing the FTM, the team incorporated years of Departmental consultation with tribes. The Department adopted the FTM in December 2004 to guide trust reform.

On August 8, 2006, the Department published a proposed rule at 71 FR 4517 which addressed the FTM's goals for regulatory changes to the probate process. Today's rulemaking finalizes the proposed rule, with changes addressing comments received during the public comment period.

*B. The Need for This Final Rulemaking*

Since adopting the FTM, the Department formed an FTM Implementation Team with tribal representatives. The FTM Implementation Team is leading internal organizational changes for improving performance and accountability in management of the trust. At the beginning of the reengineering process, the Joint Task Force had anticipated that regulatory changes would be necessary to fully implement trust reform. The Team has since determined, and the Secretary has confirmed, that certain regulatory changes are indeed needed to enable the Department to fully implement the FTM. Today's final rule includes many of these necessary regulatory changes.

Additionally, Congress enacted the American Indian Probate Reform Act of 2004. AIPRA amends ILCA to better meet the trust reform goals for land consolidation articulated in ILCA. Many of the regulatory changes within these rules reflect recent changes to the law by the enactment of AIPRA.

*C. Development of Regulatory Language*

This final rulemaking encompasses tribal and Departmental representatives' efforts who have provided comments throughout the trust reform process. These efforts guided in-house teams in drafting the specific regulatory language. The in-house teams consisted of Federal personnel from Department headquarters and the field, and included program officers and Department attorneys possessing extensive expertise in probate.

On December 27, 2005, the Department shared advance copies of the regulatory language (identified as ''preliminary drafts'' throughout this preamble) with leaders of each federally recognized tribal government, as well as additional contacts in Indian country, for their input and recommendations. The Department also presented the preliminary drafts and obtained the input of tribes at two formal consultation meetings: One in Albuquerque, New Mexico, on February 14–15, 2006, and one in Portland, Oregon, on March 29, 2006. Comments received during these consultations and in the time leading up to this publication have identified several issues that the Department considered in revising the preliminary drafts for publication as a proposed rule.

The Department published the proposed rule on August 8, 2006, at 71 FR 45173 and held additional tribal consultations in August 2006.

**III. Overview of Final Rule**

The final rule amends various parts of the CFR to further implement Indian trust management reform and ILCA, as amended by AIPRA. The Department is not yet finalizing 25 CFR part 150, Indian Land Title of Record, or 25 CFR 152, Conveyances of Trust or Restricted Indian Land, Removal of Trust or Restricted Status; however, the remaining proposed regulations, 25 CFR parts 15, 18, and 179, and 43 CFR parts 4 and 30 are being finalized today. Together, these amendments form an integrated approach to Indian trust management related to probates that allow the Department to better meet the needs of its beneficiaries. The amendments incorporate AIPRA changes to probate, promote consolidation and the reduction of fractionation of interests, and improve service to beneficiaries. The amendments also make changes in accordance with the Plain Language Initiative (63 FR 31885 (June 10, 1998)) to facilitate ease of use and public comprehension.

**IV. Overview of Public Comments**

As noted above, the Department held tribal consultations on this rule. A court reporter transcribed each comment made orally at these consultations. In addition, the Department received approximately 21 written comments via letter, facsimile, e-mail, and the comment entry form at *http://www.doitrustregs.com* during the formal comment period.

Publication of the proposed rule opened the original public comment period on August 8, 2006 (*see* 71 FR 45173). Comments were originally due by October 10, 2006. On November 1, 2006, the Department reopened the comment period for an additional 60 days to January 2, 2007 (*see* 71 FR 64181). The Department again reopened the public comment period on January 25, 2007, for an additional 60 days to March 12, 2007 (*see* 71 FR 3377).

Public comments ranged from the very general, regarding the Department's approach to tribal consultations, to the very specific, regarding the language used in a particular proposed regulation. The Department reviewed and discussed each written and transcribed comment at intra-Departmental workgroup meetings held in Albuquerque, New Mexico, the week of March 19, 2007, and continued to refine the regulations throughout the following year. Through close coordination among the members, the workgroups drafted changes to the regulations as appropriate to address comments.

**V. Part-by-Part Discussion**

The following sections provide a summary of public comments on the proposed rule and changes the final rule makes to the proposed rule. The following sections also provide distribution tables showing where general content in the current rule can be found in the final rule, by listing the current CFR sections that the final rule amends and the new CFR sections. For a description of changes made to the preliminary drafts, which were distributed to tribes in December 2005 and incorporated into the proposed rule, refer to the proposed rule at 71 FR 45173 (August 8, 2006).

This preamble does not specifically address all non-substantive changes or editorial wording changes.

*A. 25 CFR Part 15—Probate of Indian Estates*

The purpose of this part is to describe the authorities, policies, and procedures the BIA (or tribe that has contracted or compacted to fulfill probate functions) uses to prepare a probate file for an Indian decedent's trust estate, except for restricted land derived from allotments made to members of the Osage Nation and the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole).

1. Public Comments

a. Applicability to Alaska

One commenter requested that the Department clarify the applicability of this part to Alaska. The Department has added such clarification at section 15.1(b).

b. Definitions

Several commenters questioned how eligibility for membership in a tribe is determined in the context of whether someone meets the definition of ''Indian.'' AIPRA established a new definition of ''Indian,'' which now includes persons eligible for membership in any Indian tribe. See 25 U.S.C. 2201(2)(A). Part 15 incorporates this new definition in its definition of ''Indian'' in section 15.2 and by requiring information regarding eligibility for membership in an Indian tribe to be included in the probate file under section 15.202. The tribe determines its own membership. BIA will need information from the tribes on their eligibility requirements; however, BIA will not require tribal certification as to a particular person's eligibility. Once the information is sent to the Office of Hearings and Appeals (OHA), the judge will apply the tribe's enrollment standards during the probate process in order to determine who may inherit. The judge's determination as to eligibility for probate purposes does not affect the tribe's determination as to membership.

One commenter asked whether a person would be considered ''eligible for membership'' in an Indian tribe if the tribe's code prevents inheritance. Eligibility for membership relates only to the definition of ''Indian'' under AIPRA and is a separate issue from whether, under a tribe's code, a particular class of people may inherit.

Another commenter suggested adding a definition for ''testator.'' The Department has added this definition in section 15.2.

Two commenters pointed out that the definition of ''trust personalty'' in the proposed rule would not include reindeer subject to the Reindeer Act of 1937, as amended, 50 Stat. 900; 25 U.S.C. 500–500n, or fossils removed from trust land over which the Secretary has trust responsibility. The Department has amended the definition of ''trust personalty'' in the final rule to include personal property that may be subject to Secretarial supervision, such as the ''trust reindeer.'' This amendment does not expand Secretarial obligations, but merely recognizes existing obligations.

One commenter stated that BIA is mentioned in several headings, but the definition of BIA does not include tribes that are contracting or compacting the probate function. The Department has reviewed the headings to ensure that the more general term ''agency'' is used when appropriate to include contracting or compacting tribes acting in place of BIA in performing the preparation of the probate package. Additionally, the text of the section clarifies the actor through the use of ''we'' and ''us,'' which are defined as including contracting and compacting tribes.

One commenter requested a new definition for ''testamentary capacity.'' Because testamentary capacity is a determination made by the judge, the Department does not believe a definition is appropriate here.

One commenter noted that, in section 15.201, using the term ''we'' when identifying who will transfer the probate file to OHA is ambiguous. The Department again points the commenter to the definition of ''we'' as including contracting and compacting tribes.

c. Claims

One commenter asked whether proposed section 15.202 (final sections 15.302 through 15.305), which allows the use of trust personalty to satisfy claims, also allows land to be sold to satisfy claims against the estate. The answer is no, land interests cannot be sold to satisfy claims against the estate.

Another commenter asked whether statutes of limitations may bar claims against an Indian estate. Statutes of limitations do apply to claims against Indian estates. If the statute of limitations on a claim has already run, the creditor cannot resurrect the claim during probate of the estate.

Certain kinds of claims are barred altogether. For example, claims by States and counties are barred (e.g., if a State seeks reimbursement of welfare assistance). Claims for unliquidated damages or unliquidated claims are barred because the Department does not have jurisdiction to determine those claims or pay them out of trust assets. See 43 CFR 30.143, below.

Several commenters asked whether an assignment of income would be considered a claim or would continue with the land. An assignment is not the same as a debt, but is a manner or method of payment of a debt. Whether an assignment of income survives a decedent, or does not survive a decedent but may be relevant to the allowance of a claim against the estate, depends on the specific language of the assignment and debt instrument. In some cases, an assignment of income is a personal act of the assignor and upon the death of the assignor, the assignment dies. The underlying debt could be the basis of a claim against the estate, if a balance remains unpaid. The final provision at 43 CFR 30.146 makes it clear that claims may be paid only from intangible trust personalty in a decedent's IIM account or due and payable to the decedent on the date of death. However, if the decedent entered into a valid assignment of income from specific identified trust property, if the assignment specifically provides that it survives the decedent, and if the assignment was approved by the Secretary, the trust property affected by the assignment would likely pass subject to the assignment and would not be subject to the limitation that applies to claims. Similarly, trust property that is subject to a mortgage passes to the heirs or devisees subject to that mortgage.

d. Timeframes

Several commenters addressed the current delay in probating Indian estates and requested the inclusion of timeframes for preparation of the probate package by BIA (or the contracting or compacting tribe). During the probate process, many factors can affect the timing, including cooperation by tribes, family members, and probable heirs and the availability of Departmental resources. The Department decided not to include deadlines for preparation of the probate package because each case is unique; some cases require more time to compile the necessary information, while others require less. We have added a timeframe that once the probate package is complete, it will be forwarded to OHA within 30 days (section 15.401).

One commenter stated that the 30-day appeal time provided in section 15.403 is too short given that addresses may change, mail may need to be forwarded, and individuals may not understand the need to speak with a tribal or BIA representative about the implications of a decision. The Department weighed the interests of those who may want to appeal and the potential for circumstances such as those identified by the commenter against the interests of those waiting for distribution of the probated assets. Based on this weighing of interests, the Department determined that 30 days is a reasonable amount of time.

e. AIPRA

Several commenters had miscellaneous questions and comments regarding the statutory language and effect of AIPRA. For example, one commenter expressed concern that

AIPRA may allow interests to be inherited by non-Indians. In response, the Department notes that AIPRA prevents land from leaving trust status through intestacy and points the commenter to the definitions of ''Indian'' (25 U.S.C. 2201(2)) and ''eligible heirs'' (25 U.S.C. 2201(9)).

Another commenter requested clarification of the phrase ''lineal descendants within two degrees of consanguinity'' in AIPRA's definition of ''eligible heirs.'' A child or grandchild would be a lineal descendant within two degrees of consanguinity of a decedent.

One commenter asked about the threshold for interests to be subject to purchase at probate without consent. AIPRA is clear in stating that consent is not required where the interest passing to the heir intestate is less than 5 percent. See 25 U.S.C. 2206(o)(5). Section 15.202(e)(2) establishes that the probate file will include an inventory of, among other things, interests that represent less than 5 percent of the undivided interest in a parcel.

One commenter suggested that section 15.401, which provides that tribes will receive notice of a prepared probate package only for interests that are less than 5 percent, should include large interests because the tribe may want to exercise a purchase option, particularly where the land might go out of trust or be inherited by a non-tribal member. The tribe can obtain information on ownership of trust interests at any time, pursuant to 25 U.S.C. 2216(e). Additionally, OHA will provide the tribe with jurisdiction with notice of the formal probate proceeding for all probate cases in which the decedent died on or after June 20, 2006, pursuant to 43 CFR 30.213 and 30.214.

A commenter noted that several of the ''2 percent or less'' interests that escheated to the tribes under the ILCA provision that was ruled unconstitutional in *Youpee* v. *Babbitt,* 519 U.S. 234 (1997), have yet to be returned to the estates from which they were taken. This commenter stated that it is difficult to determine whether a decedent's interest is less than 5 percent for the purposes of AIPRA's single heir rule, given that many of these ''2 percent or less'' interests have not yet been returned. The Department recognizes that this is an issue. The Department is addressing this issue and is tracking progress in returning the ''2 percent or less'' interests. Nevertheless, the single heir rule is a statutory requirement of AIPRA and not subject to modification in these regulations.

f. Will Drafting and Storage

Two commenters suggested including a provision in part 15 authorizing the use of electronic copies of wills, codicils, and revocations. Probate of electronic wills and related documents is not an accepted judicial practice at this time; however, should it become an accepted practice in the future, the Department will reconsider this suggestion.

Several commenters questioned why the Department is no longer providing will-drafting services to Indians or accepting wills for storage. Part 15 does not address will-drafting services or will storage; however, the Department will address this comment here, given its relevance. The Department's April 21, 2005 policy on wills and estate planning services discontinues the Department's practice of assisting Indians in preparing wills by acting as a scrivener. This policy also discontinues the Department's practice of accepting wills for storage. The Department will continue to store those wills that were in our possession as of April 29, 2005. However, the Department has elected not to exercise our discretionary right to continue accepting and storing any wills not in our possession as of April 29, 2005. A testator may keep his or her will with other important papers or give it to someone else to store safely. Family members or others with access to the will should present it to BIA upon the death of the testator.

A commenter asked to change section 15.3 to eliminate or provide exceptions to the requirement that a person be 18 years of age or over to make a will disposing of trust or restricted land or trust personalty. The Department reviewed this request and determined that the Secretary does not have the authority to change the age requirement because it is statutorily established. *See* 25 U.S.C. 373.

g. Miscellaneous

One commenter stated that requiring a birth certificate as part of the probate file creates a hardship. The Department recognizes that many people do not have a birth certificate, and therefore has deleted the requirement for a birth certificate to be included in the probate file.

One commenter suggested amending section 15.202 to require appraisal information as part of the probate file, in support of purchases at probate or settlement agreements. The Department has determined that it is more efficient for OHA to request appraisal information on an as-needed basis than to require an appraisal in support of every probate.

Several commenters asked whether the decedent's family has access to the probate file. Access to the probate file is governed by the Privacy Act insofar as the file contains personal identifying information of living persons, such as heirs or devisees. These commenters also stated that section 15.504 is unclear because the language does not appear to respond to the heading ''Who may inspect these records?'' The Department has revised the heading to better address the content of this provision.

One commenter asked how often a claim to recover the costs of searching for an absent interest owner by an independent firm would occur, under section 15.106(d). The purpose of this provision is to allow for a determination as to whether an interest owner is deceased, and if so, connect heirs and devisees to property. Whether an estate is charged for a search will depend on the size of the estate. BIA decides whether it will conduct that search in any particular case. Ultimately, OHA will decide on a case-by-case basis whether a search would be chargeable as a cost of administration of the estate.

One commenter noted that part 15 does not address handwritten wills and asked whether the Department will accept them. The Department will accept a will that is handwritten, but it still must meet the minimum formalities of execution: A testamentary instrument signed by the testator, dated, and witnessed by two disinterested adults. See 25 CFR 15.4. The same commenter asked whether tribal notaries may notarize signatures even if the tribe has a statutory option to purchase. The fact that the notary is a tribal employee does not disqualify that person from serving as a notary, because the notary only acknowledges the signatures. However, the two witnesses under section 15.4 must be disinterested.

Several commenters asked whether Mutual Help houses are probated by OHA. ''Mutual Help'' refers to housing grants from the U.S. Department of Housing and Urban Development administered by Indian housing authorities. There may be circumstances in which a Mutual Help house would be probated by OHA.

2. Changes From the Proposed Rule

The Department amended the title of part 15 to reflect established statutory law that, in effect, exempts members of the Osage Nation from part 15.

To improve the organization, the Department switched the order of subparts C and D, since preparation of the probate file logically comes before

obtaining emergency assistance and filing claims. The Department also moved proposed section 15.505 to final 15.203, and renumbered proposed 15.303 to become final 15.204 and proposed 15.506 to become final 15.505. Proposed section 15.505 relates to information the tribe must provide to complete the probate file, which fits better in subpart C (''Preparing the Probate File''), than with provisions relating to records.

In section 15.1, the Department clarified applicability of the rule to Alaska.

In section 15.2, the Department added definitions for ''affidavit'' and ''testator'' in response to a public comment. The Department also clarified that ''child'' includes natural children, clarified ''eligible heir'' and ''Indian'' by adding an ''or'' in each, clarified ''will,'' and clarified ''you'' by defining interested parties as the universe of persons that may be referred to by this term. The Department added a definition for ''lockbox'' in response to a comment.

In section 15.9, the Department changed the wording to allow a person to either swear or affirm.

In section 15.104, the Department made editorial changes to clarify the requirement for a death certificate or certified copy of a death certificate, and to specify the contents of an affidavit provided in lieu of a death certificate.

In section 15.202 (proposed section 15.302), the Department deleted the reference to BIA's querying sources, since the focus of the section is on the content of the probate file, not BIA's process for assembling the probate file. Final section 15.204 covers BIA's obligation with respect to querying sources.

In section 15.301, the Department deleted paragraphs (c)(2) and (c)(3) because these factors, ''the number of potential heirs or devisees'' and ''the amount of any claims against the estate,'' respectively, are not routinely considered in determining whether to approve expenditures from an IIM account to cover burial costs.

In sections 15.302 through 15.305, the Department clarifies how to file claims in formal probate proceedings and summary probate proceedings, in response to comments. The Department clarifies that creditor claims may be filed with the agency (which includes compacting and contracting tribes) before the agency transfers the probate file to OHA. After the file is transferred, claims may be filed with OHA. In any formal proceeding, claims must be filed before the conclusion of the first hearing at OHA. Section 15.305 now also specifies that an affidavit must include a statement as to whether the creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent's trust or restricted property in any other judicial or quasi-judicial proceeding, and the status of such action.

Section 15.305(a)(5) is reworded to require the creditor to disclose any evidence that the decedent disputed the amount of the claim.

In section 15.403, the Department adds a cross reference to 43 CFR parts 4 and 30 and restates that, after a judge's decision on rehearing, a person may file an appeal within 30 days of the date of mailing the decision.

In section 15.501, the Department added ''OHA'' as a source for information on the status of a probate. The Department also removed the telephone number for the Trust Beneficiary Call Center (888–678–6836, ext. 0) in this section and in section 15.103 because any future change in the telephone number would have required a regulatory amendment.

3. Distribution Table—25 CFR Part 15

The following distribution table indicates where each of the current regulatory sections in 25 CFR part 15 is located in the final 25 CFR part 15.

| Current citation | New citation | Title |
|---|---|---|
| 15.1 | 15.1 | What is the purpose of this part? |
| 15.2 | 15.2 | What definitions do I need to know? |
| | 15.3 | Who can make a will disposing of trust or restricted land or trust personalty? |
| | 15.4 | What are the requirements for a valid will? |
| | 15.5 | May I revoke my will? |
| | 15.6 | May my will be deemed revoked by the operation of the law of any State? |
| | 15.7 | What is a self-proved will? |
| | 15.8 | May I make my will, codicil, or revocation self-proved? |
| | 15.9 | What information must be included in an affidavit for a self-proved will, codicil, or revocation? |
| 15.3 | 15.10 | Will the Secretary probate all the land or assets in an estate? |
| 15.4 | 15.11 | What are the basic steps of the probate process? |
| | 15.12 | What happens if assets in a trust estate may be diminished or destroyed while the probate is pending? |
| 15.101 | 15.103 | How do I begin the probate process? |
| | 15.104 | Does the agency need a death certificate to prepare a probate file? |
| 15.102 | 15.102 | Who may notify the agency of a death? |
| 15.103 | 15.101 | When should I notify the agency of a death of a person owning trust or restricted property? |
| 15.104, 15.105 | 15.105 | What other documents does the agency need to prepare a probate file? |
| 15.106 | 15.301 | May I receive funds from the decedent's IIM account for funeral services? |
| 15.107 | 15.107 | Who prepares the probate file? |
| 15.108 | 15.108 | If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate file? |
| | 15.106 | May a probate case be initiated when an owner of an interest has been absent? |
| 15.201 | 15.201 | What will the agency do with the documents that I provide? |
| 15.202 | 15.302 | May I file a claim against the estate? |
| | 15.303 | Where may I file my claim against an estate? |
| | 15.304 | When must I file my claim? |
| | 15.305 | What must I include with my claim? |
| 15.203 | 15.202 | What items must the agency include in the probate file? |
| | 15.203 | What information must tribes provide BIA to complete the probate file? |
| | 15.204 | When is a probate file complete? |
| 15.301 | 15.401 | What happens after BIA prepares the probate file? |
| 15.302 | 15.402 | What happens after the probate file is referred to OHA? |
| 15.303 | 15.403 | What happens after the probate order is issued? |
| 15.401 | 15.501 | How may I find out the status of a probate? |
| 15.402 | 15.502 | Who owns the records associated with this part? |

| Current citation | New citation | Title |
|---|---|---|
| 15.403 ..... | 15.503 | How must records associated with this part be preserved? |
| | 15.504 | Who may inspect records and records management practices? |
| | 15.505 | How does the Paperwork Reduction Act affect this part? |

*B. 25 CFR 18—Tribal Probate Codes*

This new CFR part addresses the process for obtaining Secretarial approval of a tribal probate code and lists factors the Secretary will consider in reviewing the tribal probate code for approval.

1. Public Comments

a. Applicability to Alaska

At least one commenter noted that Alaska tribes may enact tribal probate codes, but that AIPRA does not apply. Part 18 does not apply to Alaska lands.

b. Adjudication Functions

One commenter asked whether a tribe can contract the probate adjudication functions. While tribes may contract probate file preparation (the BIA function), tribes cannot contract the adjudication function (the OHA function) because the adjudication function—determining ownership of trust land, title to which is held by the United States for the benefit of tribes and individual Indians—is an inherently Federal function. In adjudicating probates, OHA will apply a tribal probate code so long as it is consistent with Federal law and approved pursuant to AIPRA where applicable.

c. 180-Day Time Periods

Several commenters stated that they believe the 180-day period for the Department to review and come to a decision whether to approve the code is excessive. These commenters point out that ILCA, as amended by AIPRA, establishes 180 days as an absolute deadline for the Department to come to a decision, but does not prevent the Department from establishing a shorter timeline. The Department is exercising the authority granted by Congress to take up to 180 days to review tribal probate codes. See 25 U.S.C. 2205(b)(2)(A).

Several commenters stated that they believe the second 180-day period—from approval of the tribal probate code to when the code may become effective—is also excessive. ILCA, as amended by AIPRA establishes that the tribal probate code may not be effective for 180 days following approval to allow tribal members adequate opportunity to amend their wills. See 25 U.S.C. 2205(b)(3). One commenter asked when those provisions of a tribal probate code that do not require Secretarial approval will become effective. Part 18 addresses only those sections of a tribal probate code dealing with trust property. The 180-day time period applies only to the provisions dealing with trust property. All other provisions may become effective at the time prescribed by the tribe.

d. Single Heir Rule

One commenter asked whether tribal probate codes must provide that interests less than 5 percent must pass in accordance with the single heir rule. Section 2205 of ILCA, as amended by AIPRA, says the code must be consistent with the goals of ILCA. One of those goals is to reduce fractionation; therefore, no more than one individual can inherit less than 5 percent of the total undivided ownership in a parcel through intestacy. Under AIPRA, the single heir rule does not apply to interests that are 5 percent or greater or interests devised through a will. The Department also clarified in final section 18.301 that a tribe may adopt a single heir rule without adopting a full tribal probate code. Another commenter noted that ILCA, as amended by AIPRA, allows tribes to adopt a single heir rule that distributes to a different single heir from that designated by statute. The Department clarified this point in final section 18.301. Another commenter asked what timelines apply to single heir rules submitted separately from, or without, a tribal probate code. The Department has added subpart D to address this comment.

e. Miscellaneous

One commenter stated that part 18 should be revised to expressly limit the Department's review of sections of the tribal probate code that govern trust and restricted lands. The Department has added sections 18.103 and 18.203 to clarify which provisions of a tribal probate code are subject to its approval.

At least one commenter questioned whether the commenter's specific tribe may enact a tribal probate code. Congress enacted some statutes specific to tribes. Nothing in AIPRA amends or otherwise affects the application of the tribe-specific laws addressed in 25 U.S.C. 2206(g). However, a tribe may use AIPRA and its Congressionally enacted statute to develop and adopt its own probate code.

Several commenters noted that, in final section 18.106, the provision stating that a tribal probate code must allow an Indian lineal descendant of the original allottee and an Indian who is not a member of the Indian tribe with jurisdiction over the interest in land to ''inherit'' is inaccurate, because ILCA, as amended by AIPRA, states that the tribal probate code must allow such persons to receive by will (i.e., by devise). The Department agrees with this comment and has incorporated the change in section 18.106(c) and (d).

One commenter stated that the proposed section 18.4, which had stated that the tribal probate code be submitted to the local Bureau official, was not specific enough. The Department has responded by including the specific address to which tribal probate codes should be submitted at section 18.105, and has changed the recipient to Central Office rather than local Bureau officials.

A few commenters requested more guidance as to what parts of a tribal probate code are subject to Secretarial approval. Final part 18 clarifies that only those tribal probate codes containing provisions regarding the descent and distribution of trust or restricted lands require and are subject to Secretarial approval. The Department published a model tribal probate code in the **Federal Register** to provide suggested guidelines for tribes considering the creation and adoption of a tribal probate code containing provisions applicable to trust and restricted property. *See* 72 FR 54674 (September 26, 2007).

One commenter stated that proposed 25 CFR 18.3(c)(2) was inconsistent with AIPRA. The commenter pointed out that this regulation allowed a spouse or a lineal descendent of either the testator or the original allottee to reserve a life estate. The commenter noted that including descendents of the original allottee in 25 CFR 18.3(c)(2) as eligible to reserve a life estate under a tribal probate code expands the class of persons contemplated by AIPRA. The Department agrees with this comment and has deleted the reference to descendents of the original allottee in 25 CFR 18.3(c)(2).

AIPRA does not allow a tribal probate code to prohibit the devise of an interest in trust or restricted property to an

Indian lineal descendent of the original allottee or an Indian who is not a member of the tribe with jurisdiction over the interest in land unless the following conditions are met: (1) The code allows those individuals to renounce their interests to eligible devisees in accordance with the tribal code; (2) the code allows a devisee spouse or lineal descendant of the testator to reserve a life estate without regard to waste; and (3) the code requires the payment of fair market value as determined by us on the date of the decedent's death. The final rule complies with AIPRA. The relevant provisions are now found at 25 CFR 18.106(c) and (d).

2. Changes From the Proposed Rule

The Department reorganized the proposed rule, by separating into three distinct subparts provisions related to tribal probate codes, amendments to tribal probate codes, and single heir rules submitted separately from tribal probate codes. This reorganization should allow users to more readily locate the provisions they are interested in.

The Department also changed who tribes should submit their tribal probate codes to, requiring them to submit to Central Office, rather than local Bureau officials. This allows a specific address to be included, as requested by a commenter. The Department also added several additional sections for further clarification. For example, the Department added a new section 18.1 to make the purposes of part 18 explicit. The Department also clarifies that a tribe must obtain approval of the tribal probate code only if the code governs descent and distribution of trust and restricted lands (see final sections 18.101 and 18.102). The Department added a new section 18.103 to clarify which provisions of a tribal probate code are subject to the Secretary's approval.

In response to comments, the Department added a new subpart D to clarify that a tribe may enact a single heir rule without enacting a tribal probate code and to clarify the approval timeline for a single heir rule that is not part of a tribal probate code.

To make the approval process more transparent, the Department also clarified what the Secretary will consider in the approval decision (see final section 18.106) and the procedure for obtaining Secretarial approval of amendments to tribal probate codes (see subpart C).

The Department deleted proposed 18.12(b) regarding appeals of a denial by the Assistant Secretary—Indian Affairs to the Board of Indian Appeals because the Board generally lacks authority to review decisions of the Assistant Secretary, and even if such authority were granted, the time limits imposed by AIPRA essentially exclude the possibility of review by the Board.

In final sections 18.110, 18.207, and 18.306, the Department clarifies when a tribal probate code, amendment, and single heir rule, respectively, becomes effective if it is approved by the Department's inaction.

**Note:** A distribution table is not included here because these provisions are new.

*C. 25 CFR Part 179—Life Estates and Future Interests*

This part sets forth the authorities, policy, and procedures governing the administration by the Secretary of life estates and future interests in Indian lands. Many of the provisions are effective only in the absence of language to the contrary in the document creating the life estate (i.e., probate order or conveyance document).

1. Public Comments

The public comments on proposed 25 CFR part 179 overwhelmingly objected to the proposed revisions as confusing. The public comments stated that such confusing language makes it difficult for people to ensure that their property will be distributed in accordance with their intent when their will or conveyance includes life estates and future interests. For this reason, the Department has decided not to adopt most of the changes it proposed, with a few exceptions.

Commenters also objected to the apparent prohibition on successive life estates. The Department has decided not to adopt the proposed changes that would have prohibited successive life estates.

Additionally, several commenters objected to the provisions at proposed section 179.8 stating that members of a class are determined at the time a conveyance document is approved or at the death of decedent. Commenters objected to these provisions because ILCA, as amended by AIPRA, explicitly states that the time for ascertaining a class is the time the devise is to take effect in enjoyment. Likewise, commenters objected to proposed section 179.7 establishing that the Department will determine whether a condition is satisfied upon the Department's approval of the conveyance document or upon the death of the decedent. The Department has not adopted these proposed provisions.

Commenters also objected to limiting rights to dispose of property in probate or by gift. The Department has decided not to adopt the changes it proposed that would have limited rights to dispose of property in probate or by gift.

One commenter asked whether mineral rights could be given as a life estate, without rights to the surface. In a will, a testator may devise a life interest in the mineral estate and may define the extent of damage the life tenant may do. This rule only establishes guidelines in the absence of the language in the document establishing the life estate.

Another commenter asked whether a person holding a life estate ''without regard to waste'' is entitled to harvest timber without the consent of the remaindermen. The Department has added a new section 179.202 to address this and other situations regarding depletion of resources.

A few commenters asked about the meaning of the phrase ''without regard to waste.'' AIPRA established the definition and the Department is bound by its applicability.

2. Changes From Proposed Rule

As stated above, in response to comments, the Department has not adopted most of the changes it proposed, with a few exceptions. In section 179.1, the Department clarified the scope and purpose of part 179, establishing three separate subparts. In section 179.2, the Department reinserted a definition for ''agency,'' clarified that agency includes compacting and contracting tribes, and retained an amended version of ''life estate.'' In addition, the Department added definitions for ''life estate without regard to waste'' and ''rents and profits.'' In section 179.3, the Department clarifies the application of law to include AIPRA. The Department also added a new section 179.4 to clarify how a life estate terminates.

The Department has retained the proposed use of Actuarial Table S in proposed section 179.13 (now in final section 179.102) rather than the table in the currently effective version of part 179, and has retained the explanatory paragraph stating that the Department will periodically review and revise the rate of return. The Department has also retained a revised version of the provision in proposed section 179.12(b) (now in final section 179.201) establishing distribution for life estates without regard to waste.

The Department has deleted proposed provisions related to classes and proposed provisions regarding the privileges and responsibilities of a life

tenant. The Department also deleted proposed section 179.11, regarding how a future interest holder can stop a life tenant from damaging or substantially diminishing the future interest, because the Department is already authorized as trustee to take action where appropriate.

3. Distribution Table—25 CFR Part 179

The following distribution table indicates where each of the current regulatory sections in 25 CFR part 179 is located in the final 25 CFR part 179.

| Current citation | New citation | Title |
|---|---|---|
| 179.1 | 179.1 | What is the purpose of this part? |
| 179.2 | 179.2 | What definitions do I need to know? |
| 179.3 | 179.3 | What law applies to life estates? |
| | 179.4 | When does a life estate terminate? |
| 179.4 | 179.101 | How does the Secretary distribute principal and income to the holder of a life estate? |
| 179.5 | 179.102 | How does the Secretary calculate the value of a remainder and a life estate? |
| 179.6 | 179.5 | What documents will the BIA use to record termination of a life estate? |
| | 179.201 | How does the Secretary distribute principal and income to the hold of a life estate without regard to waste? |
| | 179.202 | Can the holder of a life tenancy without regard to waste deplete the resources? |

*D. 43 CFR Part 4, Subpart D—Department Hearings and Appeals Procedures, Rules Applicable in Indian Affairs Hearings and Appeals*

Currently, subpart D of 43 CFR part 4 addresses how OHA probates a trust estate after receipt of the probate file that BIA prepares under 25 CFR part 15. The amendments relocate the probate hearing procedures to a new part 30 and amend these procedures to improve clarity and to include new provisions implementing ILCA, as amended by AIPRA. See the discussion of these changes below.

*E. 43 CFR Part 30—Indian Probate Hearings Procedures*

This newly established part addresses probate hearing procedures.

1. Public Comments

a. Applicability to Alaska

One commenter requested that the Department clarify the applicability of this part to Alaska. The Department has added such clarification at section 30.100(c).

b. Claims

One commenter asked whether legal notice to creditors is still required, and noted that the BIA staff will not know the deadline for submitting claims, since it is now the date of the first hearing. Creditors will receive constructive or actual notice by OHA of the first hearing, either by posting of the notice of hearing or by mailing of the notice to creditors whose claims were presented to BIA prior to transfer of the probate file to OHA. Creditors may still file their claims with the BIA prior to transfer of the probate file to OHA, and BIA staff will know whether the file has been transferred, in which case they can refer the creditor to OHA for more information about the filing.

One commenter asked whether a mortgage is a claim against an estate. The Department treats the mortgage as an encumbrance on the land. The trust property will pass through the estate encumbered by the mortgage.

Several commenters asked whether various loans or assignments would be considered claims against the estate. See the discussion of ''Claims'' under 25 CFR part 15, above, for information on assignments. One commenter asked specifically whether a loan for which a lien on farming equipment is placed would be a claim in probate. A loan secured by farming equipment is not a trust probate issue because the equipment is not trust property. Under these regulations, the creditor must exhaust the security and must show evidence of any balance due after the exhaustion of the security before making a claim against trust assets. See final 25 CFR 15.305(c) and 43 CFR 30.141. Another commenter asked specifically whether claims for child support or alimony are claims against an estate. If liquidated under the applicable State or tribal law, claims for alimony or child support may be considered as general claims against the estate.

One commenter objected to section 30.144 to the extent it would allow BIA to petition for costs of administering an estate because it is BIA's trust responsibility to do so. This section allows the judge the discretion to authorize payment of costs of administering the estate where the judge deems it appropriate under specific circumstances; the Department does not anticipate that judges will routinely authorize payment to BIA.

One commenter recommended changing the word ''personalty'' to ''funds'' in section 30.146 because money generated after the date of death is generated from the land and goes with those heirs vested in the land. The Department agrees that money generated after the decedent's death belongs to the heirs or devisees, but it is still ''trust personalty.'' Trust personalty that accrues after the date of the decedent's death from trust or restricted property is not available for payment of claims against the estate.

The discussion of comments on claims under 25 CFR part 15, at section V.A(1)(c) of this preamble, above, provides additional information on probate claims.

c. Timeframes

Several commenters suggested adding timeframes to various parts of the probate process, including when OHA receives the probate file from BIA, notifies potential heirs or devisees, takes action to complete an incomplete probate file, provides notice of the hearing, schedules and holds hearings, and allows document discovery. One commenter suggested that certain classes of probate cases should be completed within certain timeframes. The Department decided not to add timelines for adjudication of probate estates because each case is unique, some requiring more time and some requiring less. During the probate process, many factors can affect the timing, including cooperation by tribes, family members, and probable heirs and devisees and the availability of Departmental resources.

A few commenters stated that the 30 days provided for filing a notice of appeal in 4.321 is not long enough because someone may not know of the decision in time, or decide to appeal in time. The Department weighed the interests of those who may want to appeal against the interests of those waiting for distribution of the probated assets and determined that 30 days was an appropriate time period. Provisions have been added to the regulations requiring the deciding official to give notice to the parties of their rights to further review or appeal, and providing that the review or appeal period runs

from the mailing of a notice, decision, or order (i.e., one that includes accurate appeal information).

d. AIPRA

One commenter asserted that AIPRA conflicts with the Indian Child Welfare Act regarding adopted-out children. AIPRA does not necessarily cut off the rights of adopted-out heirs. Even though a child has been adopted out by the mother (in this case, if the mother gave the child up for adoption), if the grandmother continued to maintain a relationship with that child, the child could inherit from the grandmother. See 25 U.S.C. 2206(j)(2)(B)(ii) and (iii). Another commenter stated that AIPRA's ''adopted-out heirs'' provisions are too vague. The regulations reflect AIPRA as enacted; however, tribes may adopt tribal standards for inheritance by adopted children in their tribal probate codes.

One commenter asked whether interests owned by persons who do not respond to notices may be sold without their consent. AIPRA allows certain interests to be sold during probate without the consent of the owner. See 25 U.S.C. 2206(o), as implemented by 43 CFR part 30, subpart G (Purchase at Probate).

One commenter asserted that abusive spouses should not be eligible to inherit. AIPRA provides no basis for disinheriting an abusive spouse, except in the extreme case where death results. Under 25 U.S.C. 2206(i), any person who knowingly participated, either as a principal or accessory before the fact, in the willful and unlawful killing of the decedent may not take any inheritance or devise.

One commenter asked how AIPRA affects mineral rights. AIPRA governs the descent and distribution of mineral rights to the same extent as other property rights.

Several commenters suggested that the Department has the ability to interpret AIPRA, in support of various regulatory changes. The Department has based these regulations on AIPRA, as enacted.

e. Purchase at Probate

Several commenters expressed concern regarding the purchase at probate provisions allowing interests to be sold without the owner's consent. ILCA, as amended by AIPRA, authorizes the sale without consent of interests passing intestate that represent less than 5 percent of the entire undivided ownership in the parcel. See 25 U.S.C. 2206(o)(5). One commenter asked whether such a sale without the owner's consent is constitutional. These regulations implement the statute as enacted. The Department notes that all sales under these regulations require that the owners be compensated at fair market value.

Another commenter stated that the sale of property, even property of small economic value, without the owner's consent is contrary to well-established principles of property law and, as such, should be strictly limited. This commenter stated the concern that section 30.163 is an ill-concealed effort to increase the number of forced sales at probate. As previously stated, the regulations interpret AIPRA as enacted, which allows for purchase without consent of an interest passing by intestate succession, where the ''interest passing to such heir represents less than 5 percent of the entire undivided ownership of the parcel.'' See 25 U.S.C. 2206(o)(5).

Another commenter noted that, in some areas, even an interest less than 5 percent may be very profitable and stated that such interests should not be subject to purchase at probate without the owner's consent. The regulations interpret AIPRA as enacted, which allows purchase at probate of interests of less than 5 percent without the owner's consent; however, the production of income from an interest would be considered in arriving at a valuation in the purchase at probate process. Valuation can be contested by interlocutory appeal before the interest is ordered sold. See 43 CFR 30.169.

A few commenters expressed concern that a sale of an interest is not actually taking place during the probate because the heir or devisee only has an expectancy, and his or her ownership in the interest does not vest until the final probate order. According to one of these commenters, the regulation creates a ''fictional interest'' (because the interest is merely an expectancy). The regulations apply the purchase at probate provisions of AIPRA as enacted. AIPRA does not distinguish between an expectancy and vested interest for the purposes of purchases at probate.

Several commenters expressed dissatisfaction with the fact that whether an interest may be purchased without the owner's consent is measured by what percentage interest passes to the heir, rather than what percentage interest the decedent owned. In other words, these commenters believe that purchase without consent should be allowed only where the decedent owned a less than 5 percent undivided interest, rather than where the heir receives a less than 5 percent interest. For example, if a decedent owns a 20 percent interest and has five heirs, each receiving a 4 percent interest, then the concern is that the entire 20 percent interest would be subject to purchase at probate without those heirs' consent. The Department agrees that this situation could occur. The regulations apply AIPRA as enacted, which allows for purchase without consent of an interest passing by intestate succession, where the ''interest passing to such heir represents less than 5 percent of the entire undivided ownership of the parcel.'' See 25 U.S.C. 2206(o)(5).

One commenter asked when any relevant appraisal information for a purchase at probate would be obtained by interested parties. BIA or the judge will order an appraisal or other valuation when a request for purchase is submitted.

A few commenters stated that the 30 days provided for filing a notice of objection to an appraisal in section 30.169 is not long enough. The Department weighed the interests of those who may want to object against the interests of those waiting for distribution of the probated assets and determined that 30 days was an appropriate time period. Many of these same commenters stated that the 30 days should be measured from the date of receipt, rather than the date of mailing, of the notice. The Department decided against measuring from the date of receipt because of the cost of various methods of delivery confirmation (certified or registered mail or priority mail with delivery confirmation). The Department therefore clarified that time periods are measured from the date of mailing in this section, as well as in other sections throughout this part.

One commenter asked whether a deed would be drafted as part of the purchase at probate process. The probate order would take the place of the deed in the purchase at probate.

One commenter asked whom the Department will notify of a purchase at probate. Section 30.165 establishes whom the Department will notify of a request to purchase at probate. A commenter also asked how persons who are eligible to purchase at probate are notified of an estate. OHA notifies devisees, eligible heirs, and the tribe by mailing and co-owners by posting. Additionally, ILCA, as amended by AIPRA, provides all co-owners and the tribe with the right to request ownership information to track interests they would like to purchase.

One commenter asked whether the consent of the co-owners of an interest is required before purchasing an interest at probate. Consent of the co-owners is not required for a purchase at probate.

One commenter noted that purchases at probate have the potential to slow down the probate of an estate considerably, especially where a request to purchase is brought before OHA shortly before issuance of the final order. This commenter asked if the process could be handled by the regional BIA Realty office, instead of OHA. The purchase at probate process, as established by AIPRA, may occur only during adjudications of an estate by OHA. See 25 U.S.C. 2206(o).

One commenter expressed some confusion over the process for transferring title in a purchase at probate in section 30.173. This commenter thought that OHA was to issue an order to LTRO to transfer title, and was concerned that the title may not transfer in a reasonable time. In fact, the probate order transfers the title, while recordation in the LTRO provides notice of the new ownership.

One commenter expressed concern that a non-Indian may purchase at probate. The regulations establish who qualifies as an ''eligible purchaser'' at section 30.161, in accordance with AIPRA.

One commenter asked what happens to an interest if nobody purchases the interest at probate. Interests not purchased at probate will pass to the heirs according to AIPRA or the applicable probate code, or to the devisees according to the will.

One commenter noted that sections 30.260 to 30.274 refer to tribes authorized under particular statutes governing purchases and asked whether there will be a separate section for other tribes seeking to purchase interests at probate. Other tribes may purchase at probate pursuant to subpart G of 43 CFR part 30.

f. Purchase at Probate—Valuation

Several commenters objected to the proposed provision stating that an appraisal of the market value of the interest to be sold at probate must be based on an appraisal that gives appropriate consideration to the fractionated ownership interest in the parcel. One commenter objected to the language because it sets up a framework that prevents beneficiaries from receiving the highest possible value for their land, which is inconsistent with the Department's trust responsibilities. This commenter would support language stating that the appraisal is ''without consideration of the fractionation of ownership of the parcel.'' The Department revised the language, in final section 30.167(b), to clarify that the market value of the interest to be sold at probate must be based on an appraisal that meets the standards in the Uniform Standards for Professional Appraisal Practice (USPAP), or on an alternate valuation method developed by the Secretary.

Another commenter stated that taking fractionation into account in the appraisal may mean that some interests will have no value. According to this commenter, this valuation method may also mean that an appraisal of a 160-acre allotment that is heavily fractionated will result in a discounted value for the whole parcel, even for large interest holders within that parcel. This commenter stated that the valuation method may depreciate the appraised value of Indian trust lands as a whole, whether fractionated or not, and whether owned by an individual or the tribe. This commenter also stated that discounted values for fractionated parcels may affect the value of both trust and fee parcels that are not fractionated, since appraisals are based upon the sale and prices of comparable parcels, potentially reducing the net value trust lands as a whole, and adversely impacting the utility of using the parcel as collateral or security for loans.

The Department revised sections 30.167 and 30.168 to reflect the Secretary's decision to use valuation methods conforming to USPAP standards or an alternative valuation method in accordance with 25 U.S.C. 2214.

The Secretary's authority to develop and use an alternate method of valuation of Indian trust property is set forth in AIPRA:

> For purposes of this chapter, the Secretary may develop a system for establishing the fair market value of various types of lands and improvements. Such a system may include determinations of fair market value based on appropriate geographic units as determined by the Secretary. Such system may govern the amounts offered for the purchase of interests in trust or restricted lands under this Act.

25 U.S.C. 2214. To date, the Secretary has not exercised this authority. However, we have included references to the Secretary's section 2214 authority in the regulations at 43 CFR 30.167(b) and 30.265(a)(3) to allow for the use of an alternate valuation method if and when one is developed in the future. Development of such an alternate system of valuation of Indian trust lands will be done through a notice and comment process, with tribal consultation.

g. Consolidation Agreements

One commenter asked what documentation OHA will require as proof of ownership of an interest to be included as part of a consolidation agreement. OHA will require a title status report from the Land Title and Records Office as proof of ownership.

At least one comment questioned whether interests not included in the estate may be included in a consolidation agreement at probate. Interests already owned by heirs or devisees may be included in a consolidation agreement pursuant to section 30.151; however, persons who are not party to the probate may not enter into the consolidation agreement.

h. Formal and Summary Proceedings

Several commenters asked whether 43 CFR part 30 eliminates informal proceedings. The revised regulations delete the informal process, which had been handled by an Attorney Decision Maker. The revised regulations provide a formal process for all cases involving land and a summary process for cases involving only money (no land) totaling less than $5,000. In a related comment, one commenter asked whether law clerks will be adjudicating estates. Attorney Decision Makers, who are not law clerks, but rather, attorneys, may handle summary proceedings; formal proceedings will be handled by Administrative Law Judges and Indian Probate Judges, not law clerks.

One commenter requested clarification that section 30.200, regarding summary proceedings, applies only to estates not exceeding $5,000 cash held in individual Indian money (IIM) accounts. This commenter also requested clarification that summary proceedings will not be held for any estate containing an interest in land, no matter how small. The commenter is correct on both counts.

i. Resources

Several commenters mentioned resource issues with the LTRO, educating Indians about their estate planning options and consolidation options as heirs and devisees, and obtaining appraisals. The Department has considered and noted these resource issues.

j. Miscellaneous

One commenter suggested moving all the substantive provisions regarding purchase at probate and settlement and consolidation agreements from 43 CFR part 30 to 25 CFR part 15. The Department has decided to retain these provisions in 43 CFR part 30 because OHA, rather than BIA, will be handling purchases at probate and settlement and consolidation agreements. Title 43 addresses OHA procedures, while Title 15 addresses BIA procedures.

A few commenters asked how tribal probate codes fit into OHA's adjudication of an estate. Under AIPRA, tribes may develop their own probate codes and submit them to the Secretary for approval. OHA will apply any approved tribal probate code in the probate of trust estates governed by that code.

One commenter questioned what types of documents are needed if American citizenship is in question. OHA will determine whether evidence is sufficient to establish citizenship on a case-by-case basis.

One commenter stated that 30.123(a)(1) improperly authorizes administrative law judges to determine the tribal membership status of heirs and devisees. OHA's determination of who qualifies as an Indian and eligible heir is solely to determine who can inherit in trust. The Department applies the tribe's criteria to determine eligibility. OHA's determination does not affect the tribe's decision as to enrollment.

One commenter noted that a tribe may have property ownership as a condition for membership, and that people may not be able to become members of the tribe until they inherit from the probated estate. Rights to inherit an interest vest on the date of decedent's death and ownership relates back to the date of decedent's death.

One commenter asked whether a tribe can state that someone is not eligible to inherit. A tribe may establish who is eligible to inherit pursuant to an approved tribal probate code. Please refer to the model tribal probate code published by the Department on September 26, 2007 at 72 FR 54678.

One commenter asked how OHA will obtain the mailing addresses of co-owners to provide notice. Currently, OHA obtains mailing addresses from BIA. BIA uses the Department's Trust Asset Accounting Management System (TAAMS) to maintain names and addresses of co-owners in trust and restricted property.

A few commenters noted that section 30.242 allows a person claiming an interest in the estate to file a petition for reopening, but that BIA files many, if not most, petitions for reopening. The Department has revised section 30.242 to explicitly state that the agency (BIA or a compacting or contracting tribe) may also file a petition for reopening.

One commenter expressed concern with regard to section 30.121, allowing the appointment of masters. This commenter's concern is that the masters will be untrained. Masters will be appointed only based on specific expertise in the subject matter at issue in a particular case.

One commenter stated that persons should not be allowed to renounce an inherited interest or devise unless they first obtain an appraisal of the interest to be renounced. AIPRA does not require an appraisal for renunciation. A person considering renunciation may either request an appraisal or waive the right to an appraisal.

One commenter asked what the ''applicable law'' is, as stated in the definition for ''minor.'' The applicable law could be tribal law, State law, or Federal law, depending on which law applies to the particular issue at hand.

One commenter asked what the timeframe is for presuming someone to be deceased. For the purposes of probating trust and restricted property, the timeframe for presuming someone to be deceased is 6 years from the last contact with any person. A proceeding to determine whether a missing person is deceased may be initiated in accordance with 43 CFR 30.124.

One commenter asked the status of persons who qualify as Indian but who are incarcerated. Trust beneficiaries in prison are still entitled to notice. They are entitled to make wills. They may not be able to attend the hearing in a probate case, but they are entitled to have notice of the hearing. In an appropriate case, they may be able to submit written testimony or testify by deposition or telephone.

One commenter asked for clarification of the term ''lockbox.'' The Department added a definition for this term at section 30.101 and in 25 CFR 15.2.

One commenter asked whether the tribe will receive an inventory of interests to be probated in any given estate. The tribe may request a copy of the inventory from the agency before the probate file is transferred to OHA or from OHA once it has received the file from the agency.

One commenter asked that tribes be permitted to establish a specific address for receipt of notices of probate proceedings. OHA will provide notice to one address of record per tribe; however, tribes can establish their own internal mail routing procedures.

One commenter presented a factual situation in which property was omitted from an estate, and asked how OHA handles that situation. Property omitted from an estate is added and distributed pursuant to section 30.126.

2. Changes From Proposed Rule

43 CFR Part 4

In section 4.200(a), the final regulations delete the first entry in the table, ''All proceedings in subpart D.'' The final regulations also amend this table by adding ''4.201'' as a reference for ''Appeals to the Board of Indian Appeals from decisions of the Probate Hearings Division in Indian probate matters'' and ''Appeals to the Board of Indian Appeals from actions or decisions of BIA'' in the second and third rows of the table. The final regulations add a new fourth row to the table stating that sections 4.201 and 4.330 through 4.340 should be consulted for provisions relating to ''Review by the Board of Indian Appeals of other matters referred to it by the Secretary, Assistant Secretary—Indian Affairs, or Director—Office of Hearings and Appeals.''

In section 4.201, the final regulations amend the definition of ''Board'' by deleting superfluous language. The final rule adds a definition for ''Decision or Order,'' amends the definition of ''heir'' to simplify language, and amends the definition of ''interested party'' to more generally refer to a ''decedent's'' estate, rather than an ''Indian's'' estate. The definition of ''Indian probate judge'' is amended to delete ''licensed'' before attorney, since an attorney must be licensed and the deleted word is unnecessary. The definition of ''judge'' is amended by clarifying that ''judge'' means an Administrative Law Judge or Indian Probate Judge (IPJ) except when used in the term ''administrative judge.''

In section 4.320, the heading and text are changed to more generally apply to a judge's decision or order issued under 43 CFR part 30. The final rule adds that an appeal may be taken from any modification of the inventory of an estate. This does not change the scope of coverage set out in section 4.320.

In section 4.321, the final rule clarifies that the 30-day time period is measured from the date of mailing of the judge's order or decision.

In section 4.324, the final rule clarifies LTRO procedures by adding that the LTRO must certify that the probate record is complete before forwarding the certified record to the Board, must include the original of the transcript in the record and make a copy of the transcript for the duplicate record, and must prepare a table of contents for the record. The final rule also clarifies that, for interlocutory appeals or appeals related to modification of an inventory or determining that a person for whom a probate proceeding is sought to be opened is not dead, the judge must prepare the administrative record and table of contents.

Section 4.325 carries through the clarifications made in section 4.324 by

distinguishing between the probate record and the administrative record and adding a reference to the table of contents.

4 CFR Part 30

4 CFR Part 30—Subpart A

In section 30.100, the final rule updates section references. The final rule also adds a new paragraph (c) to 30.100 identifying those provisions that do not apply to Alaska.

In section 30.101, the final rule revises the definitions of ''Board'' to be consistent with section 4.201. The final rule adds new definitions for ''affidavit,'' ''deposition,'' ''discovery,'' and ''interrogatories.'' While the meaning of these terms is generally understood, the Department added definitions for clarity. Additionally, the Department added definitions for ''lockbox'' and ''master,'' in response to comments. The final regulations also clarify several definitions, including ''agency'' to include the BIA agency office having jurisdiction over trust financial assets; ''attorney decision maker'' and ''Indian probate judge'' to change ''licensed attorney'' to simply ''attorney,'' since all attorneys must be licensed; ''child'' to explicitly include natural children; and ''summary probate proceeding'' to replace ''trust personalty'' with ''IIM account.'' The definition of ''trust personalty'' is amended to include ''tangible personal property'' in response to comments regarding trust personal property beyond funds and securities (e.g., ''trust reindeer''). Minor wording changes are made to the definitions of ''decision or order,'' ''heir,'' ''IIM account,'' ''Indian,'' ''intestate,'' ''lockbox,'' ''per stirpes,'' ''we or us,'' ''will,'' and ''you.''

43 CFR Part 30—Subpart B

In section 30.114, the final rule clarifies that notice of a formal probate proceeding will be sent to only those creditors whose claims appear in the probate file.

The final regulations amend section 30.115 to replace ''probate file'' with ''probate record.'' The probate file may include judge's notes and attorney work product, while the probate record is available for inspection by the public.

43 CFR Part 30—Subpart C

The final rule adds a new paragraph (b) to section 30.120, specifying that the judge has authority to ''determine whether an individual will be deemed to be dead by reason of unexplained absence.'' This authority has been placed in the ''authority'' section in the final rule for clarity.

The final rule amends section 30.122 to measure the 30-day period from the date of mailing in accordance with the Department's determination that the date of mailing is the necessary starting point for practical purposes and for consistency with other sections' time measurements. The final regulations also clarify that the judge may make new findings of fact based on evidence in the record, and may make findings of fact and conclusions of law when hearing the case de novo.

In section 30.123, the phrase ''if relevant'' has been added to clarify that the judge will not determine nationality or citizenship unless it is an issue. These determinations are needed only when a foreign national stands to inherit, usually a Canadian or Mexican.

The final rule deletes proposed paragraph (a)(5) of section 30.125, which gave judges authority to ''address any other error deemed by the judge sufficient to order the case to be reopened.'' The Department determined this provision was overly broad.

Section 30.126 (''What happens if property was omitted from the inventory of the estate?'') has been amended to clarify that BIA may not administratively modify an estate, but only a judge may modify an estate through a modification order and that the modification order may be appealed. The final rule also adds paragraph (c) clarifying what the judge's decision or modification order must include and when a judge's modification order becomes final. The appeal procedures parallel those for challenging a decision that property was improperly included in the inventory of an estate in section 30.127.

The final rule, in section 30.127, adds language in paragraph (a) that the petitioner must notify parties whose interests may be affected by the modification. The final rule also breaks proposed paragraphs (c) and (d) of section 30.127 into several paragraphs and adds clarifying language in final paragraph (d) regarding the deadline for filing an appeal, and in final paragraph (e) that the judge (not BIA) forwards the record of all proceedings to the LTRO.

In section 30.128, the Department clarifies that an erroneous recitation of acreage alone shall not be considered an improper description.

43 CFR Part 30—Subpart D

The Department deleted several sections in this subpart to simplify the language regarding recusal of judges or ADMs, since this subject is already covered in 43 CFR 4.27(c).

43 CFR Part 30—Subpart E

In sections 30.140 and 30.141, the final regulations provide for a single process and specification of requirement for filing claims by reference to 25 CFR 15.302 through 15.305. Section 30.140 sets firm deadlines for filing claims against an Indian trust estate, regardless of whether a creditor has actual or constructive notice of either the decedent's death or the probate proceedings. The existing regulations at 43 CFR 4.250(a) set an initial deadline for filing claims of 60 days from the date BIA received verification of the decedent's death, but they provide an additional 20-day window for creditors who were not chargeable with notice in time to meet the initial deadline. Under the rule being promulgated today, for formal probate proceedings, all claims must be filed before the conclusion of the first hearing. For summary probate proceedings, different deadlines apply depending on the nature of the claimant, but the deadlines are firm, without regard to whether a claimant has notice of the probate proceedings.

As an exercise of the Secretary's broad rulemaking authority with respect to Indian probates under 25 U.S.C. 372 and 373, the Department for many years has made funds in Indian trust estates subject to the payment of creditor claims. Were it not for the Secretary's regulations, creditors would have no right to assert claims against Indian trust assets, including individual Indian trust funds. In this final rule, the Department has decided to (1) limit the funds available for the payment of claims to those that are on deposit or have accrued on the date of a decedent's death, and (2) create fixed deadlines for filing claims against the Indian trust estate.

The Department recognizes that, for creditors who do not have notice of the probate proceedings, this rule effectively cuts off their ability to file a claim against the decedent's trust funds. However, no such legal right independently exists. In order to ensure that all issues, including claims, can be addressed at the first (and typically only) hearing, and that a decedent's trust funds can be distributed promptly following the conclusion of the proceedings, the Department has decided to create fixed deadlines for filing claims and to make them applicable to all creditors.

Section 30.143 deletes ''not properly within the jurisdiction of OHA'' from paragraph (c) and ''or any of its political subdivisions'' from paragraph (d) as superfluous. Section 30.143 also includes several clarifying changes to

more explicitly define when claims will not be allowed.

A phrase has been added to section 30.145, to clarify that a claim may be reduced only if the judge determines it is unreasonable.

In section 30.146, the final regulations make changes necessary to clarify that only intangible trust personalty may be used to satisfy claims. The Department also deleted proposed paragraph (b) because it was merely the converse of (a), and therefore redundant.

In section 30.147, the final regulations delete the phrase stating that claims may be disallowed in their entirety because, if necessary, claims will be paid on a pro rata basis. The judge still has the authority, as set out in section 30.145 to disallow a claim in its entirety.

43 CFR Part 30—Subpart F

The Department did not make any significant changes to subpart F in the final rule.

43 CFR Part 30—Subpart G

Section 30.160 has been amended to reflect that purchase at probate is available for estates of decedents who die on June 20, 2006, as well as those who die after this date.

The final regulations amend section 30.167 to clarify that an interest will be sold by purchase at probate to the highest eligible bidder only if a request has been made, and an eligible bidder submits a bid in an amount equal to or greater than fair market value. The provision regarding the basis for market value has been moved from section 30.168 to section 30.167(b). The final regulations also delete the phrase ''which gives appropriate consideration to the fractionated ownership interests in the parcel'' in this provision.

The final regulations amend the heading in section 30.168 for clarification. Section 30.170(b) incorporates the requirement for the record's table of contents. The final regulations add a new 30.175 to clarify when an interest vests in a purchaser.

43 CFR Part 30—Subpart H

The citation to AIPRA has been removed from section 30.181 as unnecessary and to avoid the potential for confusion. The final regulations also delete superfluous language.

The final regulations correct section 30.182 by replacing ''testator'' with ''decedent'' in paragraph (a), and reorganize paragraphs (a) and (b) for clarity.

The final regulations also reorganize section 30.183 for clarity, and add that an interest that represents less than five percent of the entire undivided ownership in the parcel may be renounced in favor of the Indian tribe with jurisdiction over the interest, in addition to those listed in the proposed rule.

The final regulations amend the heading of section 30.184 to remove unnecessary language in paragraph (a) and add a new paragraph (b), which amends the category of persons for whom the Secretary will continue to manage trust personalty. The category of ''a person who owns a preexisting undivided trust or restricted interest in the same parcel of land'' has been deleted. While this category of persons may still receive a renounced interest in trust personalty, the Secretary may not manage those personalty interests in trust status unless the person also fits into one of the other categories (lineal descendant of the decedent, a tribe, or an Indian).

In section 30.185, the final regulations clarify the deadline for filing a refusal to accept a renounced interest.

The final regulations clarify in section 30.187 that a judge must receive a revocation of a renunciation before entry of a final order for the revocation to be effective.

The final regulations amend section 30.188 to clarify that, where there is a will, and the renunciation is not to an eligible person or entity, the interest will go to the residual devisees.

43 CFR Part 30—Subpart I

Section 30.201 has been amended to clarify that a summary of the proposed distribution, rather than all the information included on the OHA–7 form, will be included in the notice of the summary probate proceeding. The final regulations also delete the exception (''except to a creditor who is not an eligible heir'') as superfluous because such creditors do not receive notice of the summary probate proceeding.

The final rule adds a new section 30.202 to clarify that OHA will consider all claims filed with the agency before the agency transferred the file to OHA, and will consider claims of devisees or eligible heirs if filed with OHA within 30 days of the mailing of the summary probate proceeding notice. This section also moves text from the proposed section 30.202 (final section 30.203) allowing devisees or eligible heirs to renounce or disclaim an interest within 30 days of the mailing of the summary probate proceeding notice.

The final regulations clarify in section 30.207 that if nobody files for de novo review within 30 days of a written decision, it will be final for the Department. Interested parties have an opportunity to request de novo review during the 30 days following a decision, and if they forgo this opportunity, they are not given another opportunity to challenge the decision. If an interested party does request de novo review, he or she retains all rights to request rehearing and appeal.

43 CFR Part 30—Subpart J

The final regulations amend section 30.210(b) to include more accurate language with regard to notice returned by the post office as undeliverable, rather than unclaimed.

The final regulations in section 30.211 delete the deadline for the judge to publish advance notice of the hearing, since it is already included in section 30.210(a)(2).

The final regulations add clarifying language in section 30.212 and delete the statement that requirements for notice by posting may not be waived.

The final regulations amend section 30.214 to delete the requirement for the drafter of the will to be named in the notice of the hearing.

The final regulations add a new paragraph 30.222(a) clarifying what happens if a party fails to respond to a request for admission. The final regulations also delete ''and requests for admission'' from section 30.222(b).

Section 30.224(a)(3) is amended to clarify that the judge will also mail copies of the order to witnesses, in addition to interested parties. The final regulations delete paragraph (e) concerning the judge's filing a petition with the U.S. District Court to invoke the court's powers of contempt if necessary, since jurisdiction over such a proceeding cannot be conferred by regulation.

The final regulations delete proposed section 30.225 in its entirety because public disclosure is governed by the Privacy Act and AIPRA. Subsequent sections are renumbered accordingly.

The final regulations change ''probate'' to the correct term, ''probative,'' in section 30.227(a)(1), in response to a comment.

In section 30.232, the final rule deletes the sentence regarding the judge compiling the official record because this item is addressed in section 30.127.

While the final regulations do not change section 30.234, the Department would like to clarify here that, generally, the Department retains recordings indefinitely, but there is no guarantee against deterioration of recording media, so recordings may be lost due to age. To the extent that the Department may otherwise be legally required to keep records, the

Department complies with those requirements regardless of the regulation. Additionally, the Department keeps recordings as long as possible for historical purposes. Given that most recordings are now digital, the issue of storage space for tapes is less of an issue and now the issue is electronic storage space.

The final regulations revise section 30.235 to state what all decisions must include and clarify the different contents of decisions and orders in testate versus intestate cases. Under 30.235(a)(1), a decision need not contain the identification numbers of heirs and devisees, in the interest of protecting personally identifiable information of living people to the greatest extent possible. The final section also makes explicit that a judge's decision in a formal intestate probate proceeding will cite the law of descent and distribution in accordance with which the decision is made and, in all formal probate proceedings, will include the probate case number assigned to the case in any case management or tracking system then in use within the Department.

In section 30.236, the final regulations make explicit that the notice of the judge's decision must include notice that adversely affected interested parties have the right to file a petition for rehearing with the judge within 30 days of the date the decision is mailed. Likewise, the final regulations include appeal rights in section 30.239.

Section 30.242 has been reworded to clarify the applicable timelines, make explicit that the agency may also file a petition for reopening, and clarify the required contents of a petition.

In sections 30.243 and 30.244, the final regulations clarify that an order denying reopening and final order on reopening must advise interested parties of their appeal rights.

43 CFR Part 30—Subpart K

In section 30.250, the final regulations delete ''Indian'' from ''Indian testator'' because a person who owns trust or restricted property may make a will devising the property, whether or not the testator meets the definition of an ''Indian.''

The final regulations in section 30.254 delete the provision regarding sending notice of rights to appeal because the final rule includes this provision in each instance in which it is applicable, rather than in this one location.

43 CFR Part 30—Subpart L

The final regulations reorder the sections in subpart L to follow a more chronological approach. The final regulations also delete references to statutes relating to Devils Lake Sioux Reservation for the Spirit Lake Sioux Tribe and to the Standing Rock Sioux Reservation in section 30.260 because these regulations are not appropriate to those statutory schemes.

The final regulations amend section 30.262 (proposed section 30.264) to clarify that, following a decision on a rehearing or hearing, the tribe may purchase the interest in accordance with its statutory option to purchase if the decision on the rehearing or hearing is favorable to the tribe.

In final section 30.264 (proposed section 30.262), the Department clarified that BIA furnishes valuations only for those probates where a tribe exercises its statutory option to purchase. The wording of the proposed, and current, versions of the regulations caused confusion about which probates require a valuation. The final regulations reorganize this section for clarity, and specify that interested parties may view and copy, at their expense, the valuation report at the agency.

The final regulations incorporate updated language regarding rights of appeal in sections 30.267, 30.268 and 30.270.

3. Distribution Table—43 CFR Part 4, Subpart D, and 43 CFR Part 30

The following distribution table indicates where each of the current regulatory sections in 43 CFR part 4, subpart D, is located in the final 43 CFR part 30 and in final revisions to 43 CFR part 4.

| Current citation | New citation | Title |
|---|---|---|
| 4.200 | 30.100 | How do I use this part? |
| 4.201 | 30.101 | What definitions do I need to know? |
| | 30.102 | Will the Secretary probate all the land or assets in an estate? |
| 4.210 | 30.110 | When does OHA commence a probate case? |
| 4.211 | 30.111 | How does OHA commence a probate case? |
| | 30.112 | What must a complete probate file contain? |
| | 30.113 | What will OHA do if it receives an incomplete probate file? |
| | 30.114 | Will I receive notice of the probate proceeding? |
| | 30.115 | May I review the probate record? |
| 4.202 | 30.120 | What authority does the judge have in probate cases? |
| | 30.121 | May a judge appoint a master in a probate case? |
| | 30.122 | Is the judge required to accept the master's recommended decision? |
| 4.206 | 30.123 | Will the judge determine matters of status and nationality? |
| 4.204 | 30.124 | When may a judge make a finding of death? |
| 4.203 | | |
| 4.205 | 30.154 | What happens when a person dies without a will and has no heirs? |
| 4.242 | 30.125 | May a judge reopen a probate case to correct errors and omissions? |
| | 30.130 | How does a judge or ADM recuse himself or herself from a probate case? |
| | 30.131 | How will the case proceed after the judge's or ADM's recusal? |
| | 30.132 | May I appeal the judge's or ADM's recusal decision? |
| 4.250(a) | 30.140 | Where and when may I file a claim against the probate estate? |
| 4.250(c) | 30.141 | How must I file a claim against a probate estate? |
| 4.250(b) | 30.142 | Will a judge authorize payment of a claim from the trust estate if the decedent's non-trust estate was or is available? |
| 4.250(d)–(f) | 30.143 | Are there any categories of claims that will not be allowed? |
| 4.251(a) | 30.144 | May the judge authorize payment of the costs of administering the estate? |
| 4.251(b) | | What are priority claims the deciding official may authorize payment for? |
| 4.251(c) | | When may the deciding official authorize payment of general claims? |
| 4.251(d) | 30.145 | When can a judge reduce or disallow a claim? |
| 4.251(e)–(g) | 30.147 | What happens if there is not enough trust personalty to pay all the claims? |

| Current citation | New citation | Title |
|---|---|---|
| 4.251(h) | 30.148 | Will interest or penalties charged after the date of death be paid? |
| 4.252 | 30.146 | What property is subject to claims? |
| 4.207 | 30.150 | What action will the judge take if the interested parties agree to settle matters among themselves? |
| | 30.151 | May the devisees or eligible heirs in a probate proceeding consolidate their interests? |
| | 30.152 | May the parties to an agreement waive valuation of trust property? |
| | 30.153 | Is an order approving an agreement considered a partition or sale transaction? |
| | 30.160 | What may be purchased at probate? |
| | 30.161 | Who may purchase at probate? |
| | 30.162 | Does property purchased at probate remain in trust or restricted status? |
| | 30.163 | Is consent required for a purchase at probate? |
| | 30.164 | What must I do to purchase at probate? |
| | 30.165 | Whom will OHA notify of a request to purchase at probate? |
| | 30.166 | What will the notice of the request to purchase at probate include? |
| | 30.167 | How does OHA decide whether to approve a purchase at probate? |
| | 30.168 | How will the judge allocate the proceeds from a sale? |
| | 30.169 | Who may I do if I do not agree with the appraised market value? |
| | 30.170 | What may I do if I disagree with the judge's determination to approve a purchase at probate? |
| | 30.171 | What happens when the judge grants a request to purchase at probate? |
| | 30.172 | When must the successful bidder pay for the interest purchased? |
| | 30.173 | What happens after the successful bidder submits payment? |
| | 30.174 | What happens if the successful bidder does not pay within 30 days? |
| | 30.175 | When does a purchased interest vest in the purchaser? |
| 4.208 | 30.180 | May I give up an inherited interest in trust or restricted property or trust personalty? |
| | 30.181 | How do I renounce an inherited interest? |
| | 30.182 | Who may receive a renounced interest in trust or restricted land? |
| | 30.183 | Who may receive a renounced interest of less than 5 percent in trust or restricted land? |
| | 30.184 | Who may receive a renounced interest in trust personalty? |
| | 30.185 | May my designated recipient refuse to accept the interest? |
| | 30.186 | Are renunciations that predate the American Indian Probate Reform Act of 2004 valid? |
| 4.208(c) | 30.187 | May I revoke my renunciation? |
| 4.208(b) | 30.188 | Does a renounced interest vest in the person who renounced it? |
| 4.212 | 30.200 | What is a summary probate proceeding? |
| | 30.202 | May I file a claim or renounce or disclaim an interest in the estate in a summary probate proceeding? |
| | 30.203 | May I request that a formal probate proceeding be conducted instead of a summary probate proceeding? |
| | 30.201 | What does a notice of a summary probate proceeding contain? |
| 4.213 | | |
| 4.214 | 30.204 | What must a summary probate decision contain? |
| 4.215(a)–(c) | 30.205 | How do I seek review of a summary probate proceeding? |
| 4.215(d) | | |
| 4.215(e) | 30.206 | What happens after I file a request for a de novo review? |
| | 30.207 | What happens if nobody files for a de novo review? |
| 4.216 | 30.210 | How will I receive notice of the formal probate proceeding? |
| | 30.213 | What notice to a tribe is required in a formal probate proceeding? |
| | 30.211 | Will the notice be published in a newspaper? |
| | 30.212 | May I waive notice of the hearing or the form of notice? |
| 4.217 | 30.214 | What must a notice of hearing contain? |
| 4.220(a), (c) | 30.215 | How may I obtain documents related to the probate proceeding? |
| 4.221(a)–(c) | 30.216 | How do I obtain permission to take depositions? |
| 4.221(d)–(g) | 30.217 | How is a deposition taken? |
| 4.221(h) | 30.218 | How may the transcript of a deposition be used? |
| | 30.219 | Who pays for the costs of taking a deposition? |
| 4.222 | 30.220 | How do I obtain written interrogatories and admission of facts and documents? |
| 4.223 | 30.221 | May the judge limit the time, place, and scope of discovery? |
| 4.224 | 30.222 | What happens if a party fails to comply with discovery? |
| 4.225 | 30.223 | What is a prehearing conference? |
| 4.230 | 30.224 | May a judge compel a witness to appear and testify at a hearing or deposition? |
| 4.231 | 30.225 | Must testimony in a probate proceeding be under oath or affirmation? |
| | 30.226 | Is a record made of formal probate hearings? |
| 4.232 | 30.227 | What evidence is admissible at a probate hearing? |
| 4.233(a)–(b) | 30.228 | Is testimony required for self-proved wills, codicils, or revocation? |
| 4.233(c) | 30.229 | When will testimony be required for approval of a will, codicil or revocation? |
| 4.234 | 30.230 | Who pays witnesses' costs? |
| 4.235 | 30.231 | May a judge schedule a supplemental hearing? |
| 4.236(a) | 30.232 | What will the official record of the probate case contain? |
| 4.236(b) | 30.233 | What will the judge do with the original record? |
| | 30.234 | What happens if a hearing transcript has not been prepared? |
| 4.240(a) | 30.235 | What will the judge's decision in a formal probate hearing contain? |
| 4.240(b) | 30.236 | What notice of the decision will the judge provide? |
| 4.241(a) | 30.237 | May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing? |
| 4.241(b) | 30.238 | Does any distribution of the estate occur while a petition for rehearing is pending? |
| 4.241(c)–(e) | 30.239 | How will the judge decide a petition for rehearing? |
| 4.241(f) | 30.240 | May I submit another petition for rehearing? |

| Current citation | New citation | Title |
|---|---|---|
| 4.241(g)–(h) | | |
| | 30.241 | When does the judge's decision on a petition for rehearing become final? |
| 4.242 | 30.242 | May a closed probate case be reopened? |
| | 30.243 | How will the judge decide my petition for reopening? |
| | 30.244 | What happens if the judge reopens the case? |
| 4.242(h)–(i) | | |
| | 30.245 | When will the decision on reopening become final? |
| 4.261 | 30.250 | When does the anti-lapse provision apply? |
| 4.262 | 30.251 | What happens if an heir or devisee participates in the killing of the decedent? |
| 4.270 | | |
| 4.271 | 30.126 | What happens if property was omitted from the inventory of the estate? |
| 4.272 | 30.127 | What happens if property was improperly included in the inventory? |
| | 30.128 | What happens if an error in BIA's estate inventory is alleged? |
| 4.273 | | |
| 4.281 | 30.252 | May a judge allow fees for attorneys representing interested parties? |
| 4.282 | 30.253 | How must minors or other legal incompetents be represented? |
| | 30.254 | What happens when a person dies without a valid will and has no heirs? |
| 4.300(a) | 30.260 | What land is subject to a tribal purchase option at probate? |
| 4.300(b)–(d) | 30.265 | What determinations will a judge make with regard to a tribal purchase option? |
| 4.301 | 30.264 | When must BIA furnish a valuation of a decedent's interests? |
| 4.302(a) | 30.266 | When is a final decision issued? |
| 4.302(b) | 30.262 | When may a tribe exercise its statutory option to purchase? |
| | 30.261 | How does a tribe exercise its statutory option to purchase? |
| 4.303 | 30.263 | May a surviving spouse reserve a life estate when a tribe exercises its statutory option to purchase? |
| 4.304 | 30.267 | What if I disagree with the probate decision regarding tribal purchase option? |
| 4.305(a) | 30.268 | May I demand a hearing regarding the tribal option to purchase decision? |
| 4.305(b) | 30.269 | What notice of the hearing will the judge provide? |
| 4.305(c)–(d) | 30.270 | How will the hearing be conducted? |
| 4.306 | 30.271 | How must the tribe pay for the interests it purchases? |
| 4.307(a) | 30.272 | What are BIA's duties on payment by the tribe? |
| 4.307(b) | 30.273 | What action will the judge take to record title? |
| 4.308 | 30.274 | What happens to income from land interests during pendency of the probate? |
| 4.320(a) | 4.320 | Who may appeal a judge's decision or order? |
| 4.320(b)(1)–(3) | 4.321 | How do I appeal a judge's decision or order? |
| | 4.322 | What must an appeal contain? |
| 4.320(c) | 4.323 | Who receives service of the notice of appeal? |
| 4.320(d) | 4.324 | How is the record on appeal prepared? |
| 4.321 | 4.325 | How will the appeal be docketed? |
| 4.322 | 4.326 | What happens to the record after disposition? |

## VI. Procedural Requirements

### *A. Regulatory Planning and Review (Executive Order 12866)*

Executive Order 12866 (58 FR 51735, October 4, 1993) requires Federal agencies taking a regulatory action to determine whether that action is ''significant.'' Agencies must submit regulatory actions that qualify as significant to the U.S. Office of Management and Budget (OMB) for review, assess the costs and benefits of the regulatory action, and fulfill other requirements of the Executive Order. A significant regulatory action is one that is likely to result in a rule that may meet one of the following four criteria:

(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the 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.

OMB has determined that this rule is not a significant rule under Executive Order 12866 because it is not likely to result in a rule that will meet any of the four criteria.

*(1) The rule will not have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.*

This rule will not have an annual effect on the economy of $100 million or more. This rule does not add or subtract land or IIM account funds from any probate estate. Additionally, the total assets probated each year are themselves below the $100 million mark. The following discussion individually addresses each CFR part and substantive changes within each part, where appropriate. Within the discussion of each CFR part is a brief statement of the major changes, the baseline (i.e., the current state of affairs), an analysis of the economic effect of the change in comparison to the baseline alternative, and a brief conclusion.

25 CFR Part 15

This part governs the processing of probate estates by BIA and tribes contracting or compacting to perform BIA's probate functions (''agency''). Amendments will ensure that the agency compiles sufficient information in the probate file so that when the agency passes the probate file on to OHA, OHA can properly administer the probate estate. The baseline for this analysis is the existing part 15, which

does not incorporate requirements for certain items of information to be included in the probate file.

The Secretary has sole statutory authority to probate Indian trust estates. 25 U.S.C. 372; *First Moon* v. *White Tail & United States*, 270 U.S. 243 (1926); *United States* v. *Bowling*, 256 U.S. 484 (1921); *Lane* v. *United States*, 241 U.S. 201 (1916); *Hallowell* v. *Commons*, 239 U.S. 506 (1916); *Bertrand* v. *Doyle*, 36 F.2d 351 (10th Cir. 1929). As such, it is imperative that the Secretary have all the information necessary to properly determine the heirs and distribute estate assets. The enacted AIPRA amendments to ILCA, 25 U.S.C. 2201 *et seq.*, affect the determination of how property should be distributed among the heirs and beneficiaries by allowing certain persons to purchase interests in property at probate and through consolidation agreements, and affect who can inherit a small fractional interest. AIPRA therefore directly affects the determinations that OHA will make and requires additional information to be included in the probate file.

The primary benefit of the amendments is that they ensure that OHA will have the information it needs in the probate file to adjudicate Indian estates. Because this part addresses only internal processes, and does not impose any enforceable obligation on persons outside the agency, there is no effect on the outside economy. Amendments to this part focus on the agency's procedures in compiling a complete probate file, and addressing what should be included in that file. No economic impact is associated with these internal processes.

25 CFR Part 179

Amendments to part 179 make two primary changes with potential to affect the economy:

- Incorporate AIPRA's requirement that life estates created by operation of law under AIPRA after June 20, 2006, will be ''without regard to waste,'' as explained below.
- Replace the current tables showing the value of a life estate and remainderman with a reference to Actuarial Table S, issued by the Internal Revenue Service, to make life estate and remainder valuations consistent with the Internal Revenue Service's valuations.

The existing part 179 provided that the life tenant will have the rights to all rents and profit, as income, from the estate, but did not provide that such rights were ''without regard to waste'' for life tenants by intestacy. Therefore, the existing part 179 required all life tenants to ensure that they did not diminish the estates of the remaindermen in their pursuit of rents and profits. Additionally, the existing part 179 required contract bonuses to be split one-half each between the life tenant and the remainderman.

The first primary change to part 179 is necessary to reflect the AIPRA sections establishing that life estates created by operation of law under AIPRA will be determined ''without regard to waste,'' meaning that the life estate holder is entitled to the receipt of all income, including bonuses and royalties, from such land, to the exclusion of remaindermen. *See* 25 U.S.C. 2201(10), 2205, 2206(a)(2). These amendments comply with the provisions of AIPRA with respect to life estates created by operation of law under AIPRA after June 20, 2006. There is no change with respect to life estates created before June 20, 2006, or life estates created by conveyance documents on or after June 20, 2006.

The cost of amendments incorporating ''without regard to waste'' provisions could be a reduced value of the remaindermen's estate. However, amendments to the discount rate will generally provide remaindermen with more value. These amendments may affect the timing of the distribution of the value of the land between life tenants and remaindermen, but will not affect the economy as a whole. The Department does not currently track how many life estates are created by operation of law under AIPRA, but if it were assumed for the sake of analysis that all probated acreage included life estates created by operation of law under AIPRA on or after June 20, 2006, the value of the life estates would be some fraction of the value of the total land value per year, which is $74,724,525. The new requirement that the life estate holder receive all income, including bonuses and royalties, from such land, affects only the allocation of this amount between life estate holders and remaindermen, and does not affect the economy.

The change to the valuation tables, eliminates valuation based on the gender of the life tenant, and now refers to Internal Revenue Service Actuarial Table S. In the current version of part 179, the valuation of remainder interests where the life tenant was female was consistently lower than the valuation of remainder interests where the life tenant was male. At a 6 percent discount rate, the IRS Actuarial Table S results in remainder valuations that generally fall between the two values. Again, this change affects only the allocation of the value between the life estate holders, and does not affect the economy.

For these reasons, part 179 will not have an effect on the economy.

43 CFR Parts 4 and 30

Most amendments to 43 CFR part 4 (including those incorporated in the new part 30) are amendments to the existing 43 CFR part 4, subpart D, relating to the administration of probate estates. The amendments add provisions to implement procedures established by AIPRA for renouncing an interest, consolidating interests by agreement, requesting and conducting a purchase at probate, and setting the time periods for filing requests for de novo review and rehearing at 30 days, rather than the current 60 days.

Because these provisions relate to procedural aspects of probating trust estates and will not affect the amount of money and property within each estate that is distributed, nor the number of estates that must be probated, they have no effect on the economy. For these reasons, amendments to 43 CFR part 4, subpart D, and the new 43 CFR part 30 will not affect the economy.

New 25 CFR Part 18 (Tribal Probate Codes)

The new CFR part addressing tribal probate codes implements provisions of ILCA that allow any tribe to adopt a tribal probate code to govern descent and distribution of trust and restricted lands within its reservation or otherwise subject to its jurisdiction. 25 U.S.C. 2005(a). ILCA provides that the tribe must submit the tribal probate code containing provisions for trust and restricted lands to the Secretary for review and approval. The Secretary may not approve a tribal probate code that contains provisions contrary to Federal law or policy.

The baseline is the absence of regulations governing tribal probate codes. While the ILCA statute had established requirements for a tribal probate code and the basics of the submission and approval process in 1983, there have been no implementing regulations. With AIPRA, a new uniform Federal probate code will govern descent and distribution of trust and restricted property. This may prompt some tribes to prepare a tribal probate code and may prompt tribes that already have a tribal probate code to amend it in light of AIPRA.

An approved tribal code, or AIPRA if there is none, will govern the descent and distribution of trust and restricted lands for deceased persons owning trust or restricted property. AIPRA will govern the descent and distribution of trust personalty. These regulations, which implement statutory provisions

for Secretarial approval of tribal probate codes, do not affect the economy because tribes were already authorized to establish tribal probate codes and statutorily required to submit such codes to the Secretary for approval. For these reasons, the new 25 CFR part 18 will not affect the economy.

*(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.*

Implementation of this rule will not create any serious inconsistencies or otherwise interfere with an action taken or planned by another agency because the Department is the only agency with authority for handling Indian trust management issues related to probate. Additionally, this rule will standardize processes within the Department, to guard against internal inconsistencies.

*(3) This rule will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof.*

(a) The revisions 25 CFR part 15 address what must be included in a probate package and describe how to file a claim against an estate, but do not address entitlements, grants, user fees, or loan programs. Therefore, revisions to part 15 have no budgetary effects and do not affect the rights or obligations of any recipients.

(b) The revisions to 43 CFR part 4 (including those incorporated into the new 43 CFR part 30) address the procedures for adjudicating a probate case and the rights of individual Indians with respect to a probate case. The revisions do not address entitlements, grants, user fees, or loan programs.

(c) Amendments to 25 CFR part 179 change the respective rights of a life estate tenant, and remainderman, where the life estate was created by operation of law under AIPRA on or after June 20, 2006. This change entitles the life tenant to receive all income from the land, including rents and profits, contract bonuses, and royalties. This change in rights will not impact the budget.

(d) The new CFR part addressing tribal probate codes does not address entitlements, grants, user fees or loan programs and will not materially alter the Department's budget because the CFR part merely implements the existing statutory requirement for Departmental review of tribal probate codes that contain provisions applicable to trust or restricted lands, and the requirement for Secretarial approval of those provisions.

*(4) This rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.*

Most of the regulatory changes directly implement statutory provisions that require certain actions to meet Indian trust management responsibilities. Specifically, the rule implements requirements of AIPRA, the American Indian Trust Fund Management Reform Act of 1994, and court orders. The legal and policy issues related with this rulemaking have been thoroughly discussed through the process of developing and implementing the Fiduciary Trust Model, discussed in the preamble.

Thus, the impact of the rule is confined to the Federal Government, individual Indians, and tribes and does not impose a compliance burden on the economy generally. Accordingly, this rule is not a ''significant regulatory action'' from an economic standpoint, nor does it otherwise create any inconsistencies, materially alter any budgetary impacts, or raise novel legal or policy issues.

*B. Regulatory Flexibility Act*

The Department has reviewed this rule pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and certifies that the rule will not have a significant economic impact on a substantial number of small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). Small businesses who may be creditors of an estate are the only small entities potentially impacted by this rule, and the Department has determined that this rule will not have a significant economic impact on these entities. Indian tribes are not considered to be small entities for the purposes of the Act and, consequently, no regulatory flexibility analysis has been done to address the effects on Indian tribes.

*C. Small Business Regulatory Enforcement Fairness Act of 1996*

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804(2), sets criteria for determining whether a rule is ''major.'' A rule is major if OMB finds that the rule will result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule is not major within the meaning of SBREFA. It may require some limited additional expenditures by tribes, as discussed in subsection H of the procedural requirements (Paperwork Reduction Act) of this preamble. However, it will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year.

Because this rule is limited to probated Indian trust estates, land, and assets within the United States and within tribal communities, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions or have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

*D. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2. U.S.C. 1531 *et seq.*, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. If the agency promulgates a proposed or final rule with Federal mandates that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, the Federal agency must prepare a written statement, including a cost-benefit analysis of the rule, under section 202 of the UMRA. The term ''Federal mandate'' means any provision in statute or regulation or any Federal court ruling that imposes ''an enforceable duty'' upon State, local, or tribal governments, and includes any condition of Federal assistance or a duty arising from participation in a voluntary Federal program that imposes such a duty.

The Department has determined that the rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. The following discussion addresses each CFR part individually to identify Federal mandates.

25 CFR Part 15

Most amendments to part 15 address the internal processes of the BIA (or tribe that has compacted or contracted to fulfill probate functions) in compiling probate files.

- Part 15 contains a mandate for tribal governments to provide information

when necessary to complete a probate file. This provision is aimed at requiring tribes to provide information that is already readily available to them, such as family history data.

- Part 15 also contains a mandate for the public, presumably someone closely associated with the decedent, to provide either a certified copy of a death certificate or other information regarding the death.

Subsection H of the procedural requirements (Paperwork Reduction Act) of this preamble states the expected increase in cost burden on tribal governments of these mandates, which is minimal. The opportunity for tribes to adopt their own tribal probate codes is voluntary and does not qualify as a Federal mandate.

25 CFR Part 179

Amendments to part 179 do not impose any duties on persons outside the Department of the Interior.

43 CFR Parts 4 and 30

Amendments to 43 CFR part 4 (including those incorporated into the new 43 CFR part 30), related to adjudication of probate estates, clarify the process for renouncing an interest, and allow consolidation agreements and purchases at probate. These opportunities are voluntary. The remainder of the amendments address OHA adjudication of probate estates and appeals. These amendments do not impose any Federal mandates on individual Indians, tribes, or others outside the Department of the Interior.

New 25 CFR Part 18 (Tribal Probate Codes)

The new CFR part addressing tribal probate codes implements statutory authority for the adoption of a tribal probate code and statutory requirements for Secretarial approval of tribal probate codes. The adoption of a tribal probate code is voluntary; therefore, this rule does not impose any Federal mandates on tribes.

Section 205 of the UMRA requires the agency to identify and consider a reasonable number of regulatory alternatives to the rule and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The Department has determined that alternatives to this rule are limited by practicality and feasibility, among other concerns, given that this rule is the result of negotiated working group recommendations working within the confines of statutory and judicial mandates. For this reason, the primary alternative the Department examined was the baseline (i.e., the current CFR part or the absence of regulatory provisions, as appropriate). With respect to each CFR part, the Department determined that the final language meets the objectives of the rule.

Section 203 of the UMRA requires the agency to develop a small government agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The small government agency plan must include procedures for notifying potentially affected small governments, providing officials of affected small governments with the opportunity for meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. The Department has been operating under tribal consultation procedures that equate to a small government agency plan. The Department has developed these regulations in accordance with consultation procedures for notifying tribes, providing tribes with the opportunity for meaningful and timely input on the development of the rule; and it continues to inform, educate, and advise tribes on the contents of the rule.

*E. Governmental Actions and Interference With Constitutionally Protected Property Rights (Executive Order 12630)*

This rule does not have significant ''takings'' implications. The Department notes that all sales under these regulations require that the owners be compensated at fair market value.

*F. Federalism (Executive Order 13132)*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), establishes certain requirements for Federal agencies issuing regulations, among other agency documents, that have ''federalism implications.'' A regulation has ''federalism implications'' when it has ''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 because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of the States. The rule primarily provides means for improving the trust relationship between the Department and individual Indians by allowing the Department to better serve beneficiaries' interests. Additionally, the Federal government and the tribes have a government-to-government relationship that is independent of and does not affect the Federal government's relationship to the States or the balance of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment.

*G. Civil Justice Reform (Executive Order 12988)*

Executive Order 12988 (61 FR 4729, February 7, 1996), section 3(a), requires Federal agencies to adhere to the following requirements when promulgating regulations: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) specifically requires that executive agencies make every reasonable effort to ensure that the regulations (1) clearly specify any preemptive effect; (2) clearly specify any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specify the retroactive effect, if any; (5) adequately define key terms; and (6) address other important issues clearly affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires agencies to review regulations in light of the applicable standards in sections 3(a) and 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them.

The Department has determined that this rule will not unduly burden the judicial system. Significant portions of the rule will ensure that the judicial system is not overly burdened through enhancements to the administrative adjudication process. For example, amendments to 43 CFR parts 4 and 30, which describe the administrative processes for challenging the outcome of a probate proceeding, will streamline the probate adjudication process. Additionally, the Department has determined that the rule meets the applicable standards provided in sections 3(a) and 3(b) of Executive Order 12988. The Department has incorporated ''plain language'' approaches, as described in OMB's Writing User-Friendly Topics referred to

in the **Federal Register** Document Drafting Handbook. Department attorneys provided input throughout the development and drafting of these regulations to provide clear legal standards, specify preemptive effects, specify the effect on existing Federal laws and regulations, and otherwise minimize the likelihood that litigation will result from an ambiguity in the regulations.

*H. Paperwork Reduction Act*

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained and the collection request displays a currently valid OMB control number. No person is required to respond to an information collection request that has not complied with the PRA.

1. Background

In the **Federal Register** of August 8, 2006, the Department published the proposed rule and invited comments on the proposed collection of information. The Department reopened the comment period for an additional 60 days to January 2, 2007. The Department again reopened the public comment period on January 25, 2007, for an additional 60 days to March 12, 2007. The Department submitted the information collection request to the Office of Management and Budget (OMB) for review and approval. OMB did not approve this collection of information, but instead, filed comment. In filing comment on this collection of information, OMB requested that, prior to the publication of the final rule, the Department provide all comments on the recordkeeping and reporting requirements in the proposed rule, the Department's response to these comments, and a summary of any changes to the information collections. Further, OMB requested for any future submissions of this information collection, the Department indicate the submission as ''new'' and reference OMB control numbers 1076–0169, 1076–0168, and 1076–0171.

2. Comments on Information Collections

In response to publication of the proposed rule in the **Federal Register** and notices reopening the comment period, the Department did not receive any public comments regarding the information collection requirements. However, the Department did receive a few oral comments on the information collection requirements during tribal consultations and one written comment from a Departmental employee.

The oral comments asked generally what the Paperwork Reduction Act section of the proposed rule addressed, and what the information collection request figures represented. Representatives of the Department responded at the tribal consultations by summarizing the Paperwork Reduction Act's requirement that the Department (1) identify any instances where the regulation requests that members of the public provide information; (2) explain the need for that information collection request; and (3) estimate how long it will take members of the public to provide the information. The Department representatives highlighted the fact that members of the public are welcome to comment on the information collection requests, including the Department's need for the information and estimates for how long it will take to provide the information.

Pursuant to OMB's comments, the Department has summarized and submitted the comments, the Department's responses to these comments, and any changes made to information collections to OMB.

3. Information Collection Hour Burdens

Two CFR parts being published today contain information collection requests: 25 CFR parts 15 and 18. The following tables, by part, describe the information collection requirements in each section of the final rule and any changes from the current rule.

25 CFR Part 15

*Title:* Probate of Indian Estates, Except for Members of the Osage Nation and the Five Civilized Tribes.

*OMB Control Number:* 1076–0169.

*Requested Expiration Date:* Three years from the approval date.

*Summary:* This part contains the procedures that the Secretary of the Interior follows to initiate the probate of the trust estate of a deceased person for whom the Secretary holds an interest as trust or restricted property. The Secretary must perform the information collection requests in this part to obtain the information necessary to compile an accurate and complete probate file. This file will be forwarded to the Office of Hearings and Appeals (OHA) for disposition. Responses to these information collection requests are required to obtain benefits (e.g., payment of a devise or claim from a probated estate) in accordance with the Secretary's sole statutory authority to probate estates (*see* 25 U.S.C. 372).

*Bureau Form Number:* None.

*Frequency of Collection:* One per respondent each year with the exception of tribes that may be required to provide enrollment information on an average of approximately 10 times/year.

*Description of Respondents:* Indians, businesses, and tribal authorities.

*Number of Respondents:* 64,915.

*Total Annual Responses:* 76,655.

*Total Annual Burden Hours:* 1,037,433.

The following is an explanation of the information collection requirements for 25 CFR part 15.

*Section 15.9 What information must be included in an affidavit for a self-proved will, codicil, or revocation?*

This rule includes a requirement for a testator and witnesses executing a self-proving will, codicil, or revocation to file affidavits. The Department has estimated that approximately 1,000 testators will choose to execute self-proving wills each year and that it will take approximately 0.5 hour to make the affidavit before an official authorized to administer oaths and to attach the affidavit to the will = 500 burden hours. This represents an increase of 500 burden hours due to program change with no annualized startup, or operations and maintenance costs.

Likewise, given that approximately 1,000 testators will choose to execute self-proving wills each year, approximately 2,000 witnesses will be required to file supporting affidavits at 0.5 hour each = 1,000 burden hours. This represents an increase of 1,000 burden hours due to program change with no annualized startup, or operations and maintenance costs.

*Section 15.104 Does the agency need a death certificate to prepare a probate file?*

This rule adds a requirement for persons unable to provide a certified copy of a death certificate to provide as much information as they have about the deceased, including the State, city, reservation, location, date, and cause of death, the last known address of the deceased, and names and addresses of others who may have information about the deceased. If no death certificate exists, they must provide this information in an affidavit. This information will ensure that BIA has the information it needs regarding the identity of the deceased to collect documents for the probate file. The requirement already existed to provide a certified copy of a death certificate or, when unable to provide a certified copy of a death certificate because none existed, newspaper articles, obituary, or death notices and a church or court record.

The Department estimates that preparing the affidavit in lieu of

providing a death certificate will impose an additional 1 hour burden per response to comply with this section. The existing estimated burden for locating and providing the death certificate is 4 hours per response. Assuming a respondent provides an affidavit in lieu of a certified copy of a death certificate only after spending the 4 hours searching unsuccessfully for the death certificate, 5 total burden hours per response are required to comply with this section. Assuming approximately 5,850 probates per year, the total burden will be 5,850 responses × 5 hours per response = 29,250 burden hours. This represents an increase of 5,850 hours due to a programmatic change, with no annualized startup, or operations and maintenance costs.

*Section 15.105 What other documents does the agency need to prepare a probate file?*

This section lists the items that BIA needs to prepare a probate file. The decedent's family and other knowledgeable members of the public are the most likely respondents for this information. The rule adds several items of information that must be included in the probate file. These additional items are (1) adoption and guardianship papers concerning decedent's potential heirs or beneficiaries; (2) orders requiring payment of spousal support; (3) identification of person or entity to whom an interest is renounced; (4) court judgments regarding creditor claims; and (5) place of enrollment and tribal enrollment or census number of the decedent and potential heirs and beneficiaries.

The Department estimates that providing these documents will add approximately 1.25 hours to each response. Assuming 21,235 respondents annually × 45.5 hours to complete this section = 966,192.5 burden hours. This is an increase of approximately 26,543.75 hours due to a program change, with no annualized startup, or operations and maintenance costs.

*Section 15.301 May I receive funds from the decedent's IIM account for funeral services?*

There has been no change to the information collection requirements in this section. The Department estimates that there will be one request for funeral expenses per each of the estimated 5,850 probates per year, at an estimated 2 hours per response = 11,700 burden hours, with no annualized startup, or operations and maintenance costs.

*Section 15.302 May I file a claim against the estate?*

This rule adds to the requirements in the existing regulations that creditors provide information regarding their claims. Specifically, the rule requires creditors to file with the Secretary an affidavit and an itemized statement of the debt, including copies of any documents (such as signed notes, mortgages, account records, billing records, and journal entries) necessary to prove the indebtedness.

For the proposed rule, the Department estimated that, on average, approximately 6 creditor claims per probate estate will be filed and that it will take creditors approximately 0.5 hour to provide this information. The Department believes that the number-of-claims estimate was, in fact, high, but because no public comments were received, the Department has retained this estimate. The most recent Paperwork Reduction Act submission purported to assume that 6 claims per probate estate would be filed, but at 5,850 probates per year, the previous assumption of 127,410 respondents appears to be erroneous. Assuming 35,100 responses (6 claims per probate estate × 5,850 probate estates), the Department estimates the burden hours = 35,100 responses × 0.5 = 17,550 burden hours. This is a decrease of approximately 46,155 hours due to an adjustment with no annualized startup, or operations and maintenance costs.

This rule also adds a requirement for the person filing a claim against the estate to file an affidavit. The Department has determined that this does not qualify as ''information'' under 5 CFR 1320.3(h)(1) because it entails no burden other than that necessary to identify the claimant, the date, the claimant's address, and the nature of the instrument as a claim against the estate.

*Section 15.203 What information must tribes provide BIA to complete the probate file?*

This new section requires tribes to provide any information the Secretary requires to complete the probate file, such as enrollment or family data. The information required by the Secretary will include documents that the tribe should have readily available. We assumed that, of the 5,850 probate cases, at least one decedent would come from each of the 562 federally recognized tribes. On average, a tribe will have to provide information for approximately 10 of the 5,850 probate cases per year. We estimate that each tribe will require 2 hours to assist in completing the probate file × 10 responses annually × 562 Federal recognized tribes = 11,240 hours to ensure completion of probate files. This is a new requirement, which incorporates 11,240 hours as a program change, with no annualized startup, or operations and maintenance costs.

*Section 15.403 What happens after the probate order is issued?*

This section provides that a request for de novo review may be filed within 30 days of a probate decision by an Attorney Decision Maker. The information collection requirements that had been included in this section have been moved to 43 CFR part 4, but are exempt under 5 CFR 1320.4(a)(2) because they relate to the conduct of administrative actions against specific individuals. Additionally, all that is required is the filing of a request for do novo review. This represents a decrease of 53,088 hours due to a program change.

**Note:** The ''Old CFR Section'' numbers in the table below are those as of the last Paperwork Reduction Act submission for 25 CFR part 15 in December 2003.

| Old CFR section | New CFR section | Description of info collection requirement | Number of response per yr | Hours per response | Total hours requested (Annual) | Currently approved hours | Explanation of difference |
|---|---|---|---|---|---|---|---|
| | 15.9 | File affidavit to self-prove will, codicil, or revocation. | 1,000 | 0.5 | 500 | 0 | Requires testator affidavit to self-prove will. |
| | 15.9 | File supporting affidavit to self-prove will, codicil, or revocation. | 2,000 | 0.5 | 1,000 | 0 | Requires witness affidavits to self-prove will. |
| 15.101 ..... | 15.104 | Reporting req.—death certificate. | 5,850 | 5 | 29,250 | 23,400 | New section requires additional information where a death certificate is not provided. |

| Old CFR section | New CFR section | Description of info collection requirement | Number of response per yr | Hours per response | Total hours requested (Annual) | Currently approved hours | Explanation of difference |
|---|---|---|---|---|---|---|---|
| 15.106 ..... | 15.301 | Reporting funeral expenses. | 5,850 | 2 | 11,700 | 11,700 | No change. |
| 15.104 ..... | 15.105 | Provide probate documents. | 21,235 | 45.5 | 966,193 | 939,649 | Amendments delete requirement for birth certificate, but add other requirements. |
| 15.109 ..... | | Provide disclaimer info (¼). | 0 | 0 | 0 | 7,887 | Section deleted. |
| 15.303 ..... | 15.302 | File claim against estate (affidavit). | N/A | N/A | N/A | | |
| 15.203 ..... | N/A | Provide response to transmittal. | 0 | 0 | 0 | 2,972 | This requirement has been deleted. |
| 15.303 ..... | 15.302 | Provide info on creditor claim (6 per probate). | 35,100 | 0.5 | 17,550 | 63,705 | Decrease to reflect 6 claims per probate. |
| | 15.203 | Provide tribal information for probate file [2]. | 5,620 | 2 | 11,240 | 0 | New requirement for tribes to provide enrollment information, upon request. |
| 15.402 ..... | 15.403 | Provide info for filing appeal. | 0 | 0 | 0 | 53,088 | Now only have to file a notice of appeal; info collection requirements moved to 43 CFR part 4. |
| Total ..... | ..... | ..... | 76,655 | ..... | 1,037,433 | 1,094,514 | |

25 CFR Part 18

*Title:* Tribal Probate Codes.

*OMB Control Number:* 1076–0168.

*Requested Expiration Date:* Three years from the approval date.

*Summary:* This part contains the procedures that the Secretary of the Interior follows to review and approve tribal probate codes and amendments to tribal probate codes. This part also explains the procedure the tribe must follow to begin the approval process for a tribal probate code or amendment to the code, as well as the date on which the tribal probate code becomes effective.

*Bureau Form Number:* None.

*Frequency of Collection:* On occasion.

*Description of Respondents:* Tribal authorities.

*Number of Respondents:* 100.

*Total Annual Responses:* 100.

*Total Annual Burden Hours:* 50.

The following is an explanation of the information collection requirements for 25 CFR part 18.

*Section 18.105 How does a tribe request approval for a tribal probate code?*

*Section 18.202 How does a tribe request approval for a tribal probate code amendment?*

*Section 18.302 How does a tribe request approval for the single heir rule?*

This rule adds a requirement for a tribe enacting a new tribal probate code, amending an existing tribal probate code, or enacting a freestanding single heir rule, to submit the code, amendment, or rule to the Secretary for approval. Secretarial approval is required whenever the code, amendment, or rule governs the descent or distribution of trust or restricted lands. The Department has estimated that, on average, approximately 100 tribes will submit new codes, amend their existing codes, or submit freestanding single heir rules each year, and that it will take approximately 0.5 hour to submit the document to the Secretary = 50 burden hours. This represents an increase of 50 burden hours due to program change with no annualized startup, or operations and maintenance costs.

| New CFR section | Description of info collection requirement | Number of responses per yr | Hours per response | Total hours requested (annual) | Currently approved hours | Explanation of difference |
|---|---|---|---|---|---|---|
| 18.105, 18.202, 18.302 | Submit tribal probate code, amendment, or single heir rule. | 100 | 0.5 | 50 | 0 | New section requires submission of tribal probate code, amendment, or single heir rule for approval. |
| Total ..... | ..... | 100 | | 50 | 0 | |

4. OMB Approval of Information Collections

OMB has approved the information collection requirements included in this final rule and has assigned the following OMB Control Numbers—25 CFR part 15: OMB Control No. 1076–0169, and 25 CFR part 18: OMB Control No. 1076–0168. These approvals will expire on 11/30/2011. Questions or comments concerning this information collection should be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

*I. National Environmental Policy Act (NEPA)*

The National Environmental Policy Act of 1969 (NEPA) requires Federal

agencies to prepare an environmental assessment or environmental impact statement for all ''major Federal actions.'' This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required because any environmental effects of this rule are too broad, speculative, or conjectural to lend themselves to meaningful analysis. Further, the Federal actions under this rule (e.g., approval or disapproval of leases of Indian lands), where they qualify as ''major Federal actions,'' will be subject to the NEPA process at the time of the action itself, either collectively or case-by-case.

*J. Government-to-Government Relationships With Tribes (Executive Order 13175)*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets and have identified potential effects. The Department engaged tribal government representatives in developing the Fiduciary Trust Model, which served as the basis for this rulemaking, provided tribal government representatives with advance copies of the proposed rule, and provided additional notice to tribal government through **Federal Register** notices. The Department presented the preliminary drafts and obtained the input of tribes at two formal consultation meetings: One in Albuquerque, New Mexico, on February 14–15, 2006, and one in Portland, Oregon, on March 29, 2006. The Department then presented revised drafts and again obtained the input of tribes at tribal consultations in Rapid City, South Dakota, on July 27, 2006. Tribal consultations on the proposed regulations took place in Billings, Montana, on August 8, 2006, and in Minneapolis, Minnesota, on August 10, 2006. The Department carefully reviewed comments received by tribal government officials. These actions enabled tribal officials and the affected tribal constituency throughout Indian country to have meaningful and timely input in the development of the final rule, while reinforcing positive intergovernmental relations with tribal governments.

*K. Energy Effects (Executive Order 13211)*

Executive Order 13211 addresses regulations that significantly affect energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In accordance with this Executive Order, this rule does not have a significant effect on the nation's energy supply, distribution, or use. This rule is restricted to addressing assets held in trust or restricted status for individual Indians or tribes.

*L. Information Quality Act*

In developing this rule, the Department did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

**List of Subjects**

*25 CFR Part 15*

Estates, Indians–law.

*25 CFR Part 18*

Estates, Indians–lands.

*25 CFR Part 179*

Estates, Indians–lands.

*43 CFR Part 4*

Administrative practice and procedure, Claims.

*43 CFR Part 30*

Administrative practice and procedure, Claims, Estates, Indians, Lawyers.

■ For the reasons given in the preamble, the Department of the Interior amends chapter 1 of title 25 and subtitle A of title 43 of the Code of Federal Regulations as follows.

## Title 25—Indians

### Chapter 1—Bureau of Indian Affairs, Department of the Interior

■ 1. Revise part 15 to read as follows:

## PART 15—PROBATE OF INDIAN ESTATES, EXCEPT FOR MEMBERS OF THE OSAGE NATION AND THE FIVE CIVILIZED TRIBES

### Subpart A—Introduction

Sec.
15.1 What is the purpose of this part?
15.2 What definitions do I need to know?
15.3 Who can make a will disposing of trust or restricted land or trust personalty?
15.4 What are the requirements for a valid will?
15.5 May I revoke my will?
15.6 May my will be deemed revoked by the operation of the law of any State?
15.7 What is a self-proved will?
15.8 May I make my will, codicil, or revocation self-proved?
15.9 What information must be included in an affidavit for a self-proved will, codicil, or revocation?
15.10 Will the Secretary probate all the land or assets in an estate?
15.11 What are the basic steps of the probate process?
15.12 What happens if assets in a trust estate may be diminished or destroyed while the probate is pending?

### Subpart B—Starting the Probate Process

15.101 When should I notify the agency of a death of a person owning trust or restricted property?
15.102 Who may notify the agency of a death?
15.103 How do I begin the probate process?
15.104 Does the agency need a death certificate to prepare a probate file?
15.105 What other documents does the agency need to prepare a probate file?
15.106 May a probate case be initiated when an owner of an interest has been absent?
15.107 Who prepares the probate file?
15.108 If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate file?

### Subpart C—Preparing the Probate File

15.201 What will the agency do with the documents that I provide?
15.202 What items must the agency include in the probate file?
15.203 What information must tribes provide BIA to complete the probate file?
15.204 When is a probate file complete?

### Subpart D—Obtaining Emergency Assistance and Filing Claims

15.301 May I receive funds from the decedent's IIM account for funeral services?
15.302 May I file a claim against an estate?
15.303 Where may I file my claim against an estate?
15.304 When must I file my claim?
15.305 What must I include with my claim?

### Subpart E—Probate Processing and Distributions

15.401 What happens after BIA prepares the probate file?
15.402 What happens after the probate file is referred to OHA?
15.403 What happens after the probate order is issued?

### Subpart F—Information and Records

15.501 How may I find out the status of a probate?
15.502 Who owns the records associated with this part?
15.503 How must records associated with this part be preserved?
15.504 Who may inspect records and records management practices?
15.505 How does the Paperwork Reduction Act affect this part?

**Authority:** 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.*; 44 U.S.C. 3101 *et seq.*

*Cross Reference:* For special rules applying to proceedings in Indian Probate (Determination of Heirs and Approval of Wills, Except for Members of the Five Civilized Tribes and Osage Indians), including hearings and appeals within the jurisdiction of the Office of Hearings and Appeals, see title 43, Code of Federal Regulations, part 4, subpart D, and part 30; Funds of deceased Indians other than the Five Civilized Tribes, see title 25 Code of Federal Regulations, part 115.

## Subpart A—Introduction

### § 15.1 What is the purpose of this part?

(a) This part contains the procedures that we follow to initiate the probate of the trust estate of a deceased person for whom the United States holds an interest in trust or restricted land or trust personalty. This part tells you how to file the necessary documents to probate the trust estate. This part also describes how probates will be processed by the Bureau of Indian Affairs (BIA), and when probates will be forwarded to the Office of Hearings and Appeals (OHA) for disposition.

(b) The following provisions do not apply to Alaska property interests:

(1) Section 15.202(c), (d), (e)(2), (n), and (o); and

(2) Section 15.401(b).

### § 15.2 What definitions do I need to know?

*Act* means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Pub. L. 108–374, as codified at 25 U.S.C. 2201 *et seq.*

*Administrative law judge (ALJ)* means an administrative law judge with the Office of Hearings and Appeals appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

*Affidavit* means a written declaration of facts by a person that is signed by that person, swearing or affirming under penalty of perjury that the facts declared are true and correct to the best of that person's knowledge and belief.

*Agency means:*

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

*Attorney Decision Maker (ADM)* means an attorney with OHA who conducts a summary probate proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior.

*Child* means a natural or adopted child.

*Codicil* means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

*Consolidation agreement* means a written agreement under the provisions of 25 U.S.C. 2206(e) or 2206(j)(9), entered during the probate process, approved by the judge, and implemented by the probate order, by which a decedent's heirs and devisees consolidate interests in trust or restricted land.

*Creditor* means any individual or entity that has a claim for payment from a decedent's estate.

*Day* means a calendar day.

*Decedent* means a person who is deceased.

*Decision or order* (or *decision and order*) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an attorney decision maker in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is dead by reason of unexplained absence.

*Department* means the Department of the Interior.

*Devise* means a gift of property by will. Also, to give property by will.

*Devisee* means a person or entity that receives property under a will.

*Eligible heir* means, for the purposes of the Act, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are any of the following:

(1) Indian;

(2) Lineal descendents within two degrees of consanguinity of an Indian; or

(3) Owners of a trust or restricted interest in a parcel of land for purposes of inheriting—by descent, renunciation, or consolidation agreement—another trust or restricted interest in such parcel from the decedent.

*Estate* means the trust or restricted land and trust personalty owned by the decedent at the time of death.

*Formal probate proceeding* means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

*Heir* means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

*Individual Indian Money (IIM) account* means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

*Indian* means, for the purposes of the Act, any of the following:

(1) Any person who is a member of a federally recognized Indian tribe is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

*Indian probate judge (IPJ)* means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

*Interested party* means:

(1) Any potential or actual heir;

(2) Any devisee under a will;

(3) Any person or entity asserting a claim against a decedent's estate;

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or

(5) A co-owner exercising a purchase option.

*Intestate* means that the decedent died without a valid will as determined in the probate proceeding.

*Judge* means an ALJ or IPJ.

*Lockbox* means a centralized system within OST for receiving and depositing trust fund remittances collected by BIA.

*LTRO* means the Land Titles and Records Office within BIA.

*OHA* means the Office of Hearings and Appeals within the Department of the Interior.

*OST* means the Office of the Special Trustee for American Indians within the Department of the Interior.

*Probate* means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

(1) Determine the heirs;

(2) Determine the validity of wills and determine devisees;

(3) Determine whether claims against the estate will be paid from trust personalty; and

(4) Order the transfer of any trust or restricted land or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive them.

*Purchase option at probate* means the process by which eligible purchasers can purchase a decedent's interest during the probate proceeding.

*Restricted property* means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purpose of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term ''restricted property'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Summary probate proceeding* means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that does not exceed $5,000 in value on the date of the decedent's death.

*Superintendent* means a BIA Superintendent or other BIA official, including a field representative or one holding equivalent authority.

*Testate* means that the decedent executed a valid will as determined in the probate proceeding.

*Testator* means a person who has executed a valid will as determined in the probate proceeding.

*Trust personalty* means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

*Trust property* means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

*We* or *us* means the Secretary, an authorized representative of the Secretary, or the authorized employee or representative of a tribe performing probate functions under a contract or compact approved by the Secretary.

*Will* means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

*You or I* means an interested party, as defined herein, with an interest in the decedent's trust estate unless the context requires otherwise.

**§ 15.3 Who can make a will disposing of trust or restricted land or trust personalty?**

Any person 18 years of age or over and of testamentary capacity, who has any right, title, or interest in trust or restricted land or trust personalty, may dispose of trust or restricted land or trust personalty by will.

**§ 15.4 What are the requirements for a valid will?**

You must meet the requirements of § 15.3, date and execute your will, in writing and have it attested by two disinterested adult witnesses.

**§ 15.5 May I revoke my will?**

Yes. You may revoke your will at any time. You may revoke your will by any means authorized by tribal or Federal law, including executing a subsequent will or other writing with the same formalities as are required for execution of a will.

**§ 15.6 May my will be deemed revoked by operation of the law of any State?**

No. A will that is subject to the regulations of this subpart will not be deemed to be revoked by operation of the law of any State.

**§ 15.7 What is a self-proved will?**

A self-proved will is a will with attached affidavits, signed by the testator and the witnesses before an officer authorized to administer oaths, certifying that they complied with the requirements of execution of the will.

**§ 15.8 May I make my will, codicil, or revocation self-proved?**

Yes. A will, codicil, or revocation may be made self-proved as provided in this section.

(a) A will, codicil, or revocation may be made self-proved by the testator and attesting witnesses at the time of its execution.

(b) The testator and the attesting witnesses must sign the required affidavits before an officer authorized to administer oaths, and the affidavits must be attached to the will, codicil, or revocation.

**§ 15.9 What information must be included in an affidavit for a self-proved will, codicil, or revocation?**

(a) A testator's affidavit must contain substantially the following content:

Tribe of ____ or
State of ____
County of ____.

I, ____, swear or affirm under penalty of perjury that, on the __ day of ____, 20__, I requested ____and ____ to act as witnesses to my will; that I declared to them that the document was my last will; that I signed the will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and that I willingly made and executed the will as my free and voluntary act for the purposes expressed in the will.

_____
Testator

(b) Each attesting witness's affidavit must contain substantially the following content:

We, ____and ____, swear or affirm under penalty of perjury that on the __ day of ____, 20__, ____ of the State of ____, published and declared the attached document to be his/her last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her request, signed the will as witnesses in his/her presence and in the presence of each other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

_____
Witness

_____
Witness

Subscribed and sworn to or affirmed before me this __ day of ____, 20__, by ____ testator, and by ____ and ____, attesting witnesses.

_____
(Title)

**§ 15.10 Will the Secretary probate all the land or assets in an estate?**

(a) We will probate only the trust or restricted land or trust personalty in an estate.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty in an estate of a decedent;

(2) Restricted land derived from allotments made to members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the estate of a deceased member of the Five Civilized Tribes or Osage Nation who

owns a trust interest in land or a restricted interest in land derived from an individual Indian who was a member of a tribe other than the Five Civilized Tribes or Osage Nation.

**§ 15.11 What are the basic steps of the probate process?**

The basic steps of the probate process are:

(a) We learn about a person's death (see subpart B for details);

(b) We prepare a probate file that includes documents sent to the agency (see subpart C for details);

(c) We refer the completed probate file to OHA for assignment to a judge or ADM (see subpart D for details); and

(d) The judge or ADM decides how to distribute any trust or restricted land and/or trust personalty, and we make the distribution (see subpart D for details).

**§ 15.12 What happens if assets in a trust estate may be diminished or destroyed while the probate is pending?**

(a) This section applies if an interested party or BIA:

(1) Learns of the death of a person owning trust or restricted property; and

(2) Believes that an emergency exists and the assets in the trust estate may be significantly diminished or destroyed before the final decision and order of a judge in a probate case.

(b) An interested party, the Superintendent, or other authorized representative of BIA has standing to request relief.

(c) The interested party or BIA representative may request:

(1) That OHA immediately assign a judge or ADM to the probate case;

(2) That BIA transfer a probate file to OHA containing sufficient information on potential interested parties and documentation concerning the alleged emergency for a judge to consider emergency relief in order to preserve estate assets; and

(3) That OHA hold an expedited hearing or consider ex parte relief to prevent impending or further loss or destruction of trust assets.

## Subpart B—Starting the Probate Process

**§ 15.101 When should I notify the agency of the death of a person owning trust or restricted property?**

There is no deadline for notifying us of a death.

(a) Notify us as provided in § 15.103 to assure timely distribution of the estate.

(b) If we find out about the death of a person owning trust or restricted property we may initiate the process to collect the necessary documentation.

**§ 15.102 Who may notify the agency of a death?**

Anyone may notify us of a death.

**§ 15.103 How do I begin the probate process?**

As soon as possible, contact any of the following offices to inform us of the decedent's death:

(a) The agency or BIA regional office nearest to where the decedent was enrolled;

(b) Any agency or BIA regional office; or

(c) The Trust Beneficiary Call Center in OST.

**§ 15.104 Does the agency need a death certificate to prepare a probate file?**

(a) Yes. You must provide us with a certified copy of the death certificate if a death certificate exists. If necessary, we will make a copy from your certified copy for our use and return your copy.

(b) If a death certificate does not exist, you must provide an affidavit containing as much information as you have concerning the deceased, such as:

(1) The State, city, reservation, location, date, and cause of death;

(2) The last known address of the deceased;

(3) Names and addresses of others who may have information about the deceased; and

(4) Any other information available concerning the deceased, such as newspaper articles, an obituary, death notices, or a church or court record.

**§ 15.105 What other documents does the agency need to prepare a probate file?**

In addition to the certified copy of a death certificate or other reliable evidence of death listed in § 15.104, we need the following information and documents:

(a) Originals or copies of all wills, codicils, and revocations, or other evidence that a will may exist;

(b) The Social Security number of the decedent;

(c) The place of enrollment and the tribal enrollment or census number of the decedent and potential heirs or devisees;

(d) Current names and addresses of the decedent's potential heirs and devisees;

(e) Any sworn statements regarding the decedent's family, including any statements of paternity or maternity;

(f) Any statements renouncing an interest in the estate including identification of the person or entity in whose favor the interest is renounced, if any;

(g) A list of claims by known creditors of the decedent and their addresses, including copies of any court judgments; and

(h) Documents from the appropriate authorities, certified if possible, concerning the public record of the decedent, including but not limited to, any:

(1) Marriage licenses and certificates of the decedent;

(2) Divorce decrees of the decedent;

(3) Adoption and guardianship records concerning the decedent or the decedent's potential heirs or devisees;

(4) Use of other names by the decedent, including copies of name changes by court order; and

(5) Orders requiring payment of child support or spousal support.

**§ 15.106 May a probate case be initiated when an owner of an interest has been absent?**

(a) A probate case may be initiated when either:

(1) Information is provided to us that an owner of an interest in trust or restricted land or trust personalty has been absent without explanation for a period of at least 6 years; or

(2) We become aware of other facts or circumstances from which an inference may be drawn that the person has died.

(b) When we receive information as described in § 15.106(a), we may begin an investigation into the circumstances, and may attempt to locate the person. We may:

(1) Search available electronic databases;

(2) Inquire into other published information sources such as telephone directories and other available directories;

(3) Examine BIA land title and lease records;

(4) Examine the IIM account ledger for disbursements from the account; and

(5) Engage the services of an independent firm to conduct a search for the owner.

(c) When we have completed our investigation, if we are unable to locate the person, we may initiate a probate case and prepare a file that may include all the documentation developed in the search.

(d) We may file a claim in the probate case to recover the reasonable costs expended to contract with an independent firm to conduct the search.

**§ 15.107 Who prepares a probate file?**

The agency that serves the tribe where the decedent was an enrolled member will prepare the probate file in consultation with the potential heirs or devisees who can be located, and with other people who have information about the decedent or the estate.

**§ 15.108 If the decedent was not an enrolled member of a tribe or was a member of more than one tribe, who prepares the probate file?**

Unless otherwise provided by Federal law, the agency that has jurisdiction over the tribe with the strongest association with the decedent will serve as the home agency and will prepare the probate file if the decedent owned interests in trust or restricted land or trust personalty and either:

(a) Was not an enrolled member of a tribe; or

(b) Was a member of more than one tribe.

## Subpart C—Preparing the Probate File

**§ 15.201 What will the agency do with the documents that I provide?**

After we receive notice of the death of a person owning trust or restricted land or trust personalty, we will examine the documents provided under §§ 15.104 and 15.105, and other documents and information provided to us to prepare a complete probate file. We may consult with you and other individuals or entities to obtain additional information to complete the probate file. Then we will transfer the probate file to OHA.

**§ 15.202 What items must the agency include in the probate file?**

We will include the items listed in this section in the probate file.

(a) The evidence of death of the decedent as provided under § 15.104.

(b) A completed ''Data for Heirship Findings and Family History Form'' or successor form, certified by BIA, with the enrollment or other identifying number shown for each potential heir or devisee.

(c) Information provided by potential heirs, devisees, or the tribes on:

(1) Whether the heirs and devisees meet the definition of ''Indian'' for probate purposes, including enrollment or eligibility for enrollment in a tribe; or

(2) Whether the potential heirs or devisees are within two degrees of consanguinity of an ''Indian.''

(d) If an individual qualifies as an Indian only because of ownership of a trust or restricted interest in land, the date on which the individual became the owner of the trust or restricted interest.

(e) A certified inventory of trust or restricted land, including:

(1) Accurate and adequate descriptions of all land and appurtenances; and

(2) Identification of any interests that represent less than 5 percent of the undivided interest in a parcel.

(f) A statement showing the balance and the source of funds in the decedent's IIM account on the date of death.

(g) A statement showing all receipts and sources of income to and disbursements, if any, from the decedent's IIM account after the date of death.

(h) Originals or copies of all wills, codicils, and revocations that have been provided to us.

(i) A copy of any statement or document concerning any wills, codicils, or revocations the BIA returned to the testator.

(j) Any statement renouncing an interest in the estate that has been submitted to us, and the information necessary to identify any person receiving a renounced interest.

(k) Claims of creditors that have been submitted to us under § 15.302 through 15.305, including documentation required by § 15.305.

(l) Documentation of any payments made on requests filed under the provisions of § 15.301.

(m) All the documents acquired under § 15.105.

(n) The record of each tribal or individual request to purchase a trust or restricted land interest at probate.

(o) The record of any individual request for a consolidation agreement, including a description, such as an Individual/Tribal Interest Report, of any lands not part of the decedent's estate that are proposed for inclusion in the consolidation agreement.

**§ 15.203 What information must tribes provide BIA to complete the probate file?**

Tribes must provide any information that we require or request to complete the probate file. This information may include enrollment and family history data or property title documents that pertain to any pending probate matter.

**§ 15.204 When is a probate file complete?**

A probate file is complete for transfer to OHA when a BIA approving official includes a certification that:

(a) States that the probate file includes all information listed in § 15.202 that is available; and

(b) Lists all sources of information BIA queried in an attempt to locate information listed in § 15.202 that is not available.

## Subpart D—Obtaining Emergency Assistance and Filing Claims

**§ 15.301 May I receive funds from the decedent's IIM account for funeral services?**

(a) You may request an amount of no more than $1,000 from the decedent's IIM account if:

(1) You are responsible for making the funeral arrangements on behalf of the family of a decedent who had an IIM account;

(2) You have an immediate need to pay for funeral arrangements before burial; and

(3) The decedent's IIM account contains more than $2,500 on the date of death.

(b) You must apply for funds under paragraph (a) of this section and submit to us an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs of no more than $1,000 that are necessary for the burial services, taking into consideration:

(1) The total amount in the IIM account;

(2) The availability of non-trust funds; and

(3) Any other relevant factors.

(d) We will make payments directly to the providers of the services.

**§ 15.302 May I file a claim against an estate?**

If a decedent owed you money, you may make a claim against the estate of the decedent.

**§ 15.303 Where may I file my claim against an estate?**

(a) You may submit your claim to us before we transfer the probate file to OHA or you may file your claim with OHA after the probate file has been transferred if you comply with 43 CFR 30.140 through 30.148.

(b) If we receive your claim after the probate file has been transmitted to OHA but before the order is issued, we will promptly transmit your claim to OHA.

**§ 15.304 When must I file my claim?**

You must file your claim before the conclusion of the first hearing by OHA or, for cases designated as summary probate proceedings, as allowed under 43 CFR 30.140. Claims not timely filed will be barred.

**§ 15.305 What must I include with my claim?**

(a) You must include an itemized statement of the claim, including copies of any supporting documents such as signed notes, account records, billing records, and journal entries. The itemized statement must also include:

(1) The date and amount of the original debt;

(2) The dates, amounts, and identity of the payor for any payments made;

(3) The dates, amounts, product or service, and identity of any person making charges on the account;

(4) The balance remaining on the debt on the date of the decedent's death; and

(5) Any evidence that the decedent disputed the amount of the claim.

(b) You must submit an affidavit that verifies the balance due and states whether:

(1) Parties other than the decedent are responsible for any portion of the debt alleged;

(2) Any known or claimed offsets to the alleged debt exist;

(3) The creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent's non-trust or non-restricted property in any other judicial or quasi-judicial proceeding, and the status of such action; and

(4) The creditor or anyone on behalf of the creditor has filed a claim or sought reimbursement against the decedent's trust or restricted property in any other judicial or quasi-judicial proceeding, and the status of such action.

(c) A secured creditor must first exhaust the security before a claim against trust personalty for any deficiency will be allowed. You must submit a verified or certified copy of any judgment or other documents that establish the amount of the deficiency after exhaustion of the security.

## Subpart E—Probate Processing and Distributions

### § 15.401 What happens after BIA prepares the probate file?

Within 30 days after we assemble all the documents required by §§ 15.202 and 15.204, we will:

(a) Refer the case and send the probate file to OHA for adjudication in accordance with 43 CFR part 30; and

(b) Forward a list of fractional interests that represent less than 5 percent of the entire undivided ownership of each parcel of land in the decedent's estate to the tribes with jurisdiction over those interests.

### § 15.402 What happens after the probate file is referred to OHA?

When OHA receives the probate file from BIA, it will assign the case to a judge or ADM. The judge or ADM will conduct the probate proceeding and issue a written decision or order, in accordance with 43 CFR part 30.

### § 15.403 What happens after the probate order is issued?

(a) If the probate decision or order is issued by an ADM, you have 30 days from the decision mailing date to file a written request for a de novo review.

(b) If the probate decision or order is issued by a judge, you have 30 days from the decision mailing date to file a written request for rehearing. After a judge's decision on rehearing, you have 30 days from the mailing date of the decision to file an appeal, in accordance with 43 CFR parts 4 and 30.

(c) When any interested party files a timely request for de novo review, a request for rehearing, or an appeal, we will not pay claims, transfer title to land, or distribute trust personalty until the request or appeal is resolved.

(d) If no interested party files a request or appeal within the 30-day deadlines in paragraphs (a) and (b) of this section, we will wait at least 15 additional days before paying claims, transferring title to land, and distributing trust personalty. At that time:

(1) The LTRO will change the land title records for the trust and restricted land in accordance with the final decision or order; and

(2) We will pay claims and distribute funds from the IIM account in accordance with the final decision or order.

## Subpart F—Information and Records

### § 15.501 How may I find out the status of a probate?

You may get information about the status of an Indian probate by contacting any BIA agency or regional office, an OST fiduciary trust officer, OHA, or the Trust Beneficiary Call Center in OST.

### § 15.502 Who owns the records associated with this part?

(a) The United States owns the records associated with this part if:

(1) They are evidence of the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part; and

(2) They are either:

(i) Made by or on behalf of the United States; or

(ii) Made or received by a tribe or tribal organization in the conduct of a Federal trust function under this part, including the operation of a trust program under Pub. L. 93–638, as amended, and as codified at 25 U.S.C. 450 *et seq.*

(b) The tribe owns the records associated with this part if they:

(1) Are not covered by paragraph (a) of this section; and

(2) Are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part.

### § 15.503 How must records associated with this part be preserved?

(a) Any organization that has records identified in § 15.502(a), including tribes and tribal organizations, must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. chapters 29, 31, and 33; and

(b) A tribe or tribal organization must preserve the records identified in § 15.502(b) for the period authorized by the Archivist of the United States for similar Department of the Interior records under 44 U.S.C. chapter 33. If a tribe or tribal organization does not do so, it may be unable to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons affected by its activities.

### § 15.504 Who may inspect records and records management practices?

(a) You may inspect the probate file at the relevant agency before the file is transferred to OHA. Access to records in the probate file is governed by 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.

(b) The Secretary and the Archivist of the United States may inspect records and records management practices and safeguards required under the Federal Records Act.

### § 15.505 How does the Paperwork Reduction Act affect this part?

The collections of information contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0169. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to a collection of information unless the form or regulation requesting the information has a currently valid OMB Control Number.

■ 2. Add part 18 to subchapter C to read as follows:

# PART 18—TRIBAL PROBATE CODES

## Subpart A—General Provisions

Sec.

18.1 What is the purpose of this part?
18.2 What definitions do I need to know?

## Subpart B—Approval of Tribal Probate Codes

18.101 May a tribe create and adopt its own tribal probate code?
18.102 When must a tribe submit its tribal probate code to the Department for approval?
18.103 Which provisions within a tribal probate code require the Department's approval?
18.104 May a tribe include provisions in its tribal probate code regarding the descent and distribution of trust personalty?

18.105 How does a tribe request approval for a tribal probate code?
18.106 What will the Department consider in the approval process?
18.107 When will the Department approve or disapprove a tribal probate code?
18.108 What happens if the Department approves the tribal probate code?
18.109 How will a tribe be notified of the disapproval of a tribal probate code?
18.110 When will a tribal probate code become effective?
18.111 What will happen if a tribe repeals its probate code?
18.112 May a tribe appeal the approval or disapproval of a probate code?

**Subpart C—Approval of Tribal Probate Code Amendments**

18.201 May a tribe amend a tribal probate code?
18.202 How does a tribe request approval for a tribal probate code amendment?
18.203 Which probate code amendments require approval?
18.204 When will the Department approve an amendment?
18.205 What happens if the Department approves the amendment?
18.206 How will the tribe be notified of disapproval of the amendment?
18.207 When do amendments to tribal probate codes become effective?
18.208 May a tribe appeal an approval or disapproval of a probate code amendment?

**Subpart D—Approval of Single Heir Rule**

18.301 May a tribe create and adopt a single heir rule without adopting a tribal probate code?
18.302 How does the tribe request approval for the single heir rule?
18.303 When will the Department approve or disapprove a single heir rule?
18.304 What happens if the Department approves a single heir rule?
18.305 How will a tribe be notified of the disapproval of a single heir rule?
18.306 When does the single heir rule become effective?
18.307 May a tribe appeal approval or disapproval of a single heir rule?

**Subpart E—Information and Records**

18.401 How does the Paperwork Reduction Act affect this part?

**Authority:** 5 U.S.C. 301; 25 U.S.C. 2, 9, 372–74, 410, 2201 *et seq.*; 44 U.S.C. 3101 *et seq.*; 25 CFR part 15; 43 CFR part 4.

## Subpart A—General Provisions

### § 18.1 What is the purpose of this part?

This part establishes the Department's policies and procedures for reviewing and approving or disapproving tribal probate codes, amendments, and single heir rules that contain provisions regarding the descent and distribution of trust and restricted lands.

### § 18.2 What definitions do I need to know?

*Act* means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108–374, as codified at 25 U.S.C. 2201 *et seq.*

*Day* means a calendar day.

*Decedent* means a person who is deceased.

*Department* means the Department of the Interior.

*Devise* means a gift of property by will. Also, to give property by will.

*Devisee* means a person or entity that receives property under a will.

*Indian* means, for the purposes of the Act:

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

*Intestate* means that the decedent died without a will.

*OHA* means the Office of Hearings and Appeals within the Department of the Interior.

*Restricted lands* means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purpose of probate proceedings, restricted lands are treated as if they were trust lands. Except as the law may provide otherwise, the term ''restricted lands'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Testator* means a person who has executed a will.

*Trust lands* means real property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

*Trust personalty* means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

*We* or *us* means the Secretary or an authorized representative of the Secretary.

## Subpart B—Approval of Tribal Probate Codes

### § 18.101 May a tribe create and adopt its own tribal probate code?

Yes. A tribe may create and adopt a tribal probate code.

### § 18.102 When must a tribe submit its tribal probate code to the Department for approval?

The tribe must submit its probate code to the Department for approval if the tribal probate code contains provisions regarding the descent and distribution of trust and restricted lands.

### § 18.103 Which provisions within a tribal probate code require the Department's approval?

Only those tribal probate code provisions regarding the descent and distribution of trust and restricted lands require the Department's approval.

### § 18.104 May a tribe include provisions in its tribal probate code regarding the distribution and descent of trust personalty?

No. All trust personalty will be distributed in accordance with the American Indian Probate Reform Act of 2004, as amended.

### § 18.105 How does a tribe request approval for a tribal probate code?

The tribe must submit the tribal probate code and a duly executed tribal resolution adopting the code to the Assistant Secretary—Indian Affairs, Attn: Tribal Probate Code, 1849 C Street, NW., Washington, DC 20240, for review and approval or disapproval.

### § 18.106 What will the Department consider in the approval process?

A tribal probate code must meet the requirements of this section in order to receive our approval under this part.

(a) The code must be consistent with Federal law.

(b) The code must promote the policies of the Indian Land Consolidation Act (ILCA) Amendments of 2000, which are to:

(1) Prevent further fractionation;

(2) Consolidate fractional interests into useable parcels;

(3) Consolidate fractional interests to enhance tribal sovereignty;

(4) Promote tribal self-sufficiency and self-determination; and

(5) Reverse the effects of the allotment policy on Indian tribes.

(c) Unless the conditions in paragraph (d) of this section are met, the code must not prohibit the devise of an interest to:

(1) An Indian lineal descendant of the original allottee; or

(2) An Indian who is not a member of the Indian tribe with jurisdiction over the interest in the land.

(d) If the tribal probate code prohibits the devise of an interest to the devisees in paragraph (c)(1) or (c)(2) of this section, then the code must:

(1) Allow those devisees to renounce their interests in favor of eligible

devisees as defined by the tribal probate code;

(2) Allow a devisee who is the spouse or lineal descendant of the testator to reserve a life estate without regard to waste; and

(3) Require the payment of fair market value as determined by the Department on the date of the decedent's death.

**§ 18.107 When will the Department approve or disapprove a tribal probate code?**

(a) We have 180 days from receipt by the Assistant Secretary—Indian Affairs of a submitted tribal probate code and duly executed tribal resolution adopting the tribal probate code to approve or disapprove a tribal probate code.

(b) If we do not meet the deadline in paragraph (a) of this section, the tribal probate code will be deemed approved, but only to the extent that it:

(1) Is consistent with Federal law; and

(2) Promotes the policies of the ILCA Amendments of 2000 as listed in § 18.106(b).

**§ 18.108 What happens if the Department approves the tribal probate code?**

Our approval applies only to those sections of the tribal probate code that govern the descent and distribution of trust or restricted land. We will notify the tribe of the approval and forward a copy of the tribal probate code to OHA.

**§ 18.109 How will a tribe be notified of the disapproval of a tribal probate code?**

If we disapprove a tribal probate code, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

**§ 18.110 When will a tribal probate code become effective?**

(a) A tribal probate code may not become effective sooner than 180 days after the date of approval by the Department.

(b) If a tribal probate code is deemed approved through inaction by the Department, then the code will become effective 180 days after it is deemed approved.

(c) The tribal probate code will apply only to the estate of a decedent who dies on or after the effective date of the tribal probate code.

**§ 18.111 What will happen if a tribe repeals its probate code?**

If a tribe repeals its tribal probate code:

(a) The repeal will not become effective sooner than 180 days from the date we receive notification from the tribe of its decision to repeal the code; and

(b) We will forward a copy of the repeal to OHA.

**§ 18.112 May a tribe appeal the approval or disapproval of a probate code?**

No. There is no right of appeal within the Department from a decision to approve or disapprove a tribal probate code.

## Subpart C—Approval of Tribal Probate Code Amendments

**§ 18.201 May a tribe amend a tribal probate code?**

Yes. A tribe may amend a tribal probate code.

**§ 18.202 How does a tribe request approval for a tribal probate code amendment?**

To amend a tribal probate code, the tribe must follow the same procedures as for submitting a tribal probate code to the Department for approval.

**§ 18.203 Which probate code amendments require approval?**

Only those tribal probate code amendments regarding the descent and distribution of trust and restricted lands require the Department's approval.

**§ 18.204 When will the Department approve an amendment?**

(a) We have 60 days from receipt by the Assistant Secretary of a submitted amendment to approve or disapprove the amendment.

(b) If we do not meet the deadline in paragraphs (a) of this section, the amendment will be deemed approved, but only to the extent that it:

(1) Is consistent with Federal law; and

(2) Promotes the policies of the ILCA Amendments of 2000 as listed in § 18.106(b).

**§ 18.205 What happens if the Department approves the amendment?**

Our approval applies only to those sections of the amendment that contain provisions regarding the descent and distribution of trust or restricted land. We will notify the tribe of the approval and forward a copy of the amendment to OHA.

**§ 18.206 How will a tribe be notified of the disapproval of an amendment?**

If we disapprove an amendment, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

**§ 18.207 When do amendments to a tribal probate code become effective?**

(a) An amendment may not become effective sooner than 180 days after the date of approval by the Department.

(b) If an amendment is deemed approved through inaction by the Department, then the amendment will become effective 180 days after it is deemed approved.

(c) The amendment will apply only to the estate of a decedent who dies on or after the effective date of the amendment.

**§ 18.208 May a tribe appeal an approval or disapproval of a probate code amendment?**

No. There is no right of appeal within the Department from a decision to approve or disapprove a tribal probate code amendment.

## Subpart D—Approval of Single Heir Rule

**§ 18.301 May a tribe create and adopt a single heir rule without adopting a tribal probate code?**

Yes. A tribe may create and adopt a single heir rule for intestate succession. The single heir rule may specify a single recipient other than the one specified in 25 U.S.C. 2206(a)(2)(D).

**§ 18.302 How does the tribe request approval for the single heir rule?**

The tribe must follow the same procedures as for submitting a tribal probate code to the Department for approval.

**§ 18.303 When will the Department approve or disapprove a single heir rule?**

We have 90 days from receipt by the Assistant Secretary of a single heir rule submitted separate from a tribal probate code to approve or disapprove a single heir rule.

**§ 18.304 What happens if the Department approves the single heir rule?**

If we approve the single heir rule, we will notify the tribe of the approval and forward a copy of the single heir rule to OHA.

**§ 18.305 How will a tribe be notified of the disapproval of a single heir rule?**

If we disapprove a single heir rule, we must provide the tribe with a written notification of the disapproval that includes an explanation of the reasons for the disapproval.

**§ 18.306 When does the single heir rule become effective?**

(a) A single heir rule may not become effective sooner than 180 days after the date of approval by the Department.

(b) If a single heir rule is deemed approved through inaction by the Department, then the single heir rule will become effective 180 days after it is deemed approved.

(c) The single heir rule will apply only to the estate of a decedent who dies

on or after the effective date of the single heir rule.

#### § 18.307 May a tribe appeal approval or disapproval of a single heir rule?

No. There is no right of appeal within the Department from a decision to approve or disapprove a single heir rule.

### Subpart E—Information and Records

#### § 18.401 How does the Paperwork Reduction Act affect this part?

The collection of information contained in this part has been approved by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and assigned OMB Control Number 1076–0168. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and members of the public are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number.

■ 3. Revise part 179 to read as follows:

## PART 179—LIFE ESTATES AND FUTURE INTERESTS

### Subpart A—General

Sec.
179.1 What is the purpose of this part?
179.2 What definitions do I need to know?
179.3 What law applies to life estates?
179.4 When does a life estate terminate?
179.5 What documents will the BIA use to record termination of a life estate?

### Subpart B—Life Estates Not Created Under AIPRA

179.101 How does the Secretary distribute principal and income to the holder of a life estate?
179.102 How does the Secretary calculate the value of a remainder and a life estate?

### Subpart C—Life Estates Created Under AIPRA

179.201 How does the Secretary distribute principal and income to the holder of a life estate without regard to waste?
179.202 Can the holder of a life tenancy without regard to waste deplete the resources?

**Authority:** 86 Stat. 530; 86 Stat. 744; 94 Stat. 537; 96 Stat. 2515; 25 U.S.C. 2, 9, 372, 373, 487, 607, and 2201 *et seq.*

### Subpart A—General

#### § 179.1 What is the purpose of this part?

This part contains the authorities, policies, and procedures governing the administration of life estates and future interests in trust and restricted property by the Secretary of Interior. This part does not apply to any use rights assigned to tribal members by tribes in the exercise of their jurisdiction over tribal lands.

(a) Subpart A contains general provisions.

(b) Subpart B describes life estates not created under the American Indian Probate Reform Act of 2004 (AIPRA), as described in § 179.3(b).

(c) Subpart C describes life estates created under AIPRA, as described in § 179.3(a).

#### § 179.2 What definitions do I need to know?

*Agency* means the Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted property. This term also means any office of a tribe that has entered into a contract or compact to fulfill applicable BIA functions.

*AIPRA* means the American Indian Probate Reform Act of 2004, Pub. L. 108–374, as codified at 25 U.S.C. 2201 *et seq.*

*BIA* means the Bureau of Indian Affairs within the Department of Interior.

*Contract bonus* means cash consideration paid or agreed to be paid as incentive for execution of a contract.

*Income* means the rents and profits of real property and the interest on invested principal.

*Life estate* means an interest in property held for only the duration of a designated person's life. A life estate may be created by a conveyance document or by operation of law.

*Life estate without regard to waste* means that the holder of the life estate interest in land is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the remaindermen.

*Principal* means the corpus and capital of an estate, including any payment received for the sale or diminishment of the corpus, as opposed to the income.

*Rents and profits* means the income or profit arising from the ownership or possession of property.

*Restricted property* means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purpose of probate proceedings, restricted property is treated as if it were trust property.

Except as the law may provide otherwise, the term ''restricted property'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Secretary* means the Secretary of the Interior or authorized representative.

*Trust property* means real property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

#### § 179.3 What law applies to life estates?

(a) AIPRA applies to life estates created by operation of law under AIPRA for an individual who died on or after June 20, 2006, owning trust or restricted property.

(b) In the absence of Federal law or federally approved tribal law to the contrary, State law applies to all other life estates.

#### § 179.4 When does a life estate terminate?

A life estate terminates upon relinquishment or upon the death of the measuring life.

#### § 179.5 What documents will BIA use to record termination of a life estate?

The Agency will file a copy of the relinquishment of the interest or death certificate with the BIA Land Title and Records Office for recording upon receipt of one of the following:

(a) The life estate holder's relinquishment of an interest in trust or restricted property; or

(b) Notice of death of a person who is the measuring life for the life estate in trust or restricted property.

### Subpart B—Life Estates Not Created Under AIPRA

#### § 179.101 How does the Secretary distribute principal and income to the holder of a life estate?

(a) This section applies to the following cases:

(1) Where the document creating the life estate does not specify a distribution of proceeds;

(2) Where the vested holders of remainder interests and the life tenant have not entered into a written agreement approved by the Secretary providing for the distribution of proceeds; or

(3) Where, by the document or agreement or by the application of State law, the open mine doctrine does not apply.

(b) In all cases listed in paragraph (a) of this section, the Secretary must do the following:

(1) Distribute all rents and profits, as income, to the life tenant;

(2) Distribute any contract bonus one-half each to the life tenant and the remainderman;

(3) In the case of mineral contracts:

(i) Invest the principal, with interest income to be paid to the life tenant during the life estate, except in those instances where the administrative cost of investment is disproportionately

high, in which case paragraph (b)(4) of this section applies; and

(ii) Distribute the principal to the remainderman upon termination of the life estate; and

(4) In all other instances:

(i) Distribute the principal immediately according to § 179.102; and

(ii) Invest all proceeds attributable to any contingent remainderman in an account, with disbursement to take place upon determination of the contingent remainderman.

**§ 179.102 How does the Secretary calculate the value of a remainder and a life estate?**

(a) If income is subject to division, the Secretary will use Actuarial Table S, Valuation of Annuities, found at 26 CFR 20.2031, to determine the value of the interests of the holders of remainder interests and the life tenant.

(b) Actuarial Table S, Valuation of Annuities, specifies the share attributable to the life estate and remainder interests, given the age of the life tenant and an established rate of return published by the Secretary in the **Federal Register**. We may periodically review and revise the percent rate of return to be used to determine the share attributable to the interests of the life tenant and the holders of remainder interests. The life tenant will receive the balance of the distribution after the shares of the holders of remainder interests have been calculated.

## Subpart C—Life Estates Created Under AIPRA

**§ 179.201 How does the Secretary distribute principal and income to the holder of a life estate without regard to waste?**

The Secretary must distribute all income, including bonuses and royalties, to the life estate holder to the exclusion of any holders of remainder interests.

**§ 179.202 May the holder of a life estate without regard to waste deplete the resources?**

Yes. The holder of a life estate without regard to waste may cause lawful depletion or benefit from the lawful depletion of the resources. However, a holder of a life estate without regard to waste may not cause or allow damage to the trust property through culpable negligence or an affirmative act of malicious destruction that causes damage to the prejudice of the holders of remainder interests.

## TITLE 43—PUBLIC LANDS: INTERIOR

## PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

■ 4. Revise the authority citation for part 4 to read as follows:

**Authority:** 5 U.S.C. 301, 503–504; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457; Pub. L. 99–264, 100 Stat. 61, as amended.

■ 5. Revise the cross reference for part 4, subpart D, to read as follows:

*Cross reference:* For regulations pertaining to the processing of Indian probate matters within the Bureau of Indian Affairs, see 25 CFR part 15. For regulations pertaining to the probate of Indian trust estates within the Probate Hearings Division, Office of Hearings and Appeals, see 43 CFR part 30. For regulations pertaining to the authority, jurisdiction, and membership of the Board of Indian Appeals, Office of Hearings and Appeals, see subpart A of this part. For regulations generally applicable to proceedings before the Hearings Divisions and Appeal Boards of the Office of Hearings and Appeals, see subpart B of this part.

■ 6. In subpart D, remove undesignated center heading, ''Determination of Heirs and Approval of Wills, Except as to Members of the Five Civilized Tribes and Osage Indians; Tribal Purchases of Interests Under Special Statutes.''

■ 7. Revise §§ 4.200 and 4.201 to read as follows:

**§ 4.200 How to use this subpart.**

(a) The following table is a guide to the relevant contents of this subpart by subject matter.

| For provisions relating to . . . | Consult . . . |
|---|---|
| (1) Appeals to the Board of Indian Appeals generally | §§ 4.310 through 4.318. |
| (2) Appeals to the Board of Indian Appeals from decisions of the Probate Hearings Division in Indian probate matters. | §§ 4.201 and 4.320 through 4.326. |
| (3) Appeals to the Board of Indian Appeals from actions or decisions of BIA | §§ 4.201 and 4.330 through 4.340. |
| (4) Review by the Board of Indian Appeals of other matters referred to it by the Secretary, Assistant Secretary-Indian Affairs, or Director-Office of Hearings and Appeals. | §§ 4.201 and 4.330 through 4.340. |
| (5) Determinations under the White Earth Reservation Land Settlement Act of 1985 | §§ 4.350 through 4.357. |

(b) Except as limited by the provisions of this part, the regulations in subparts A and B of this part apply to these proceedings.

**§ 4.201 Definitions.**

*Administrative law judge (ALJ)* means an administrative law judge with OHA appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

*Agency means:*

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior.

*Board* means the Interior Board of Indian Appeals within OHA.

*Day* means a calendar day.

*Decedent* means a person who is deceased.

*Decision or order* (or *decision and order*) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an attorney decision maker in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is deceased by reason of unexplained absence.

*Devise* means a gift of property by will. Also, to give property by will.

*Devisee* means a person or entity that receives property under a will.

*Estate* means the trust or restricted land and trust personalty owned by the decedent at the time of death.

*Formal probate proceeding* means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

*Heir* means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

*Individual Indian Money (IIM) account* means an interest-bearing account for trust funds held by the Secretary that belong to a person who

has an interest in trust assets. These accounts are under the control and management of the Secretary.

*Indian probate judge (IPJ)* means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

*Interested party* means any of the following:

(1) Any potential or actual heir;

(2) Any devisee under a will;

(3) Any person or entity asserting a claim against a decedent's estate;

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or

(5) Any co-owner exercising a purchase option.

*Intestate* means that the decedent died without a valid will as determined in the probate proceeding.

*Judge*, except as used in the term ''administrative judge,'' means an ALJ or IPJ.

*LTRO* means the Land Titles and Records Office within BIA.

*Probate* means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

(1) Determine the heirs;

(2) Determine the validity of wills and determine devisees;

(3) Determine whether claims against the estate will be paid from trust personalty; and

(4) Order the transfer of any trust or restricted land or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive them.

*Restricted property* means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the Secretary's consent. For the purposes of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term ''restricted property'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Trust personalty* means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

*Trust property* means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

*Will* means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

■ 8. Remove and reserve §§ 4.202 through 4.308, along with their undesignated center headings.

■ 9. Revise § 4.320 to read as follows:

**§ 4.320 Who may appeal a judge's decision or order?**

Any interested party has a right to appeal to the Board if he or she is adversely affected by a decision or order of a judge under part 30 of this subtitle:

(a) On a petition for rehearing;

(b) On a petition for reopening;

(c) Regarding purchase of interests in a deceased Indian's trust estate; or

(d) Regarding modification of the inventory of a trust estate.

■ 10. Redesignate §§ 4.321 through 4.323 as §§ 4.324 through 4.326 and add new §§ 4.321 through 4.323 to read as follows:

**§ 4.321 How do I appeal a judge's decision or order?**

(a) A person wishing to appeal a decision or order within the scope of § 4.320 must file a written notice of appeal within 30 days after we have mailed the judge's decision or order and accurate appeal instructions. We will dismiss any appeal not filed by this deadline.

(b) The notice of appeal must be signed by the appellant, the appellant's attorney, or other qualified representative as provided in § 1.3 of this subtitle, and must be filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

**§ 4.322 What must an appeal contain?**

(a) Each appeal must contain a written statement of the errors of fact and law upon which the appeal is based. This statement may be included in either the notice of appeal filed under § 4.321(a) or an opening brief filed under § 4.311(a).

(b) The notice of appeal must include the names and addresses of the parties served.

**§ 4.323 Who receives service of the notice of appeal?**

(a) The appellant must deliver or mail the original notice of appeal to the Board.

(b) A copy of the notice of appeal must be served on the judge whose decision is being appealed, as well as on every other interested party.

(c) The notice of appeal filed with the Board must include a certification that service was made as required by this section.

■ 11. Revise redesignated §§ 4.234 through 4.236 to read as follows:

**§ 4.324 How is the record on appeal prepared?**

(a) On receiving a copy of the notice of appeal, the judge whose decision is being appealed must notify the agency concerned, which must return the duplicate record filed under subpart J of part 30 of this subtitle to the designated LTRO.

(b) The LTRO must conform the duplicate record to the original. Thereafter, the duplicate record will be available for inspection either at the LTRO or at the agency.

(c) If a transcript of the hearing was not prepared, the judge must have a transcript prepared and forwarded to the LTRO within 30 days after receiving a copy of the notice of appeal. The LTRO must include the original of the transcript in the record and make a copy of the transcript for the duplicate record.

(d) Within 30 days of the receipt of the transcript, the LTRO must prepare a table of contents for the record, certify that the record is complete, and forward the certified original record on appeal, together with the table of contents, to the Board by certified mail.

(e) Any party may file an objection to the record. The party must file his or her objection with the Board within 15 days after receiving the notice of docketing under § 4.325.

(f) For any of the following appeals, the judge must prepare an administrative record for the decision and a table of contents for the record and must forward them to the Board:

(1) An interlocutory appeal under § 4.28;

(2) An appeal from a decision under §§ 30.126 or 30.127 regarding modification of an inventory of an estate; or

(3) An appeal from a decision under § 30.124 determining that a person for whom a probate proceeding is sought to be opened is not deceased.

**§ 4.325 How will the appeal be docketed?**

The Board will docket the appeal on receiving the probate record from the LTRO or the administrative record from the judge, and will provide a notice of the docketing and the table of contents for the record to all interested parties as shown by the record on appeal. The docketing notice will specify the deadline for filing briefs and will cite the procedural regulations governing the appeal.

**§ 4.326 What happens to the record after disposition?**

(a) After the Board makes a decision other than a remand, it must forward to the designated LTRO:

(1) The record filed with the Board under § 4.324(d) or (f); and

(2) All documents added during the appeal proceedings, including any transcripts and the Board's decision.

(b) The LTRO must conform the duplicate record retained under § 4.324(b) to the original sent under paragraph (a) of this section and forward the duplicate record to the agency concerned.

■ 12. Add a new part 30 to read as follows:

## PART 30—INDIAN PROBATE HEARINGS PROCEDURES


**Subpart A—Scope of Part; Definitions**

Sec.
30.100 How do I use this part?
30.101 What definitions do I need to know?
30.102 Will the Secretary probate all the land or assets in an estate?

**Subpart B—Commencement of Probate Proceedings**

30.110 When does OHA commence a probate case?
30.111 How does OHA commence a probate case?
30.112 What must a complete probate file contain?
30.113 What will OHA do if it receives an incomplete probate file?
30.114 Will I receive notice of the probate proceeding?
30.115 May I review the probate record?

**Subpart C—Judicial Authority and Duties**

30.120 What authority does the judge have in probate cases?
30.121 May a judge appoint a master in a probate case?
30.122 Is the judge required to accept the master's recommended decision?
30.123 Will the judge determine matters of status and nationality?
30.124 When may a judge make a finding of death?
30.125 May a judge reopen a probate case to correct errors and omissions?
30.126 What happens if property was omitted from the inventory of the estate?
30.127 What happens if property was improperly included in the inventory?
30.128 What happens if an error in BIA's estate inventory is alleged?

**Subpart D—Recusal of a Judge or ADM**

30.130 How does a judge or ADM recuse himself or herself from a probate case?
30.131 How will the case proceed after the judge's or ADM's recusal?
30.132 May I appeal the judge's or ADM's recusal decision?

**Subpart E—Claims**

30.140 Where and when may I file a claim against the probate estate?
30.141 How must I file a claim against a probate estate?
30.142 Will a judge authorize payment of a claim from the trust estate if the decedent's non-trust estate was or is available?
30.143 Are there any categories of claims that will not be allowed?
30.144 May the judge authorize payment of the costs of administering the estate?
30.145 When can a judge reduce or disallow a claim?
30.146 What property is subject to claims?
30.147 What happens if there is not enough trust personalty to pay all the claims?
30.148 Will interest or penalties charged after the date of death be paid?

**Subpart F—Consolidation and Settlement Agreements**

30.150 What action will the judge take if the interested parties agree to settle matters among themselves?
30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?
30.152 May the parties to an agreement waive valuation of trust property?
30.153 Is an order approving an agreement considered a partition or sale transaction?

**Subpart G—Purchase at Probate**

30.160 What may be purchased at probate?
30.161 Who may purchase at probate?
30.162 Does property purchased at probate remain in trust or restricted status?
30.163 Is consent required for a purchase at probate?
30.164 What must I do to purchase at probate?
30.165 Whom will OHA notify of a request to purchase at probate?
30.166 What will the notice of the request to purchase at probate include?
30.167 How does OHA decide whether to approve a purchase at probate?
30.168 How will the judge allocate the proceeds from a sale?
30.169 What may I do if I do not agree with the appraised market value?
30.170 What may I do if I disagree with the judge's determination to approve a purchase at probate?
30.171 What happens when the judge grants a request to purchase at probate?
30.172 When must the successful bidder pay for the interest purchased?
30.173 What happens after the successful bidder submits payment?
30.174 What happens if the successful bidder does not pay within 30 days?
30.175 When does a purchased interest vest in the purchaser?

**Subpart H—Renunciation of Interest**

30.180 May I give up an inherited interest in trust or restricted property or trust personalty?
30.181 How do I renounce an inherited interest?
30.182 Who may receive a renounced interest in trust or restricted land?
30.183 Who may receive a renounced interest of less than 5 percent in trust or restricted land?
30.184 Who may receive a renounced interest in trust personalty?
30.185 May my designated recipient refuse to accept the interest?
30.186 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?
30.187 May I revoke my renunciation?
30.188 Does a renounced interest vest in the person who renounced it?

**Subpart I—Summary Probate Proceedings**

30.200 What is a summary probate proceeding?
30.201 What does a notice of a summary probate proceeding contain?
30.202 May I file a claim or renounce or disclaim an interest in the estate in a summary probate proceeding?
30.203 May I request that a formal probate proceeding be conducted instead of a summary probate proceeding?
30.204 What must a summary probate decision contain?
30.205 How do I seek review of a summary probate proceeding?
30.206 What happens after I file a request for de novo review?
30.207 What happens if nobody files for de novo review?

**Subpart J—Formal Probate Proceedings**

**Notice**

30.210 How will I receive notice of the formal probate proceeding?
30.211 Will the notice be published in a newspaper?
30.212 May I waive notice of the hearing or the form of notice?
30.213 What notice to a tribe is required in a formal probate proceeding?
30.214 What must a notice of hearing contain?

**Depositions, Discovery, and Prehearing Conference**

30.215 How may I obtain documents related to the probate proceeding?
30.216 How do I obtain permission to take depositions?
30.217 How is a deposition taken?
30.218 How may the transcript of a deposition be used?
30.219 Who pays for the costs of taking a deposition?
30.220 How do I obtain written interrogatories and admission of facts and documents?
30.221 May the judge limit the time, place, and scope of discovery?
30.222 What happens if a party fails to comply with discovery?
30.223 What is a prehearing conference?

**Hearings**

30.224 May a judge compel a witness to appear and testify at a hearing or deposition?
30.225 Must testimony in a probate proceeding be under oath or affirmation?
30.226 Is a record made of formal probate hearings?
30.227 What evidence is admissible at a probate hearing?
30.228 Is testimony required for self-proved wills, codicils, or revocations?

30.229 When will testimony be required for approval of a will, codicil, or revocation?
30.230 Who pays witnesses' costs?
30.231 May a judge schedule a supplemental hearing?
30.232 What will the official record of the probate case contain?
30.233 What will the judge do with the original record?
30.234 What happens if a hearing transcript has not been prepared?

**Decisions in Formal Proceedings**

30.235 What will the judge's decision in a formal probate proceeding contain?
30.236 What notice of the decision will the judge provide?
30.237 May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?
30.238 Does any distribution of the estate occur while a petition for rehearing is pending?
30.239 How will the judge decide a petition for rehearing?
30.240 May I submit another petition for rehearing?
30.241 When does the judge's decision on a petition for rehearing become final?
30.242 May a closed probate case be reopened?
30.243 How will the judge decide my petition for reopening?
30.244 What happens if the judge reopens the case?
30.245 When will the decision on reopening become final?

**Subpart K—Miscellaneous Provisions**

30.250 When does the anti-lapse provision apply?
30.251 What happens if an heir or devisee participates in the killing of the decedent?
30.252 May a judge allow fees for attorneys representing interested parties?
30.253 How must minors or other legal incompetents be represented?
30.254 What happens when a person dies without a valid will and has no heirs?

**Subpart L—Tribal Purchase of Interests Under Special Statutes**

30.260 What land is subject to a tribal purchase option at probate?
30.261 How does a tribe exercise its statutory option to purchase?
30.262 When may a tribe exercise its statutory option to purchase?
30.263 May a surviving spouse reserve a life estate when a tribe exercises its statutory option to purchase?
30.264 When must BIA furnish a valuation of a decedent's interests?
30.265 What determinations will a judge make with respect to a tribal purchase option?
30.266 When is a final decision issued?
30.267 What if I disagree with the probate decision regarding tribal purchase option?
30.268 May I demand a hearing regarding the tribal purchase option decision?
30.269 What notice of the hearing will the judge provide?
30.270 How will the hearing be conducted?
30.271 How must the tribe pay for the interests it purchases?
30.272 What are BIA's duties on payment by the tribe?
30.273 What action will the judge take to record title?
30.274 What happens to income from land interests during pendency of the probate?

**Authority:** 5 U.S.C. 301, 503; 25 U.S.C. 9, 372–74, 410, 2201 *et seq.*; 43 U.S.C. 1201, 1457.

*Cross reference:* For regulations pertaining to the processing of Indian probate matters within the Bureau of Indian Affairs, see 25 CFR part 15. For regulations pertaining to the appeal of decisions of the Probate Hearings Division, Office of Hearings and Appeals, to the Board of Indian Appeals, Office of Hearings and Appeals, see 43 CFR part 4, subpart D. For regulations generally applicable to proceedings before the Hearings Divisions and Appeal Boards of the Office of Hearings and Appeals, see 43 CFR part 4, subpart B.

## Subpart A—Scope of Part; Definitions

### § 30.100 How do I use this part?

(a) The following table is a guide to the relevant contents of this part by subject matter.

| For provisions relating to . . . | consult . . . |
|---|---|
| (1) All proceedings in part 30 | §§ 30.100 through 30.102. |
| (2) Claims against probate estate | §§ 30.140 through 30.148. |
| (3) Commencement of probate | §§ 30.110 through 30.115. |
| (4) Consolidation of interests | §§ 30.150 through 30.153. |
| (5) Formal probate proceedings before an administrative law judge or Indian probate judge. | §§ 30.210 through 30.246. |
| (6) Probate of trust estates of Indians who die possessed of trust property. | All sections except §§ 30.260 through 30.274. |
| (7) Purchases at probate | §§ 30.160 through 30.175. |
| (8) Renunciation of interests | §§ 30.180 through 30.188. |
| (9) Summary probate proceedings before an attorney decision maker | §§ 30.200 through 30.207. |
| (10) Tribal purchase of certain property interests of decedents under special laws applicable to particular tribes. | §§ 30.260 through 30.274. |

(b) Except as limited by the provisions of this part, the regulations in part 4, subparts A and B of this subtitle apply to these proceedings.

(c) The following provisions do not apply to Alaska property interests:

(1) § 30.151;

(2) §§ 30.160 through 30.175;

(3) § 30.182 through 30.185, except for § 30.184(c);

(4) § 30.213; and

(5) § 30.214(f) and (g).

### § 30.101 What definitions do I need to know?

*Act* means the Indian Land Consolidation Act and its amendments, including the American Indian Probate Reform Act of 2004 (AIPRA), Public Law 108–374, as codified at 25 U.S.C. 2201 *et seq.*

*Administrative law judge (ALJ)* means an administrative law judge with OHA appointed under the Administrative Procedure Act, 5 U.S.C. 3105.

*Affidavit* means a written declaration of facts by a person that is signed by that person, swearing or affirming under penalty of perjury that the facts declared are true and correct to the best of that person's knowledge and belief.

*Agency* means:

(1) The Bureau of Indian Affairs (BIA) agency office, or any other designated office in BIA, having jurisdiction over trust or restricted land and trust personalty; and

(2) Any office of a tribe that has entered into a contract or compact to fulfill the probate function under 25 U.S.C. 450f or 458cc.

*Attorney decision maker (ADM)* means an attorney with OHA who conducts a summary proceeding and renders a decision that is subject to de novo review by an administrative law judge or Indian probate judge.

*BIA* means the Bureau of Indian Affairs within the Department.

*BLM* means the Bureau of Land Management within the Department.

*Board* means the Interior Board of Indian Appeals within OHA.

*Chief ALJ* means the Chief Administrative Law Judge, Probate Hearings Division, OHA.

*Child* means a natural or adopted child.

*Codicil* means a supplement or addition to a will, executed with the same formalities as a will. It may explain, modify, add to, or revoke provisions in an existing will.

*Consolidation agreement* means a written agreement under the provisions of 25 U.S.C. 2206(e) or 2206(j)(9), entered during the probate process, approved by the judge, and implemented by the probate order, by which a decedent's heirs and devisees consolidate interests in trust or restricted land.

*Creditor* means any individual or entity that has a claim for payment from a decedent's estate.

*Day* means a calendar day.

*Decedent* means a person who is deceased.

*Decision or order* (or *decision and order*) means:

(1) A written document issued by a judge making determinations as to heirs, wills, devisees, and the claims of creditors, and ordering distribution of trust or restricted land or trust personalty;

(2) The decision issued by an ADM in a summary probate proceeding; or

(3) A decision issued by a judge finding that the evidence is insufficient to determine that a person is deceased by reason of unexplained absence.

*De novo review* means a process in which an administrative law judge or Indian probate judge, without regard to the decision previously issued in the case, will:

(1) Review all the relevant facts and issues in a probate case;

(2) Reconsider the evidence introduced at a previous hearing;

(3) Conduct a formal hearing as necessary or appropriate; and

(4) Issue a decision.

*Department* means the Department of the Interior.

*Deposition* means a proceeding in which a party takes testimony from a witness during discovery.

*Devise* means a gift of property by will. Also, to give property by will.

*Devisee* means a person or entity that receives property under a will.

*Discovery* means a process through which a party to a probate proceeding obtains information from another party. Examples of discovery include interrogatories, depositions, requests for admission, and requests for production of documents.

*Eligible heir* means, for the purposes of the Act, any of a decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood, and parents who are:

(1) Indian;

(2) Lineal descendents within two degrees of consanguinity of an Indian; or

(3) Owners of a trust or restricted interest in a parcel of land for purposes of inheriting—by descent, renunciation, or consolidation agreement—another trust or restricted interest in such a parcel from the decedent.

*Estate* means the trust or restricted land and trust personalty owned by the decedent at the time of death.

*Formal probate proceeding* means a proceeding, conducted by a judge, in which evidence is obtained through the testimony of witnesses and the receipt of relevant documents.

*Heir* means any individual or entity eligible to receive property from a decedent in an intestate proceeding.

*Individual Indian Money (IIM) account* means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary.

*Indian* means, for the purposes of the Act:

(1) Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any federally recognized Indian tribe, or is an owner (as of October 27, 2004) of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under 25 U.S.C. 479; or

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

*Indian probate judge (IPJ)* means an attorney with OHA, other than an ALJ, to whom the Secretary has delegated the authority to hear and decide Indian probate cases.

*Interested party* means:

(1) Any potential or actual heir;

(2) Any devisee under a will;

(3) Any person or entity asserting a claim against a decedent's estate;

(4) Any tribe having a statutory option to purchase the trust or restricted property interest of a decedent; or

(5) Any co-owner exercising a purchase option.

*Interrogatories* means written questions submitted to another party for responses as part of discovery.

*Intestate* means that the decedent died without a valid will as determined in the probate proceeding.

*Judge* means an ALJ or IPJ.

*Lockbox* means a centralized system within OST for receiving and depositing trust fund remittances collected by BIA.

*LTRO* means the Land Titles and Records Office within BIA.

*Master* means a person who has been specially appointed by a judge to assist with the probate proceedings.

*Minor* means an individual who has not reached the age of majority as defined by the applicable law.

*OHA* means the Office of Hearings and Appeals within the Department.

*OST* means the Office of the Special Trustee for American Indians within the Department.

*Per stirpes* means by right of representation, dividing an estate into equal shares based on the number of decedent's surviving children and predeceased children who left issue who survive the decedent. The share of a predeceased child of the decedent is divided equally among the predeceased child's surviving children.

*Probate* means the legal process by which applicable tribal, Federal, or State law that affects the distribution of a decedent's estate is applied in order to:

(1) Determine the heirs;

(2) Determine the validity of wills and determine devisees;

(3) Determine whether claims against the estate will be paid from trust personalty; and

(4) Order the transfer of any trust or restricted land or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive them.

*Purchase option at probate* means the process by which eligible purchasers can purchase a decedent's interest during the probate proceeding.

*Restricted property* means real property whose title is held by an Indian but which cannot be alienated or encumbered without the consent of the Secretary. For the purposes of probate proceedings, restricted property is treated as if it were trust property. Except as the law may provide otherwise, the term ''restricted property'' as used in this part does not include the restricted lands of the Five Civilized Tribes of Oklahoma or the Osage Nation.

*Secretary* means the Secretary of the Interior or an authorized representative.

*Summary probate proceeding* means the consideration of a probate file without a hearing. A summary probate proceeding may be conducted if the estate involves only an IIM account that does not exceed $5,000 in value on the date of the death of the decedent.

*Superintendent* means a BIA Superintendent or other BIA official,

including a field representative or one holding equivalent authority.

*Testate* means that the decedent executed a valid will as determined in the probate proceeding.

*Testator* means a person who has executed a valid will as determined in the probate proceeding.

*Trust personalty* means all tangible personal property, funds, and securities of any kind that are held in trust in an IIM account or otherwise supervised by the Secretary.

*Trust property* means real or personal property, or an interest therein, the title to which is held in trust by the United States for the benefit of an individual Indian or tribe.

*We* or *us* means the Secretary or an authorized representative as defined in this section.

*Will* means a written testamentary document that was executed by the decedent and attested to by two disinterested adult witnesses, and that states who will receive the decedent's trust or restricted property.

*You or I* means an interested party, as defined herein, with an interest in the decedent's trust estate unless a specific section states otherwise.

### § 30.102 Will the Secretary probate all the land or assets in an estate?

(a) We will probate only the trust or restricted land or trust personalty in an estate.

(b) We will not probate the following property:

(1) Real or personal property other than trust or restricted land or trust personalty in an estate of a decedent;

(2) Restricted land derived from allotments in the estates of members of the Five Civilized Tribes (Cherokee, Choctaw, Chickasaw, Creek, and Seminole) in Oklahoma; and

(3) Restricted interests derived from allotments made to Osage Indians in Oklahoma (Osage Nation) and Osage headright interests owned by Osage decedents.

(c) We will probate that part of the estate of a deceased member of the Five Civilized Tribes or Osage Nation who owned either:

(1) A trust interest in land; or

(2) A restricted interest in land derived from an individual Indian who was a member of a tribe other than the Five Civilized Tribes or Osage Nation.

## Subpart B—Commencement of Probate Proceedings

### § 30.110 When does OHA commence a probate case?

OHA commences probate of a trust estate when OHA receives a probate file from the agency.

### § 30.111 How does OHA commence a probate case?

OHA commences a probate case by confirming the case number assigned by BIA, assigning the case to a judge or ADM, and designating the case as a summary probate proceeding or formal probate proceeding.

### § 30.112 What must a complete probate file contain?

A probate file must contain the documents and information described in 25 CFR 15.202 and any other relevant information.

### § 30.113 What will OHA do if it receives an incomplete probate file?

If OHA determines that the probate file received from the agency is incomplete or lacks the certification described in 25 CFR 15.204, OHA may do any of the following:

(a) Request the missing information from the agency;

(b) Dismiss the case and return the probate file to the agency for further processing;

(c) Issue a subpoena, interrogatories, or requests for production of documents as appropriate to obtain the missing information; or

(d) Proceed with a hearing in the case.

### § 30.114 Will I receive notice of the probate proceeding?

(a) If the case is designated as a formal probate proceeding, OHA will send a notice of hearing to:

(1) Potential heirs and devisees named in the probate file;

(2) Those creditors whose claims are included in the probate file; and

(3) Other interested parties identified by OHA.

(b) In a case designated a summary probate proceeding, OHA will send a notice of the designation to potential heirs and devisees and will inform them that a formal probate proceeding may be requested instead of the summary probate proceeding.

### § 30.115 May I review the probate record?

After OHA receives the case, you may examine the probate record at the relevant office during regular business hours and make copies at your own expense. Access to records in the probate file is governed by 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.

## Subpart C—Judicial Authority and Duties

### § 30.120 What authority does the judge have in probate cases?

A judge who is assigned a probate case under this part has the authority to:

(a) Determine the manner, location, and time of any hearing conducted under this part, and otherwise to administer the cases;

(b) Determine whether an individual is deemed deceased by reason of extended unexplained absence or other pertinent circumstances;

(c) Determine the heirs of any Indian or eligible heir who dies intestate possessed of trust or restricted property;

(d) Approve or disapprove a will disposing of trust or restricted property;

(e) Accept or reject any full or partial renunciation of interest in either a testate or intestate proceeding;

(f) Approve or disapprove any consolidation agreement;

(g) Conduct sales at probate and provide for the distribution of interests in the probate decision and order;

(h) Allow or disallow claims by creditors;

(i) Order the distribution of trust property to heirs and devisees and determine and reserve the share to which any potential heir or devisee who is missing but not found to be deceased is entitled;

(j) Determine whether a tribe has jurisdiction over the trust or restricted property and, if so, the right of the tribe to receive a decedent's trust or restricted property under 25 U.S.C. 2206(a)(2)(B)(v), 2206(a)(2)(D)(iii)(IV), or other applicable law;

(k) Issue subpoenas for the appearance of persons, the testimony of witnesses, and the production of documents at hearings or depositions under 25 U.S.C. 374, on the judge's initiative or, within the judge's discretion, on the request of an interested party;

(l) Administer oaths and affirmations;

(m) Order the taking of depositions and determine the scope and use of deposition testimony;

(n) Order the production of documents and determine the scope and use of the documents;

(o) Rule on matters involving interrogatories and any other requests for discovery, including requests for admissions;

(p) Grant or deny stays, waivers, and extensions;

(q) Rule on motions, requests, and objections;

(r) Rule on the admissibility of evidence;

(s) Permit the cross-examination of witnesses;

(t) Appoint a guardian ad litem for any interested party who is a minor or found by the judge not to be competent to represent his or her own interests;

(u) Regulate the course of any hearing and the conduct of witnesses, interested

parties, attorneys, and attendees at a hearing;

(v) Determine and impose sanctions and penalties allowed by law; and

(w) Take any action necessary to preserve the trust assets of an estate.

**§ 30.121 May a judge appoint a master in a probate case?**

(a) In the exercise of any authority under this part, a judge may appoint a master to do all of the following:

(1) Conduct hearings on the record as to all or specific issues in probate cases as assigned by the judge;

(2) Make written reports including findings of fact and conclusions of law; and

(3) Propose a recommended decision to the judge.

(b) When the master files a report under this section, the master must also mail a copy of the report and recommended decision to all interested parties.

**§ 30.122 Is the judge required to accept the master's recommended decision?**

No, the judge is not required to accept the master's recommended decision.

(a) An interested party may file objections to the report and recommended decision within 30 days of the date of mailing. An objecting party must simultaneously mail or deliver copies of the objections to all other interested parties.

(b) Any other interested party may file responses to the objections within 15 days of the mailing or delivery of the objections. A responding party must simultaneously mail or deliver a copy of his or her responses to the objecting party.

(c) The judge will review the record of the proceedings heard by the master, including any objections and responses filed, and determine whether the master's report and recommended decision are supported by the evidence of record.

(1) If the judge finds that the report and recommended decision are supported by the evidence of record and are consistent with applicable law, the judge will enter an order adopting the recommended decision.

(2) If the judge finds that the report and recommended decision are not supported by the evidence of record, the judge may do any of the following:

(i) Remand the case to the master for further proceedings consistent with instructions in the remand order;

(ii) Make new findings of fact based on the evidence in the record, make conclusions of law, and enter a decision; or

(iii) Hear the case de novo, make findings of fact and conclusions of law, and enter a decision.

(3) The judge may find that the master's findings of fact are supported by the evidence in the record but the conclusions of law or the recommended decision is not consistent with applicable law. In this case, the judge will issue an order adopting the findings of fact, making conclusions of law, and entering a decision.

**§ 30.123 Will the judge determine matters of status and nationality?**

(a) The judge in a probate proceeding will determine:

(1) The status of eligible heirs or devisees as Indians;

(2) If relevant, the nationality or citizenship of eligible heirs or devisees; and

(3) Whether any of the Indian heirs or devisees with U.S. citizenship are individuals for whom the supervision and trusteeship of the United States has been terminated.

(b) A judge may make determinations under this section in a current probate proceeding or in a completed probate case after a reopening without regard to a time limit.

**§ 30.124 When may a judge make a finding of death?**

(a) A judge may make a finding that an heir, devisee, or person for whom a probate case has been opened is deceased, by reason of extended unexplained absence or other pertinent circumstances. The judge must include the date of death in the finding. The judge will make a finding of death only on:

(1) A determination from a court of competent jurisdiction; or

(2) Clear and convincing evidence.

(b) In any proceeding to determine whether a person is deceased, the following rebuttable presumptions apply:

(1) The absent person is presumed to be alive if credible evidence establishes that the absent person has had contact with any person or entity during the 6-year period preceding the hearing; and

(2) The absent person is presumed to be deceased if clear and convincing evidence establishes that no person or entity with whom the absent person previously had regular contact has had any contact with the absent person during the 6 years preceding the hearing.

**§ 30.125 May a judge reopen a probate case to correct errors and omissions?**

(a) On the written request of an interested party, or on the basis of the judge's own order, at any time, a judge has the authority to reopen a probate case to:

(1) Determine the correct identity of the original allottee, or any heir or devisee;

(2) Determine whether different persons received the same allotment;

(3) Decide whether trust patents covering allotments of land were issued incorrectly or to a non-existent person; or

(4) Determine whether more than one allotment of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) The judge will notify interested parties if a probate case is reopened and will conduct appropriate proceedings under this part.

**§ 30.126 What happens if property was omitted from the inventory of the estate?**

This section applies when, after issuance of a decision and order, it is found that trust or restricted property or an interest therein belonging to a decedent was not included in the inventory.

(a) A judge can issue an order modifying the inventory to include the omitted property for distribution under the original decision. The judge must furnish copies of any modification order to the agency and to all interested parties who share in the estate.

(b) When the property to be included takes a different line of descent from that shown in the original decision, the judge will:

(1) Conduct a hearing, if necessary, and issue a decision; and

(2) File a record of the proceeding with the designated LTRO.

(c) The judge's modification order or decision will become final at the end of the 30 days after the date on which it was mailed, unless a timely notice of appeal is filed with the Board within that period.

(d) Any interested party who is adversely affected by the judge's modification order or decision may appeal it to the Board within 30 days after the date on which it was mailed.

(e) The judge's modification order or decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the decision is mailed, and giving the Board's address. The judge's modification order or decision will become final at the end of this 30-day period, unless a timely notice of appeal is filed with the Board.

**§ 30.127 What happens if property was improperly included in the inventory?**

(a) When, after a decision and order in a formal probate proceeding, it is found that property has been improperly included in the inventory of an estate, the inventory must be modified to eliminate this property. A petition for modification may be filed by the superintendent of the agency where the property is located, or by any interested party. The petitioner must serve the petition on all parties whose interests may be affected by the requested modification.

(b) A judge will review the merits of the petition and the record of the title from the LTRO on which the modification is to be based, enter an appropriate decision, and give notice of the decision as follows:

(1) If the decision is entered without a formal hearing, the judge must give notice of the decision to all interested parties whose rights are affected.

(2) If a formal hearing is held, the judge must:

(i) Enter a final decision based on his or her findings, modifying or refusing to modify the property inventory; and

(ii) Give notice of the decision to all interested parties whose rights are affected.

(c) Where appropriate, the judge may conduct a formal hearing at any stage of the modification proceeding. The hearing must be scheduled and conducted under this part.

(d) The judge's decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the date on which the decision was mailed, and giving the Board's address. The judge's decision will become final at the end of this 30-day period, unless a timely notice of appeal is filed with the Board.

(e) The judge must forward the record of all proceedings under this section to the designated LTRO.

**§ 30.128 What happens if an error in BIA's estate inventory is alleged?**

This section applies when, during a probate proceeding, an interested party alleges that the estate inventory prepared by BIA is inaccurate and should be corrected.

(a) Alleged inaccuracies may include, but are not limited to, the following:

(1) Trust property interests should be removed from the inventory because the decedent executed a gift deed or gift deed application during the decedent's lifetime, and BIA had not, as of the time of death, determined whether to approve the gift deed or gift deed application;

(2) Trust property interests should be removed from the inventory because a deed through which the decedent acquired the property is invalid;

(3) Trust property interests should be added to the inventory; and

(4) Trust property interests included in the inventory are improperly described, although an erroneous recitation of acreage alone is not considered an improper description.

(b) When an error in the estate inventory is alleged, the OHA deciding official will refer the matter to BIA for resolution under 25 CFR parts 150, 151, or 152 and the appeal procedures at 25 CFR part 2.

(1) If BIA makes a final determination resolving the inventory challenge before the judge issues a final decision in the probate proceeding, the probate decision will reflect the inventory determination.

(2) If BIA does not make a final determination resolving the inventory challenge before the judge issues a final decision in the probate proceeding, the final probate decision will:

(i) Include a reference to the pending inventory challenge; and

(ii) Note that the probate decision is subject to administrative modification once the inventory dispute has been resolved.

## Subpart D—Recusal of a Judge or ADM

**§ 30.130 How does a judge or ADM recuse himself or herself from a probate case?**

If a judge or ADM must recuse himself or herself from a probate case under § 4.27(c) of this title, the judge or ADM must immediately file a certificate of recusal in the file of the case and notify the Chief ALJ, all interested parties, any counsel in the case, and the affected BIA agencies. The judge or ADM is not required to state the reason for recusal.

**§ 30.131 How will the case proceed after the judge's or ADM's recusal?**

Within 30 days of the filing of the certificate of recusal, the Chief ALJ will appoint another judge or ADM to hear the case, and will notify the parties identified in § 30.130 of the appointment.

**§ 30.132 May I appeal the judge's or ADM's recusal decision?**

(a) If you have filed a motion seeking disqualification of a judge or ADM under § 4.27(c)(2) of this title and the judge or ADM denies the motion, you may seek immediate review of the denial by filing a request with the Chief ALJ under § 4.27(c)(3) of this title.

(b) If a judge or ADM recuses himself from a probate case, you may not seek review of the recusal.

## Subpart E—Claims

**§ 30.140 Where and when may I file a claim against the probate estate?**

You may file a claim against the trust estate of an Indian with BIA or, after the agency transfers the probate file to OHA, with OHA.

(a) In a formal probate proceeding, you must file your claim before the conclusion of the first hearing. Claims that are not filed by the conclusion of the first hearing are barred.

(b) In a summary probate proceeding, if you are a devisee or eligible heir, you must file your claim with OHA within 30 days after the mailing of the notice of summary probate proceeding. Claims of creditors who are not devisees or eligible heirs will not be considered in a summary probate proceeding unless they were filed with the agency before it transferred the probate file to OHA.

**§ 30.141 How must I file a claim against a probate estate?**

You must file your claim under 25 CFR 15.302 through 15.305.

**§ 30.142 Will a judge authorize payment of a claim from the trust estate if the decedent's non-trust estate was or is available?**

The judge will not authorize payment of a claim from trust or restricted property if the judge determines that the decedent's non-trust estate was or is available to pay the claim. This provision does not apply to a claim that is secured by trust or restricted property.

**§ 30.143 Are there any categories of claims that will not be allowed?**

(a) Claims for care will not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(b) A claim will not be allowed if it:

(1) Has existed for such a period as to be barred by the applicable statute of limitations at date of decedent's death;

(2) Is a tort claim that has not been reduced to judgment in a court of competent jurisdiction;

(3) Is unliquidated; or

(4) Is from a government entity and relates to payments for:

(i) General assistance, welfare, unemployment compensation or similar benefits; or

(ii) Social Security Administration supplemental security income or old-age, disability, or survivor benefits.

**§ 30.144 May the judge authorize payment of the costs of administering the estate?**

On motion of the superintendent or an interested party, the judge may authorize payment of the costs of administering the estate as they arise and before the allowance of any claims against the estate.

**§ 30.145 When can a judge reduce or disallow a claim?**

The judge has discretion to decide whether part or all of an otherwise valid claim is unreasonable, and if so, to reduce the claim to a reasonable amount or disallow the claim in its entirety. If a claim is reduced, the judge will order payment only of the reduced amount.

**§ 30.146 What property is subject to claims?**

Except as prohibited by law, all intangible trust personalty of a decedent on hand or accrued at the date of death may be used for the payment of claims, including:

(a) IIM account balances;

(b) Bonds;

(c) Unpaid judgments; and

(d) Accounts receivable.

**§ 30.147 What happens if there is not enough trust personalty to pay all the claims?**

If, as of the date of death, there was not enough trust personalty to pay all allowed claims, the judge may order them paid on a pro rata basis. The unpaid balance of any claims will not be enforceable against the estate after the estate is closed.

**§ 30.148 Will interest or penalties charged after the date of death be paid?**

Interest or penalties charged against claims after the date of death will not be paid.

## Subpart F—Consolidation and Settlement Agreements

**§ 30.150 What action will the judge take if the interested parties agree to settle matters among themselves?**

(a) A judge may approve a settlement agreement among interested parties resolving any issue in the probate proceeding if the judge finds that:

(1) All parties to the agreement are advised as to all material facts;

(2) All parties to the agreement understand the effect of the agreement on their rights; and

(3) It is in the best interest of the parties to settle.

(b) In considering the proposed settlement agreement, the judge may consider evidence of the respective values of specific items of property and all encumbrances.

(c) If the judge approves the settlement agreement under paragraph (a) of this section, the judge will issue an order approving the settlement agreement and distributing the estate in accordance with the agreement.

**§ 30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?**

The devisees or eligible heirs may consolidate interests under 25 U.S.C. 2206(e) in trust property already owned by the heirs or under 25 U.S.C. 2206(j)(9) in property from the inventory of the decedent's estate, or both.

(a) A judge may approve a written agreement among devisees or eligible heirs in a probate case to consolidate the interests of a decedent's devisees or eligible heirs.

(1) To accomplish a consolidation, the agreement may include conveyances among decedent's devisees or eligible heirs of:

(i) Interests in trust or restricted land in the decedent's trust inventory; and

(ii) Interests of the devisees or eligible heirs in trust or restricted land which are not part of the decedent's trust inventory.

(2) The parties must offer evidence sufficient to satisfy the judge of the percentage of ownership held and offered by a party.

(3) If the decedent's devisees or eligible heirs enter into an agreement, the parties to the agreement are not required to comply with the Secretary's rules and requirements otherwise applicable to conveyances by deed.

(b) If the judge approves an agreement, the judge will issue an order distributing the estate in accordance with the agreement.

(c) In order to approve an agreement, the judge must find that:

(1) The agreement to consolidate is voluntary;

(2) All parties to the agreement know the material facts;

(3) All parties to the agreement understand the effect of the agreement on their rights; and

(4) The agreement accomplishes consolidation.

(d) An interest included in an approved agreement may not be purchased at probate without consent of the owner of the consolidated interest.

**§ 30.152 May the parties to an agreement waive valuation of trust property?**

The parties to a settlement agreement or a consolidation agreement may waive valuation of trust property otherwise required by regulation or the Secretary's rules and requirements. If the parties waive valuation, the waiver must be included in the written agreement.

**§ 30.153 Is an order approving an agreement considered a partition or sale transaction?**

An order issued by a judge approving a consolidation or settlement agreement will not be considered a partition or sale transaction under 25 CFR part 152.

## Subpart G—Purchase at Probate

**§ 30.160 What may be purchased at probate?**

An eligible purchaser may purchase, during the probate of a trust or restricted estate, all or part of the estate of a person who died on or after June 20, 2006.

(a) Any interest in trust or restricted property, including a life estate that is part of the estate (i.e., a life estate owned by the decedent but measured by the life of someone who survives the decedent), may be purchased at probate with the following exceptions:

(1) If an interest is included in an approved consolidation agreement, that interest may not be purchased at probate without consent of the owner of the consolidated interest; and

(2) An interest that a devisee will receive under a valid will cannot be purchased without the consent of the devisee.

(b) A purchase option must be exercised before a decision or order is entered and must be included as part of the order in the estate.

**§ 30.161 Who may purchase at probate?**

An eligible purchaser is any of the following:

(a) Any devisee or eligible heir who is taking an interest in the same parcel of land in the probate proceeding;

(b) Any person who owns an undivided trust or restricted interest in the same parcel of land;

(c) The Indian tribe with jurisdiction over the parcel containing the interest; or

(d) The Secretary on behalf of the tribe.

**§ 30.162 Does property purchased at probate remain in trust or restricted status?**

Yes. The property interests purchased at probate must remain in trust or restricted status.

**§ 30.163 Is consent required for a purchase at probate?**

(a) Consent is required for a purchase at probate if both of the following conditions are met:

(1) If the interest in trust or restricted property meets the criteria in § 30.160(a)(1) or (2); and

(2) If the interest an heir will receive by intestate succession in the parcel subject to the probate proceeding meets either of the following criteria:

(i) It is 5 percent or more of the entire undivided ownership interest in the parcel; or

(ii) It is less than 5 percent of the entire undivided ownership interest in the parcel and the heir was residing on the parcel on the date of the decedent's death.

(b) A devisee's consent is always required for a purchase at probate.

**§ 30.164 What must I do to purchase at probate?**

Any eligible purchaser must submit a written request to OHA to purchase at probate before the decision or order is issued.

**§ 30.165 Who will OHA notify of a request to purchase at probate?**

OHA will provide notice of a request to purchase at probate as shown in the following table:

| OHA will provide notice to . . . | By . . . |
|---|---|
| (a) The heirs or devisees and the Indian tribe with jurisdiction over the interest. | First class mail. |
| (b) The BIA agency with jurisdiction over the interest | First class mail. |
| (c) All parties who have submitted a written request for purchase | First class mail. |
| (d) To all other eligible purchasers | Posting written notice in:<br>(1) At least five conspicuous places in the vicinity of the place of the hearing; and<br>(2) One conspicuous place at the agency with jurisdiction over the parcel. |

**§ 30.166 What will the notice of the request to purchase at probate include?**

The notice under § 30.165 will include:

(a) The type of sale;

(b) The date, time, and place of the sale;

(c) A description of the interest to be sold; and

(d) The appraised market value, determined in accordance with § 30.167(b), of the parcel containing the interest to be sold, a description of the interest to be sold, and an estimate of the market value allocated to the interest being sold.

**§ 30.167 How does OHA decide whether to approve a purchase at probate?**

(a) OHA will approve a purchase at probate if an eligible purchaser submits a bid in an amount equal to or greater than the market value of the interest. OHA will sell the interest to the eligible purchaser submitting the highest such bid.

(b) The market value of the interest to be sold at probate must be based on an appraisal that meets the standards in the Uniform Standards for Professional Appraisal Practice (USPAP), or on a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214.

**§ 30.168 How will the judge allocate the proceeds from a sale?**

(a) The judge will allocate the proceeds of sale among the heirs based on the fractional ownership interests in the parcel.

(b) For the sale of an interest subject to a life estate, the judge must use the ratios in 25 CFR part 179 to allocate the proceeds of the sale among the holder of the life estate and the holders of any remainder interests.

**§ 30.169 What may I do if I do not agree with the appraised market value?**

(a) If you are the heir whose interest is to be sold or a potential purchaser and you disagree with the appraised market value, you may:

(1) File a written objection with OHA within 30 days after the date on which the notice provided under § 30.165 was mailed, stating the reasons for the objection; and

(2) Submit any supporting documentation showing why the market value should be modified within 15 days after filing a written objection.

(b) The judge will consider your objection, make a determination of the market value, determine whether to approve the purchase under § 30.167, and notify all interested parties. The determination must include a notice stating that interested parties who are adversely affected may file written objections and request an interlocutory appeal to the Board as provided in § 30.170.

**§ 30.170 What may I do if I disagree with the judge's determination to approve a purchase at probate?**

(a) If you are adversely affected by the judge's determination to approve a purchase at probate under § 30.167(a), you may file a written objection with the judge within 15 days after the mailing of a determination under § 30.169(b).

(1) The written objection must state the reasons for the objection and request an interlocutory appeal of the determination to the Board.

(2) You must serve a copy of the written objection on the other interested parties and the agencies, stating that you have done so in your written objection.

(b) If the objection is timely filed, the judge must forward a certified copy of the complete record in the case to the Board, together with a table of contents for the record, for review of the determination. The judge will not issue the decision in the probate case until the Board has issued its decision on interlocutory review of the determination.

(c) If the objection is not timely filed, the judge will issue an order denying the request for review as untimely and will furnish copies of the order to the interested parties and the agencies. If you disagree with the decision of the judge as to whether your objection was timely filed, you may file a petition for rehearing under § 30.237 after the judge issues a decision under § 30.235.

**§ 30.171 What happens when the judge grants a request to purchase at probate?**

When the judge grants a request to purchase at probate, the judge will:

(a) Notify all bidders by first class mail; and

(b) Notify OST, the agency that prepared the probate file, and the agency having jurisdiction over the interest sold, including the following information:

(1) The estate involved;

(2) The parcel and interest sold;

(3) The identity of the successful bidder; and

(4) The amount of the bid.

**§ 30.172 When must the successful bidder pay for the interest purchased?**

The successful bidder must pay to OST, by cashier's check or money order via the lockbox, or by electronic funds transfer, the full amount of the purchase price within 30 days after the mailing of the notice of successful bid.

**§ 30.173 What happens after the successful bidder submits payment?**

(a) When OST receives payment, it will notify OHA, and the judge will enter an order approving the sale and directing the LTRO to record the transfer of title of the interest to the successful bidder. The order will state the date of the title transfer, which is the date payment was received.

(b) OST will deposit the payment in the decedent's estate account.

**§ 30.174 What happens if the successful bidder does not pay within 30 days?**

(a) If the successful bidder fails to pay the full amount of the bid within 30 days, the sale will be canceled and the interest in the trust or restricted property will be distributed as determined by the judge.

(b) The time for payment may not be extended.

(c) Any partial payment received from the successful bidder will be returned.

**§ 30.175 When does a purchased interest vest in the purchaser?**

An interest in trust or restricted property purchased under this subpart is considered to have vested in the purchaser on the date specified in § 30.173(a).

## Subpart H—Renunciation of Interest

**§ 30.180 May I give up an inherited interest in trust or restricted property or trust personalty?**

You may renounce an inherited or devised interest in trust or restricted property, including a life estate, or in trust personalty if you are 18 years old and not under a legal disability.

**§ 30.181 How do I renounce an inherited interest?**

To renounce an interest under § 30.180, you must file with the judge, before the issuance of the final order in the probate case, a signed and acknowledged declaration specifying the interest renounced.

(a) In your declaration, you may retain a life estate in a specified interest in trust or restricted land and renounce the remainder interest, or you may renounce the complete interest.

(b) If you renounce an interest in trust or restricted land, you may either:

(1) Designate an eligible person or entity meeting the requirements of § 30.182 or § 30.183 as the recipient; or

(2) Renounce without making a designation.

(c) If you choose to renounce your interests in favor of a designated recipient, the judge must notify the designated recipient.

**§ 30.182 Who may receive a renounced interest in trust or restricted land?**

(a) If the interest renounced is an interest in land, you may renounce only in favor of:

(1) An eligible heir of the decedent;

(2) A person eligible to be a devisee of the interest, if you are a devisee of the interest under a valid will; or

(3) The tribe with jurisdiction over the interest.

(b) For purposes of paragraph (a)(2) of this section, a person eligible to be a devisee of the interest is:

(1) A lineal descendant of the testator;

(2) A person who owns a preexisting undivided trust or restricted interest in the same parcel;

(3) Any Indian; or

(4) The tribe with jurisdiction over the interest.

**§ 30.183 Who may receive a renounced interest of less than 5 percent in trust or restricted land?**

You may renounce an interest in trust or restricted land that is not disposed of by a valid will and that represents less than 5 percent of the entire undivided ownership of a parcel of land only in favor of:

(a) One other eligible heir;

(b) One Indian who is related to you by blood;

(c) One co-owner of another trust or restricted interest in the same parcel; or

(d) The Indian tribe with jurisdiction over the interest.

**§ 30.184 Who may receive a renounced interest in trust personalty?**

(a) You may renounce an interest in trust personalty in favor of any person or entity.

(b) The Secretary will maintain and continue to manage trust personalty transferred by renunciation to:

(1) A lineal descendant of the testator;

(2) A tribe; or

(3) Any Indian.

(c) The Secretary will directly disburse and distribute trust personalty transferred by renunciation to a person or entity other than those listed in paragraph (b) of this section.

**§ 30.185 May my designated recipient refuse to accept the interest?**

Yes. Your designated recipient may refuse to accept the interest, in which case the renounced interest passes to the devisees or heirs of the decedent as if you had predeceased the decedent. The refusal must be made in writing and filed with the judge before the judge issues the final order in the probate case.

**§ 30.186 Are renunciations that predate the American Indian Probate Reform Act of 2004 valid?**

Any renunciation filed and included as part of a probate decision or order issued before the effective date of the American Indian Probate Reform Act of 2004 remains valid.

**§ 30.187 May I revoke my renunciation?**

A written renunciation is irrevocable after the judge enters the final order in the probate proceeding. A revocation will not be effective unless the judge actually receives it before entry of a final order.

**§ 30.188 Does a renounced interest vest in the person who renounced it?**

No. An interest in trust or restricted property renounced under § 30.181 is not considered to have vested in the renouncing heir or devisee, and the renunciation is not considered a transfer by gift of the property renounced.

(a) If the renunciation directs the interest to an eligible person or entity, the interest passes directly to that person or entity.

(b) If the renunciation does not direct the interest to an eligible person or entity, the renounced interest passes to the heirs of the decedent as if the person renouncing the interest had predeceased the decedent, or if there are no other heirs, to the residuary devisees.

## Subpart I—Summary Probate Proceedings

**§ 30.200 What is a summary probate proceeding?**

(a) A summary probate proceeding is the disposition of a probate case without a formal hearing on the basis of the probate file received from the agency. A summary probate proceeding may be conducted by a judge or an ADM, as determined by the supervising judge.

(b) A decedent's estate may be processed summarily if the estate involves only cash and the total value of the estate does not exceed $5,000 on the date of death.

**§ 30.201 What does a notice of a summary probate proceeding contain?**

The notice of summary probate proceeding under § 30.114(b) will contain the following:

(a) Notice of the right of any interested party to request that OHA handle the probate case as a formal probate proceeding;

(b) A summary of the proposed distribution of the decedent's estate, a statement of the IIM account balance, and a copy of the death certificate;

(c) A notice that the only claims that will be considered are those from

eligible heirs or devisees, or from any person or entity who filed a claim with BIA before the transfer of the probate file to OHA, with a copy of any such claim;

(d) A notice that an interested party may renounce or disclaim an interest, in writing, either generally or in favor of a designated person or entity; and

(e) Any other information that OHA determines to be relevant.

**§ 30.202 May I file a claim or renounce or disclaim an interest in the estate in a summary probate proceeding?**

(a) Claims that have been filed with the agency before the probate file is transferred to OHA will be considered in a summary probate proceeding.

(b) If you are a devisee or eligible heir, you may also file a claim with OHA as a creditor within 30 days after the mailing of the notice of the summary probate proceeding.

(c) You may renounce or disclaim an interest in the estate within 30 days after the mailing of the notice of the summary probate.

**§ 30.203 May I request that a formal probate proceeding be conducted instead of a summary probate proceeding?**

Yes. Interested parties who are devisees or eligible heirs have 30 days after the mailing of the notice to file a written request for a formal probate hearing.

**§ 30.204 What must a summary probate decision contain?**

The written decision in a summary probate proceeding must be in the form of findings of fact and conclusions of law, with a proposed decision and order for distribution. The judge or ADM must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The decision must satisfy the requirements of this section.

(a) Each decision must contain one of the following:

(1) If the decedent did not leave heirs or devisees a statement to that effect; or

(2) If the decedent left heirs or devisees:

(i) The names of each heir or devisee and their relationships to the decedent;

(ii) The distribution of shares to each heir or devisee; and

(iii) The names of the recipients of renounced or disclaimed interests.

(b) Each decision must contain all of the following:

(1) Citations to the law of descent and distribution under which the decision is made;

(2) A statement allowing or disallowing claims against the estate under this part, and an order directing the amount of payment for all approved claims;

(3) A statement approving or disapproving any renunciation;

(4) A statement advising all interested parties that they have a right to seek de novo review under § 30.205, and that, if they fail to do so, the decision will become final 30 days after it is mailed; and

(5) A statement of whether the heirs or devisees are:

(i) Indian;

(ii) Non-Indian but eligible to hold property in trust status; or

(iii) Non-Indian and ineligible to hold property in trust status.

(c) In a testate case only, the decision must contain a statement that:

(1) Approves or disapproves a will;

(2) Interprets provisions of the approved will; and

(3) Describes the share each devisee is to receive, subject to any encumbrances.

**§ 30.205 How do I seek review of a summary probate proceeding?**

(a) If you are adversely affected by the written decision in a summary probate proceeding, you may seek de novo review of the case. To do this, you must file a request with the OHA office that issued the decision within 30 days after the date the decision was mailed.

(b) The request for de novo review must be in writing and signed, and must contain the following information:

(1) The name of the decedent;

(2) A description of your relationship to the decedent;

(3) An explanation of what errors you allege were made in the summary probate decision; and

(4) An explanation of how you are adversely affected by the decision.

**§ 30.206 What happens after I file a request for de novo review?**

(a) Within 10 days of receiving a request for de novo review, OHA will notify the agency that prepared the probate file, all other affected agencies, and all interested parties of the de novo review, and assign the case to a judge.

(b) The judge will review the merits of the case, conduct a hearing as necessary or appropriate under the regulations in this part, and issue a new decision under this part.

**§ 30.207 What happens if nobody files for de novo review?**

If no interested party requests de novo review within 30 days of the date of the written decision, it will be final for the Department. OHA will send:

(a) The complete original record and the final order to the agency that prepared the probate file; and

(b) A copy of any relevant portions of the record to any other affected agency.

## Subpart J—Formal Probate Proceedings

### Notice

**§ 30.210 How will I receive notice of the formal probate proceeding?**

OHA will provide notice of the formal probate proceeding under § 30.114(a) by mail and by posting. A posted and published notice may contain notices for more than one hearing, and need only specify the names of the decedents, the captions of the cases and the dates, times, places, and purposes of the hearings.

(a) The notice must:

(1) Be sent by first class mail;

(2) Be sent and posted at least 21 days before the date of the hearing; and

(3) Include a certificate of mailing with the date of mailing, signed by the person mailing the notice.

(b) A presumption of actual notice exists with respect to any person to whom OHA sent a notice under paragraph (a) of this section, unless the notice is returned by the Postal Service as undeliverable to the addressee.

(c) OHA must post the notice in each of the following locations:

(1) Five or more conspicuous places in the vicinity of the designated place of hearing; and

(2) The agency with jurisdiction over each parcel of trust or restricted property in the estate.

(d) OHA may also post the notice in other places and on other reservations as the judge deems appropriate.

**§ 30.211 Will the notice be published in a newspaper?**

The judge may cause advance notice of hearing to be published in a newspaper of general circulation in the vicinity of the designated place of hearing. The cost of publication may be paid from the assets of the estate under § 30.144.

**§ 30.212 May I waive notice of the hearing or the form of notice?**

You may waive your right to notice of the hearing and the form of notice by:

(a) Appearing at the hearing and participating in the hearing without objection; or

(b) Filing a written waiver with the judge before the hearing.

**§ 30.213 What notice to a tribe is required in a formal probate proceeding?**

(a) In probate cases in which the decedent died on or after June 20, 2006, the judge must notify any tribe with jurisdiction over the trust or restricted land in the estate of the pendency of a proceeding.

(b) A certificate of mailing of a notice of probate hearing to the tribe at its

record address will be conclusive evidence that the tribe had notice of the decedent's death, of the probate proceedings, and of the right to purchase.

**§ 30.214 What must a notice of hearing contain?**

The notice of hearing under § 30.114(a) must:

(a) State the name of the decedent and caption of the case;

(b) Specify the date, time, and place that the judge will hold a hearing to determine the heirs of the decedent and, if a will is offered for probate, to determine the validity of the will;

(c) Name all potential heirs of the decedent known to OHA, and, if a will is offered for probate, the devisees under the will and the attesting witnesses to the will;

(d) Cite this part as the authority and jurisdiction for holding the hearing;

(e) Advise all persons who claim to have an interest in the estate of the decedent, including persons having claims against the estate, to be present at the hearing to preserve the right to present evidence at the hearing;

(f) Include notice of the opportunity to consolidate interests at the probate hearing, including that the heirs or devisees may propose additional interests for consolidation, and include notice of the opportunity for renunciation either generally or in favor of a designated recipient;

(g) In estates for decedents whose date of death is on or after June 20, 2006, include notice of the possibilities of purchase and sale of trust or restricted property by heirs, devisees, co-owners, a tribe, or the Secretary; and

(h) State that the hearing may be continued to another time and place.

## Depositions, Discovery, and Prehearing Conference

**§ 30.215 How may I obtain documents related to the probate proceeding?**

(a) You may make a written demand to produce documents for inspection and copying. This demand:

(1) May be made at any stage of the proceeding before the conclusion of the hearing;

(2) May be made on any other party to the proceeding or on a custodian of records concerning interested parties or their trust property;

(3) Must be made in writing, and a copy must be filed with the judge; and

(4) May demand copies of any documents, photographs, or other tangible things that are relevant to the issues, not privileged, and in another party's or custodian's possession, custody, or control.

(b) Custodians of official records will furnish and reproduce documents, or permit their reproduction, under the rules governing the custody and control of the records.

(1) Subject to any law to the contrary, documents may be made available to any member of the public upon payment of the cost of producing the documents, as determined reasonable by the custodians of the records.

(2) Information within federal records will be maintained and disclosed as provided in 25 U.S.C. 2216(e), the Privacy Act, and the Freedom of Information Act.

**§ 30.216 How do I obtain permission to take depositions?**

(a) You may take the sworn testimony of any person by deposition on oral examination for the purpose of discovery or for use as evidence at a hearing:

(1) On stipulation of the parties; or

(2) By order of the judge.

(b) To obtain an order from the judge for the taking of a deposition, you must file a motion that sets forth:

(1) The name and address of the proposed witness;

(2) The reasons why the deposition should be taken;

(3) The name and address of the person qualified under § 30.217(a) to take depositions; and

(4) The proposed time and place of the examination, which must be at least 20 days after the date of the filing of the motion.

(c) An order for the taking of a deposition must be served upon all interested parties and must state:

(1) The name of the witness;

(2) The time and place of the examination, which must be at least 15 days after the date of the order; and

(3) The name and address of the officer before whom the examination is to be made.

(d) The officer and the time and place specified in paragraphs (c)(2) and (c)(3) of this section need not be the same as those requested in the motion under paragraph (b) of this section.

(e) You may request that the judge issue a subpoena for the witness to be deposed under § 30.224.

**§ 30.217 How is a deposition taken?**

(a) The witness to be deposed must appear before the judge or before an officer authorized to administer oaths by the laws of the United States or by the laws of the place of the examination, as specified in:

(1) The judge's order under § 30.216(c); or

(2) The stipulation of the parties under § 30.216(a)(1).

(b) The witness must be examined under oath or affirmation and subject to cross-examination. The witness's testimony must be recorded by the officer or someone in the officer's presence.

(c) When the testimony is fully transcribed, it must be submitted to the witness for examination and must be read to or by him or her, unless examination and reading are waived.

(1) Any changes in form or substance that the witness desires to make must be entered on the transcript by the officer, with a statement of the reasons given by the witness for making them.

(2) The transcript must then be signed by the witness, unless the interested parties by stipulation waive the signing, or the witness is unavailable or refuses to sign.

(3) If the transcript is not signed by the witness, the officer must sign it and state on the record the fact of the waiver, the unavailability of the witness, or the refusal to sign together with the reason given, if any. The transcript may then be used as if it were signed, unless the judge determines that the reason given for refusal to sign requires rejection of the transcript in whole or in part.

(d) The officer must certify on the transcript that the witness was duly sworn by the officer and that the transcript is a true record of the witness's testimony. The officer must then hand deliver or mail the original and two copies of the transcript to the judge.

**§ 30.218 How may the transcript of a deposition be used?**

A transcript of a deposition taken under this part may be offered by any party or the judge in a hearing if the judge finds that the evidence is otherwise admissible and if either:

(a) The witness is unavailable; or

(b) The interest of fairness is served by allowing the transcript to be used.

**§ 30.219 Who pays for the costs of taking a deposition?**

The party who requests the taking of a deposition must make arrangements for payment of any costs incurred. The judge may assign the costs in the order.

**§ 30.220 How do I obtain written interrogatories and admission of facts and documents?**

(a) You may serve on any other interested party written interrogatories and requests for admission of facts and documents if:

(1) The interrogatories and requests are served in sufficient time to permit answers to be filed before the hearing,

or as otherwise ordered by the judge; and

(2) Copies of the interrogatories and requests are filed with the judge.

(b) A party receiving interrogatories or requests served under paragraph (a) of this section must:

(1) Serve answers upon the requesting party within 30 days after the date of service of the interrogatories or requests, or within another deadline agreed to by the parties or prescribed by the judge; and

(2) File a copy of the answers with the judge.

**§ 30.221 May the judge limit the time, place, and scope of discovery?**

Yes. The judge may limit the time, place, and scope of discovery either:

(a) On timely motion by any interested party, if that party also gives notice to all interested parties and shows good cause; or

(b) When the judge determines that limits are necessary to prevent delay of the proceeding or prevent undue hardship to a party or witness.

**§ 30.222 What happens if a party fails to comply with discovery?**

(a) If a party fails to respond to a request for admission, the facts for which admission was requested will be deemed to be admitted, unless the judge finds good cause for the failure to respond.

(b) If a party fails without good cause to comply with any other discovery under this part or any order issued, the judge may:

(1) Draw inferences with respect to the discovery request adverse to the claims of the party who has failed to comply with discovery or the order, or

(2) Make any other ruling that the judge determines just and proper.

(c) Failure to comply with discovery includes failure to:

(1) Produce a document as requested;

(2) Appear for examination;

(3) Respond to interrogatories; or

(4) Comply with an order of the judge.

**§ 30.223 What is a prehearing conference?**

Before a hearing, the judge may order the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses to avoid excessively cumulative evidence;

(d) Facilitate agreements disposing of all or any of the issues in dispute; or

(e) Resolve such other matters as may simplify and shorten the hearing.

## Hearings

**§ 30.224 May a judge compel a witness to appear and testify at a hearing or deposition?**

(a) The judge can issue a subpoena for a witness to appear and testify at a hearing or deposition and to bring documents or other material to the hearing or deposition.

(1) You may request that the judge issue a subpoena for the appearance of a witness to testify. The request must state the name, address, and telephone number or other means of contacting the witness, and the reason for the request. The request must be timely. The requesting party must mail the request to all other interested parties and to the witness at the time of filing.

(2) The request must specify the documents or other material sought for production under the subpoena.

(3) The judge will grant or deny the request in writing and mail copies of the order to all the interested parties and the witness.

(4) A person subpoenaed may seek to avoid a subpoena by filing a motion to quash with the judge and sending copies to the interested parties.

(b) Anyone whose legal residence is more than 100 miles from the hearing location may ask the judge to excuse his or her attendance under subpoena. The judge will inform the interested parties in writing of the request and the judge's decision on the request in writing in a timely manner.

(c) A witness who is subpoenaed to a hearing under this section is entitled to the fees and allowances provided by law for a witness in the courts of the United States (see 28 U.S.C. 1821).

(d) If a subpoenaed person fails or refuses to appear at a hearing or to testify, the judge may file a petition in United States District Court for issuance of an order requiring the subpoenaed person to appear and testify.

**§ 30.225 Must testimony in a probate proceeding be under oath or affirmation?**

Yes. Testimony in a probate proceeding must be under oath or affirmation.

**§ 30.226 Is a record made of formal probate hearings?**

(a) The judge must make a verbatim recording of all formal probate hearings. The judge will order the transcription of recordings of hearings as the judge determines necessary.

(b) If the judge orders the transcription of a hearing, the judge will make the transcript available to interested parties on request.

**§ 30.227 What evidence is admissible at a probate hearing?**

(a) A judge conducting probate proceedings under this part may admit any written, oral, documentary, or demonstrative evidence that is:

(1) Relevant, reliable, and probative;

(2) Not privileged under Federal law; and

(3) Not unduly repetitious or cumulative.

(b) The judge may exclude evidence if its probative value is substantially outweighed by the risk of undue confusion of the issues or delay.

(c) Hearsay evidence is admissible. The judge may consider the fact that evidence is hearsay when determining its probative value.

(d) A judge may admit a copy of a document into evidence or may require the admission of the original document. After examining the original document, the judge may substitute a copy of the original document and return the original.

(e) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the judge and the parties in interpreting and applying the provisions of this section.

(f) The judge may take official notice of any public record of the Department and of any matter of which federal courts may take judicial notice.

(g) The judge will determine the weight given to any evidence admitted.

(h) Any party objecting to the admission or exclusion of evidence must concisely state the grounds. A ruling on every objection must appear in the record.

(i) There is no privilege under this part for any communication that:

(1) Occurred between a decedent and any attorney advising a decedent; and

(2) Pertained to a matter relevant to an issue between parties, all of whom claim through the decedent.

**§ 30.228 Is testimony required for self-proved wills, codicils, or revocations?**

The judge may approve a self-proved will, codicil, or revocation, if uncontested, and order distribution, with or without the testimony of any attesting witness.

**§ 30.229 When will testimony be required for approval of a will, codicil, or revocation?**

(a) The judge will require testimony if someone contests the approval of a self-proved will, codicil, or revocation, or submits a non-self-proved will for approval. In any of these cases, the attesting witnesses who are in the reasonable vicinity of the place of hearing must appear and be examined, unless they are unable to appear and

testify because of physical or mental infirmity.

(b) If an attesting witness is not in the reasonable vicinity of the place of hearing or is unable to appear and testify because of physical or mental infirmity, the judge may:

(1) Order the deposition of the attesting witness at a location reasonably near the residence of the witness;

(2) Admit the testimony of other witnesses to prove the testamentary capacity of the testator and the execution of the will; and

(3) As evidence of the execution, admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them.

**§ 30.230 Who pays witnesses' costs?**

Interested parties who desire a witness to testify at a hearing must make their own financial and other arrangements for the witness.

**§ 30.231 May a judge schedule a supplemental hearing?**

Yes. A judge may schedule a supplemental hearing if he or she deems it necessary.

**§ 30.232 What will the official record of the probate case contain?**

The official record of the probate case will contain:

(a) A copy of the posted public notice of hearing showing the posting certifications;

(b) A copy of each notice served on interested parties with proof of mailing;

(c) The record of the evidence received at the hearing, including any transcript made of the testimony;

(d) Claims filed against the estate;

(e) Any wills, codicils, and revocations;

(f) Inventories and valuations of the estate;

(g) Pleadings and briefs filed;

(h) Interlocutory orders;

(i) Copies of all proposed or accepted settlement agreements, consolidation agreements, and renunciations and acceptances of renounced property;

(j) In the case of sale of estate property at probate, copies of notices of sale, appraisals and objections to appraisals, requests for purchases, all bids received, and proof of payment;

(k) The decision, order, and the notices thereof; and

(l) Any other documents or items deemed material by the judge.

**§ 30.233 What will the judge do with the original record?**

(a) The judge must send the original record to the designated LTRO under 25 CFR part 150.

(b) The judge must also send a copy of:

(1) The order to the agency originating the probate, and

(2) The order and inventory to other affected agencies.

**§ 30.234 What happens if a hearing transcript has not been prepared?**

When a hearing transcript has not been prepared:

(a) The recording of the hearing must be retained in the office of the judge issuing the decision until the time allowed for rehearing or appeal has expired; and

(b) The original record returned to the LTRO must contain a statement indicating that no transcript was prepared.

## Decisions in Formal Proceedings

**§ 30.235 What will the judge's decision in a formal probate proceeding contain?**

The judge must decide the issues of fact and law involved in any proceeding and issue a written decision that meets the requirements of this section.

(a) In all cases, the judge's decision must:

(1) Include the name, birth date, and relationship to the decedent of each heir or devisee;

(2) State whether the heir or devisee is Indian or non-Indian;

(3) State whether the heir or devisee is eligible to hold property in trust status;

(4) Provide information necessary to identify the persons or entities and property interests involved in any settlement or consolidation agreement, renunciations of interest, and purchases at probate;

(5) Approve or disapprove any renunciation, settlement agreement, consolidation agreement, or purchase at probate;

(6) Allow or disallow claims against the estate under this part, and order the amount of payment for all approved claims;

(7) Include the probate case number that has been assigned to the case in any case management or tracking system then in use within the Department;

(8) Make any other findings of fact and conclusions of law necessary to decide the issues in the case; and

(9) Include the signature of the judge and date of the decision.

(b) In a case involving a will, the decision must include the information in paragraph (a) of this section and must also:

(1) Approve or disapprove the will;

(2) Interpret provisions of an approved will as necessary; and

(3) Describe the share each devisee is to receive under an approved will, subject to any encumbrances.

(c) In all intestate cases, including a case in which a will is not approved, and any case in which an approved will does not dispose of all of the decedent's trust or restricted property, the decision will include the information in paragraph (a) of this section and must also:

(1) Cite the law of descent and distribution under which the decision is made; and

(2) Describe the distribution of shares to which the heirs are entitled; and

(3) Include a determination of any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs.

**§ 30.236 What notice of the decision will the judge provide?**

When the judge issues a decision, the judge must mail or deliver a notice of the decision, together with a copy of the decision, to each affected agency and to each interested party. The notice must include a statement that interested parties who are adversely affected have a right to file a petition for rehearing with the judge within 30 days after the date on which notice of the decision was mailed. The decision will become final at the end of this 30-day period, unless a timely petition for rehearing is filed with the judge.

**§ 30.237 May I file a petition for rehearing if I disagree with the judge's decision in the formal probate hearing?**

(a) If you are adversely affected by the decision, you may file with the judge a written petition for rehearing within 30 days after the date on which the decision was mailed under § 30.236.

(b) If the petition is based on newly discovered evidence, it must:

(1) Be accompanied by one or more affidavits of witnesses stating fully the content of the new evidence; and

(2) State the reasons for the failure to discover and present that evidence at the hearings held before the issuance of the decision.

(c) A petition for rehearing must state specifically and concisely the grounds on which it is based.

(d) The judge must forward a copy of the petition for rehearing to the affected agencies.

**§ 30.238 Does any distribution of the estate occur while a petition for rehearing is pending?**

The agencies must not initiate payment of claims or distribute any portion of the estate while the petition is pending, unless otherwise directed by the judge.

**§ 30.239 How will the judge decide a petition for rehearing?**

(a) If proper grounds are not shown, or if the petition is not timely filed, the judge will:

(1) Issue an order denying the petition for rehearing and including the reasons for denial; and

(2) Furnish copies of the order to the petitioner, the agencies, and the interested parties.

(b) If the petition appears to show merit, the judge must:

(1) Cause copies of the petition and supporting papers to be served on all persons whose interest in the estate might be adversely affected if the petition is granted;

(2) Allow all persons served a reasonable, specified time in which to submit answers or legal briefs in response to the petition; and

(3) Consider, with or without a hearing, the issues raised in the petition.

(c) The judge may affirm, modify, or vacate the former decision.

(d) On entry of a final order, the judge must distribute the order as provided in this part. The order must include a notice stating that interested parties who are adversely affected have a right to appeal the final order to the Board, within 30 days of the date on which the order was mailed, and giving the Board's address.

**§ 30.240 May I submit another petition for rehearing?**

No. Successive petitions for rehearing are not permitted. The jurisdiction of the judge terminates when he or she issues a decision finally disposing of a petition for rehearing, except for:

(a) The issuance of necessary orders nunc pro tunc to correct clerical errors in the decision; and

(b) The reopening of a case under this part.

**§ 30.241 When does the judge's decision on a petition for rehearing become final?**

The decision on a petition for rehearing will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part and § 4.320 of this chapter.

**§ 30.242 May a closed probate case be reopened?**

(a) The judge may reopen a closed probate case as shown in the following table.

| How the case can be reopened | Applicable deadline | Standard for reopening the case |
|---|---|---|
| (1) On the judge's own motion. | (i) Initiated within 3 years after the date of the original decision. | To correct an error of fact or law in the original decision. |
| | (ii) Initiated more than 3 years after the date of the original decision. | To correct an error of fact or law in the original decision which, if not corrected, would result in a manifest injustice. |
| (2) On a petition filed by the agency. | (i) Filed within 3 years after the date of the original decision. | To correct an error of fact or law in the original decision. |
| | (ii) Filed more than 3 years after the date of the original decision. | To correct an error of fact or law in the original decision which, if not corrected, would result in a manifest injustice. |
| (2) On a petition filed by the interested party. | (i) Filed within 3 years after the date of the original decision and within 1 year after the petitioner's discovery of an alleged error. | To correct an error of fact or law in the original decision. |
| | (ii) Filed more than 3 years after the date of the original decision and within 1 year after the petitioner's discovery of an alleged error. | To correct an error of act or law in the original decision which, if not corrected, would result in a manifest injustice. |

(b) All grounds for reopening must be set forth fully in the petition.

(c) A petition filed by an interested party must:

(1) Include all relevant evidence, in the form of documents or affidavits, concerning when the petitioner discovered the alleged error; and

(2) If the grounds for reopening are based on alleged errors of fact, be supported by affidavit.

**§ 30.243 How will the judge decide my petition for reopening?**

(a) If the judge finds that proper grounds are not shown, the judge will issue an order denying the petition for reopening and giving the reasons for the denial. An order denying reopening must include a notice stating that interested parties who are adversely affected have a right to appeal the order to the Board within 30 days of the date on which the order was mailed, and giving the Board's address. Copies of the judge's decision must be mailed to the petitioner, the agencies, and those persons whose rights would be affected.

(b) If the petition appears to show merit, the judge must cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be affected if the petition is granted. They may respond to the petition by filing answers, cross-petitions, or briefs. The filings must be made within the time periods set by the judge.

**§ 30.244 What happens if the judge reopens the case?**

On reopening, the judge may affirm, modify, or vacate the former decision.

(a) The final order on reopening must include a notice stating that interested parties who are adversely affected have a right to appeal the final order to the Board within 30 days of the date on which the order was mailed, and giving the Board's address.

(b) Copies of the judge's decision on reopening must be mailed to the petitioner and to all persons who received copies of the petition.

(c) By order directed to the agency, the judge may suspend further distribution of the estate or income during the reopening proceedings.

(d) The judge must file the record made on a reopening petition with the designated LTRO and must furnish a duplicate record to the affected agencies.

**§ 30.245 When will the decision on reopening become final?**

The decision on reopening will become final on the expiration of the 30 days allowed for the filing of a notice of appeal, as provided in this part.

## Subpart K—Miscellaneous Provisions

**§ 30.250 When does the anti-lapse provision apply?**

(a) The following table illustrates how the anti-lapse provision applies.

| If . . . | And . . . | Then . . . |
|---|---|---|
| A testator devises trust property to any of his or her grandparents or to the lineal descendant of a grandparent. | The devisee dies before the testator, leaving lineal descendants. | The lineal descendants take the right, title, or interest given by the will per stirpes. |

(b) For purposes of this section, relationship by adoption is equivalent to relationship by blood.

**§ 30.251 What happens if an heir or devisee participates in the killing of the decedent?**

Any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent may not take, directly or indirectly, any inheritance or devise under the decedent's will. This person will be treated as if he or she had predeceased the decedent.

**§ 30.252 May a judge allow fees for attorneys representing interested parties?**

(a) Except for attorneys representing creditors, the judge may allow fees for attorneys representing interested parties.

(1) At the discretion of the judge, these fees may be charged against the interests of the party represented or as a cost of administration.

(2) Petitions for allowance of fees must be filed before the close of the last hearing.

(b) Nothing in this section prevents an attorney from petitioning for additional fees to be considered at the disposition of a petition for rehearing and again after an appeal on the merits. An order allowing attorney fees is subject to a petition for rehearing and to an appeal.

**§ 30.253 How must minors or other legal incompetents be represented?**

Minors and other legal incompetents who are interested parties must be represented by legally appointed guardians, or by guardians ad litem appointed by the judge. In appropriate cases, the judge may order the payment of fees to the guardian ad litem from the assets of the estate.

**§ 30.254 What happens when a person dies without a valid will and has no heirs?**

The judge will determine whether a person with trust or restricted property died intestate and without heirs, and the judge will determine whether 25 U.S.C. 2206(a) applies, as shown in the following table.

| If . . . | Then . . . | Or . . . |
|---|---|---|
| (a) 25 U.S.C. 2206(a) applies. | The judge will order distribution of the property under § 2206(a)(2)(B)(v) through (a)(2)(C). | The judge will order distribution of the property under § 2206(a)(2)(D)(iii)(IV) through (V). |
| (b) 25 U.S.C. 2206(a) does not apply. | If the trust or restricted property is not on the public domain, the judge will order the escheat of the property under 25 U.S.C. 373a. | If the trust or restricted property is on the public domain, the judge will order the escheat of the property under 25 U.S.C. 373b. |

## Subpart L—Tribal Purchase of Interests Under Special Statutes

**§ 30.260 What land is subject to a tribal purchase option at probate?**

Sections 30.260 through 30.274 apply to formal Indian probate proceedings that relate to the tribal purchase of a decedent's interests in trust and restricted land under the statutes shown in the following table.

| Location of trust or restricted land | Statutes governing purchase |
|---|---|
| (a) Yakima Reservation or within the area ceded by the Treaty of June 9, 1855 (12 Stat. 1951). | The Act of December 31, 1970 (Pub. L. 91–627; 84 Stat. 1874; 25 U.S.C. 607 (1976)), amending section 7 of the Act of August 9, 1946 (60 Stat. 968). |
| (b) Warm Springs Reservation or within the area ceded by the Treaty of June 25, 1855 (12 Stat. 37). | The Act of August 10, 1972 (Pub. L. 92–377; 86 Stat. 530). |
| (c) Nez Perce Indian Reservation or within the area ceded by the Treaty of June 11, 1855 (12 Stat. 957). | The Act of September 29, 1972 (Pub. L. 92–443; 86 Stat. 744). |

**§ 30.261 How does a tribe exercise its statutory option to purchase?**

(a) To exercise its option to purchase, the tribe must file with the agency:

(1) A written notice of purchase; and

(2) A certification that the tribe has mailed copies of the notice on the same date to the judge and to the affected heirs or devisees.

(b) A tribe may purchase all or part of the available interests specified in the probate decision. A tribe may not, however, claim an interest less than decedent's total interest in any one individual tract.

**§ 30.262 When may a tribe exercise its statutory option to purchase?**

(a) A tribe may exercise its statutory option to purchase:

(1) Within 60 days after mailing of the probate decision unless a petition for rehearing has been filed under § 30.237 or a demand for hearing has been filed under § 30.268; or

(2) If a petition for rehearing or a demand for hearing has been filed, within 20 days after the date of the decision on rehearing or hearing, whichever is applicable, provided the decision on rehearing or hearing is favorable to the tribe.

(b) On failure to timely file a notice of purchase, the right to distribution of all unclaimed interests will accrue to the heirs or devisees.

**§ 30.263 May a surviving spouse reserve a life estate when a tribe exercises its statutory option to purchase?**

Yes. When the heir or devisee whose interests are subject to the tribal purchase option is a surviving spouse, the spouse may reserve a life estate in one-half of the interests.

(a) To reserve a life estate, the spouse must, within 30 days after the tribe has exercised its option to purchase the interest, file with the agency both:

(1) A written notice to reserve a life estate; and

(2) A certification that copies of the notice have been mailed on the same date to the judge and the tribe.

(b) Failure to file the notice on time, as required by paragraph (a)(1) of this section, constitutes a waiver of the option to reserve a life estate.

**§ 30.264 When must BIA furnish a valuation of a decedent's interests?**

(a) BIA must furnish a valuation report of the decedent's interests when the record reveals to the agency:

(1) That the decedent owned interests in land located on one or more of the reservations designated in § 30.260; and

(2) That one or more of the probable heirs or devisees who may receive the interests either:

(i) Is not enrolled in the tribe of the reservation where the land is located; or

(ii) Does not have the required blood quantum in the tribe to hold the interests against a claim made by the tribe.

(b) When required by paragraph (a) of this section, BIA must furnish a valuation report in the probate file when it is submitted to OHA. Interested parties may examine and copy, at their expense, the valuation report at the agency.

(c) The valuation must be made on the basis of the fair market value of the property, as of the date of decedent's death.

(d) If there is a surviving spouse whose interests may be subject to the tribal purchase option, the valuation must include the value of a life estate based on the life of the surviving spouse in one-half of such interests.

**§ 30.265 What determinations will a judge make with respect to a tribal purchase option?**

(a) If a tribe files a written notice of purchase under § 30.261(a), a judge will determine:

(1) The entitlement of a tribe to purchase a decedent's interests in trust or restricted land under the applicable statute;

(2) The entitlement of a surviving spouse to reserve a life estate in one-half of the surviving spouse's interests that have been purchased by a tribe; and

(3) The fair market value of such interests, as determined by an appraisal or other valuation method developed by the Secretary under 25 U.S.C. 2214, including the value of any life estate reserved by a surviving spouse.

(b) In making a determination under paragraph (a)(1) of this section, the following issues will be determined by the official tribal roll, which is binding on the judge:

(1) Enrollment or refusal of the tribe to enroll a specific individual; and

(2) Specification of blood quantum, where pertinent.

(c) For good cause shown, the judge may stay the probate proceeding to permit an interested party who is adversely affected to pursue an enrollment application, grievance, or appeal through the established procedures applicable to the tribe.

**§ 30.266 When is a final decision issued?**

This section applies when a decedent is shown to have owned land interests in any one or more of the reservations designated in § 30.260.

(a) The probate proceeding relative to the determination of heirs, approval or disapproval of a will, and the claims of creditors must first be concluded as final for the Department under this part. This decision is referred to in this section as the ''probate decision.''

(b) At the formal probate hearing, a finding must be made on the record showing those interests in land, if any, that are subject to the tribal purchase option.

(1) The finding must be included in the probate decision and must state:

(i) The apparent rights of the tribe as against affected heirs or devisees; and

(ii) The right of a surviving spouse whose interests are subject to the tribal purchase option to reserve a life estate in one-half of the interests.

(2) If the finding is that there are no interests subject to the tribal purchase option, the decision must so state.

(3) A copy of the probate decision, together with a copy of the valuation report, must be distributed to all interested parties under § 30.236.

**§ 30.267 What if I disagree with the probate decision regarding tribal purchase option?**

If you are an interested party who is adversely affected by the probate decision, you may, within 30 days after the date on which the probate decision was mailed, file with the judge a written petition for rehearing under this part.

**§ 30.268 May I demand a hearing regarding the tribal purchase option decision?**

Yes. You may file with the judge a written demand for hearing if you are an interested party who is adversely affected by the exercise of the tribal purchase option or by the valuation of the interests in the valuation report.

(a) The demand for hearing must be filed by whichever of the following deadlines is applicable:

(1) Within 30 days after the date of the probate decision;

(2) Within 30 days after the date of the decision on rehearing; or

(3) Within 20 days after the date on which the tribe exercises its option to purchase available interests.

(b) The demand for hearing must:

(1) Include a certification that copies of the demand have been mailed on the same date to the agency and to each interested party; and

(2) State specifically and concisely the grounds on which it is based.

**§ 30.269 What notice of the hearing will the judge provide?**

On receiving a demand for hearing, the judge must:

(a) Set a time and place for the hearing after expiration of the 30-day period fixed for the filing of the demand for hearing as provided in § 30.268; and

(b) Mail a notice of the hearing to all interested parties not less than 20 days in advance of the hearing.

**§ 30.270 How will the hearing be conducted?**

(a) At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests in the valuation report will have the burden of proving his or her position.

(b) On conclusion of the hearing, the judge will issue a decision that determines all of the issues including, but not limited to:

(1) The fair market value of the interests purchased by the tribe; and

(2) Any adjustment to the fair market value made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests.

(c) The decision must include a notice stating that interested parties who are adversely affected have a right to appeal the decision to the Board within 30 days after the date on which the decision was mailed, and giving the Board's address.

(d) The judge must:

(1) Forward the complete record relating to the demand for hearing to the LTRO as provided in § 30.233;

(2) Furnish a duplicate record thereof to the agency; and

(3) Mail a notice of such action together with a copy of the decision to each interested party.

**§ 30.271 How must the tribe pay for the interests it purchases?**

(a) A tribe must pay the full fair market value of the interests purchased, as set forth in the appraisal or other valuation report, or as determined after hearing under § 30.268, whichever is applicable.

(b) Payment must be made within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever is later.

**§ 30.272 What are BIA's duties on payment by the tribe?**

On payment by the tribe of the interests purchased, the Superintendent must:

(a) Issue a certificate to the judge that payment has been made; and

(b) File with the certificate all supporting documents required by the judge.

**§ 30.273 What action will the judge take to record title?**

After receiving the certificate and supporting documents, the judge will:

(a) Issue an order that the United States holds title to the interests in trust for the tribe;

(b) File the complete record, including the decision, with the LTRO as provided in § 30.233;

(c) Furnish a duplicate copy of the record to the agency; and

(d) Mail a notice of the action together with a copy of the decision to each interested party.

**§ 30.274 What happens to income from land interests during pendency of the probate?**

During the pendency of the probate, there may be income received or accrued from the land interests purchased by the tribe, including the payment from the tribe. This income will be credited to the estate and paid to the heirs. For purposes of this section, pendency of the probate ends on the date of transfer of title to the United States in trust for the tribe under § 30.273.

Dated: October 2, 2008.

**James E. Cason,**

*Associate Deputy Secretary, Department of the Interior.*

[FR Doc. E8–26487 Filed 11–12–08; 8:45 am]

BILLING CODE 4310–W7–P

Federal Register

Thursday,
November 13, 2008

# Part III

# Department of Education

## Compliance Agreement; Notice

## DEPARTMENT OF EDUCATION

### Compliance Agreement

**AGENCY:** Department of Education.

**ACTION:** Notice of written findings and compliance agreement with the Hawaii Department of Education.

**SUMMARY:** This notice is being published in the **Federal Register** consistent with section 457(b)(2) of the General Education Provisions Act (GEPA). Section 457 of GEPA authorizes the U.S. Department of Education (the Department) to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply with the applicable program requirements until a future date and that a compliance agreement is a viable means of bringing about such compliance.

On August 29, 2008, the Department entered into a compliance agreement with the Hawaii Department of Education (HIDOE). Section 457(b)(2) of GEPA requires the Department to publish written findings leading to a compliance agreement, with a copy of the compliance agreement, in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Dr. Valeria Ford, U.S. Department of Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., room 3W118, Washington, DC 20202–6132. Telephone: (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** Title I of the Elementary and Secondary Education Act of 1965 (Title I), as amended by the No Child Left Behind Act of 2001, requires each State receiving Title I funds to satisfy certain requirements.

Under Title I, each State was required to adopt academic content and student academic achievement standards in at least mathematics, reading or language arts, and, beginning in the 2005–2006 school year, science. These standards must include the same knowledge and levels of achievement expected of all public school students in the State. Content standards must specify what all students are expected to know and be able to do; contain coherent and rigorous content; and encourage the teaching of advanced skills. Achievement standards must be aligned with the State's academic content standards and must describe at least three levels of proficiency to determine how well students in each grade are mastering the content standards. A State must provide descriptions of the competencies associated with each student's academic achievement level and must determine the assessment scores (''cut scores'') that differentiate among the achievement levels.

Title I also requires each State to implement a student assessment system used to evaluate whether students are mastering the subject material reflected in the State's academic content standards. By the 2005–2006 school year, States were required to administer mathematics and reading or language arts assessments yearly during grades 3–8 and once during grades 10–12. Further, beginning with the 2007–2008 school year, each State was required to administer a science assessment in at least one grade in each of the following grade spans: 3–5, 6–9, and 10–12.

In addition to a general assessment, Title I requires States to develop and administer at least one alternate assessment for students with disabilities who cannot participate in the general assessment, with or without accommodations. An alternate assessment may be based on grade-level achievement standards, alternate achievement standards, or modified achievement standards. Like the general assessment, any alternate assessment must satisfy the requirements for high technical quality, including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards.

In August 2007, HIDOE submitted evidence of its standards and assessment system. The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) submitted that evidence to a panel of experts for peer review. Following that review, the Assistant Secretary concluded that HIDOE's standards and assessment system did not meet a number of the Title I requirements.

Section 454 of GEPA, 20 U.S.C. 1234c, sets out the remedies available to the Department when it determines that a recipient ''is failing to comply substantially with any requirement of law'' applicable to Federal program funds the Department administers. Specifically, the Department is authorized to—

(1) Withhold funds;

(2) Compel compliance through a cease and desist order;

(3) Enter into a compliance agreement with the recipient; or

(4) Take any other action authorized by law. 20 U.S.C. 1234c(a).

In a letter dated October 30, 2007, to Patricia Hamamoto, Superintendent of Education for HIDOE, the Assistant Secretary notified HIDOE that, to remain eligible to receive Title I funds, it would have to enter into a compliance agreement with the Department. The purpose of a compliance agreement is ''to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements.'' 20 U.S.C. 1234f(a). In order to enter into a compliance agreement with a recipient, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means for bringing about such compliance.

In accordance with the requirements of section 457(b) of GEPA, 20 U.S.C. 1234f(b), on March 27, 2008, Department officials conducted a public hearing in Hawaii to assess whether a compliance agreement with HIDOE might be appropriate. Patricia Hamamoto, the Superintendent of Education for HIDOE, and Dr. Robert Campbell, the Director of Program Support and Development for HIDOE, testified at this hearing. The Department considered the testimony provided at the March 2008 public hearing and all other relevant information and materials and concluded that HIDOE would not be able to correct its non-compliance with Title I standards and assessment requirements immediately.

On August 29, 2008, the Assistant Secretary issued written findings, holding that compliance by HIDOE with the Title I standards and assessment requirements is genuinely not feasible until a future date. Under Title I, HIDOE was required to implement its final assessment system no later than the 2005–2006 school year. The evidence that HIDOE submitted in August 2007 indicated that, well after the statutory deadline had passed, its standards and assessment system still did not fully meet Title I requirements. In addition, due to the enormity and complexity of the work needed to bring HIDOE's standards and assessment system into full compliance, HIDOE cannot

immediately comply with all of the Title I requirements.

The Assistant Secretary also determined that a compliance agreement represents a viable means of bringing about compliance because of the steps HIDOE has already taken to comply and the plan it has developed for further action. The compliance agreement sets out the action plan that HIDOE must implement to come into compliance with Title I requirements. This plan, coupled with specific reporting requirements, will allow the Assistant Secretary to monitor closely HIDOE's progress in meeting the terms of the compliance agreement.

The Superintendent of Education for HIDOE, Patricia Hamamoto, signed the compliance agreement on July 30, 2008, and the Assistant Secretary signed the compliance agreement on August 29, 2008.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Assistant Secretary's written findings is set forth as Appendix A and the compliance agreement is set forth as Appendix B of this notice.

*Electronic Access to This Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have the 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 a 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.*

(Authority: 20 U.S.C. 1234c, 1234f)

Dated: November 6, 2008.

**Kerri L. Briggs,**

*Assistant Secretary for Elementary and Secondary Education.*

**BILLING CODE 4000–01–P**

# Appendix A

*Written Findings of the Assistant Secretary*

*For Elementary and Secondary Education*

*Regarding the Compliance Agreement*

*Between*

*the United States Department of Education*

*and the Hawaii Department of Education*

# WRITTEN FINDINGS OF THE ASSISTANT SECRETARY FOR ELEMENTARY AND SECONDARY EDUCATION REGARDING THE COMPLIANCE AGREEMENT BETWEEN THE UNITED STATES DEPARTMENT OF EDUCATION AND THE HAWAII DEPARTMENT OF EDUCATION

## I. Introduction

The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the U.S. Department of Education (Department) has determined, pursuant to 20 U.S.C. §§ 1234c and 1234f, that the Hawaii Department of Education (HIDOE) has failed to comply substantially with certain requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (Title I), as amended by the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 *et seq.*, and that it is not feasible for HIDOE to achieve full compliance immediately. Specifically, the Assistant Secretary has determined that HIDOE did not meet, within the statutory timeframe, a number of the Title I requirements concerning the technical quality, alignment, and reporting of results for the Hawaii State Assessment, the State's general assessment; the Hawaiian Aligned Portfolio Assessment, the State's Hawaiian native language assessment; and the Hawaii State Alternate Assessment, the State's alternate assessment for students with the most significant cognitive disabilities who cannot take the general assessment even with accommodations.

For the following reasons, the Assistant Secretary has concluded that it would be appropriate to enter into a compliance agreement with HIDOE to bring it into full compliance as soon as feasible. During the effective period of the compliance agreement, which ends three years from the date of these findings, HIDOE will be eligible to receive Title I funds as long as it complies with the terms and conditions of the agreement as well as the provisions of Title I and other applicable Federal statutory and regulatory requirements.

## II. Relevant Statutory and Regulatory Provisions

### A. Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001

Title I of the Elementary and Secondary Education Act of 1965 (Title I), as amended by the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 *et seq.*, provides financial assistance, through State educational agencies, to local educational agencies to provide services in high-poverty schools to students who are failing or at risk of failing to meet the State's student academic achievement standards. Under Title I, each State, including the District of Columbia and Puerto Rico, was required to adopt academic content and student academic achievement standards in at least mathematics, reading or language arts, and science. These standards must include the same knowledge and levels of achievement expected of all public school students in the State. Content standards must specify what all students are expected to know and be able to do; contain coherent and rigorous content; and encourage the teaching of advanced skills. Achievement standards must be aligned with the State's academic content standards and must describe at least three levels of proficiency to determine how well students in each grade are mastering the content standards. A State must provide descriptions of the competencies

associated with each student's academic achievement level and must determine the assessment scores ("cut scores") that differentiate among the achievement levels.

Each State was also required to implement a student assessment system used to evaluate whether students are mastering the subject material reflected in the State's academic content standards. By the 2005–2006 school year, States were required to administer mathematics and reading or language arts assessments yearly during grades 3-8 and once during grades 10-12. Further, beginning with the 2007–2008 school year, each State was required to administer a science assessment in at least one grade in each of the following grade spans: 3-5, 6-9, and 10-12. A State's assessment system must:

- Be the same assessment system used to measure the achievement of all public school students in the State;
- Be designed to provide coherent information about student attainment of State academic content standards across grades and subjects;
- Provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient (LEP) students;
- Be aligned with the State's academic content and student academic achievement standards;
- Express student results in terms of the State's student academic achievement standards;
- Be valid, reliable, and of adequate technical quality for the purposes for which they are used and be consistent with nationally recognized professional and technical standards;
- Involve multiple measures of student academic achievement, including measures that assess higher order thinking skills and understanding of challenging content;
- Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal family beliefs and attitudes;
- Enable results to be disaggregated by gender, each major racial and ethnic group, migrant status, students with disabilities, English proficiency status, and economically disadvantaged students;
- Provide individual student reports; and
- Enable itemized score analyses.

20 U.S.C. § 6311(b)(3); 34 C.F.R. § 200.2.

In addition to a general assessment, States were required to develop and administer at least one alternate assessment for students with disabilities who cannot participate in the general assessment, with or without accommodations. 34 C.F.R. § 200.6(a)(2). An alternate assessment may be based on grade-level academic achievement standards, alternate academic achievement standards, or modified academic achievement standards. Like the general assessment, any alternate assessment must satisfy the requirements for high technical quality, including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards.

B. The General Education Provisions Act

The General Education Provisions Act (GEPA) provides a number of options when the Assistant Secretary determines a recipient of Department funds is "failing to

comply substantially with any requirement of law applicable to such funds." 20 U.S.C. § 1234c. In such a case, the Assistant Secretary is authorized to:

(1) Withhold funds;
(2) Compel compliance through a cease and desist order;
(3) Enter into a compliance agreement with the recipient; or
(4) Take any other action authorized by law.

20 U.S.C. § 1234c(a).

Under section 457 of GEPA, the Assistant Secretary may enter into a compliance agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. § 1234f. The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. § 1234f(a). Before entering into a compliance agreement with a recipient, the Assistant Secretary must hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. At that hearing, the recipient has the burden of persuading the Assistant Secretary that full compliance with applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance. 20 U.S.C. § 1234f(b)(1). If, on the basis of all the evidence presented, the Assistant Secretary determines that full compliance is genuinely not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance, the Assistant Secretary must make written findings to that effect and must publish those findings, together with the substance of any compliance agreement, in the *Federal Register*. 20 U.S.C. § 1234f(b)(2).

A compliance agreement must set forth an expiration date, not later than three years from the date of the written findings, by which time the recipient must be in full compliance with all program requirements. 20 U.S.C. § 1234f(c)(1). In addition, a compliance agreement must contain the terms and conditions with which the recipient must comply during the period that agreement is in effect. 20 U.S.C. § 1234f(c)(2). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Assistant Secretary may consider the agreement to be no longer in effect, and may take any of the compliance actions set forth above. 20 U.S.C. § 1234f(d).

## III. Analysis

### A. Overview of Issues To Be Resolved in Determining Whether a Compliance Agreement Is Appropriate

In deciding whether a compliance agreement between the Assistant Secretary and HIDOE is appropriate, the Assistant Secretary must first determine whether compliance by HIDOE with the Title I standards and assessment requirements is genuinely not feasible until a future date. 20 U.S.C. § 1234f(b)(2). Second, the Assistant Secretary must determine whether HIDOE will, within a period of up to three years from the date of these written findings, be able to come into compliance with the Title I requirements. Not only must HIDOE come into full compliance by the end of the effective period of the compliance agreement, it must also make steady and measurable progress toward that objective while the compliance agreement is in effect. If such an outcome is not possible,

then a compliance agreement between the Assistant Secretary and HIDOE would not be appropriate.

B. HIDOE Has Failed to Comply Substantially With Title I Standards and Assessment Requirements

In August 2007, HIDOE submitted evidence of its standards and assessment system. The Assistant Secretary submitted that evidence to a panel of experts for peer review. Following that review, the Assistant Secretary concluded that HIDOE's standards and assessment system did not meet a number of the Title I requirements. Specifically, the Assistant Secretary determined that, to demonstrate its compliance, HIDOE had to submit the following evidence:

**ACADEMIC ACHIEVEMENT STANDARDS**

*Hawaii State Assessment (HSA)*:

1. The subject area representation for panels that reviewed the performance level descriptors.
2. A plan and process for the future selection of panels to ensure representation of all relevant stakeholder groups.

*Hawaii State Alternate Assessment (HSAA)*:

1. Evidence of approved and adopted alternate academic achievement standards for students with the most significant cognitive disabilities in reading and mathematics for each of grades 3-8 and 10.
2. Evidence that the alternate academic achievement standards include the following for each content area:
    a. At least three levels of achievement, including two levels of high achievement (*e.g.*, proficient and advanced) that determine how well students are mastering the State's academic content standards, and a third level of achievement (*e.g.*, basic) to provide information about the progress of lower-achieving students toward mastering the two levels of high achievement;
    b. Descriptions of the competencies associated with each achievement level; and
    c. Assessment scores ("cut scores") that differentiate among the achievement levels.
3. Documentation that the State has reported separately the number and percentage of students with disabilities assessed using an alternate assessment based on alternate academic achievement standards, an alternate assessment based on grade-level academic achievement standards, and the general HSA assessment, both with and without accommodations.
4. Evidence that the State has documented the involvement of diverse stakeholders in the development of its alternate academic achievement standards.

## TECHNICAL QUALITY

*HSA*:

1. Plan and timeline for conducting a consequential validity study.
2. Documentation of how the State will address inter-rater agreement rates for short-answer and extended-response items that were less than the established target.
3. Procedures for the standardization of the accommodation that allows for the explanation of directions using simplified vocabulary.
4. Plan and timeline for conducting a study to determine the extent to which the use of accommodations and alternate assessments yield meaningful scores including the use of simplified language and read aloud accommodations (consistent with requirements described under Critical Elements 4.3 d and 4.5 c & d of the Peer Review Guidance).

*HSAA*:

1. Evidence that the State has documented validity (in addition to the alignment of the HSAA with the academic content standards), as described in the *Standards for Educational and Psychological Testing* (AERA/APA/NCME, 1999).
2. Evidence that the State has provided documentation of the standards-setting process, including a description of the selection of judges, methodology employed, and final results.
3. Evidence that the State has considered the issue of reliability, as described in the *Standards for Educational and Psychological Testing* (AERA/APA/NCME, 1999).
4. Evidence that the State has ensured that its alternate assessment system is fair and accessible to all eligible students, including students with limited English proficiency.
5. Evidence that the State has taken steps (such as bias review of items) to ensure fairness in the development of the alternate assessment.
6. If different test forms or formats are used for the alternate assessment, evidence that the State has ensured that the meaning and interpretation of the results are consistent.
7. Evidence that the State has established:
    a. Clear criteria for the administration, scoring, analysis, and reporting components of its alternate assessment; and
    b. A system for monitoring and improving the on-going quality of its alternate assessment.

*Hawaii Aligned Portfolio Assessment (HAPA)*:

1. Evidence that the cut scores for 2007 operationalize the content-specific performance level descriptors that are used for both the HAPA and the HSA. This evidence should include documentation related to the process of reviewing the 2006 cut scores for use in 2007, including a description of the preparation of the panel(s) for their task, a demographic description of the participants, and results of their deliberations.
2. Evidence that the State's scoring for oral fluency is valid and consistent across scorers.
3. Evidence that all students are being included in the assessment program.

4. Documentation of the comparability of the oral fluency tasks for the HAPA and the items from the HSA.

## ALIGNMENT

*HSA*:

1. The blueprints for reading and mathematics for each required tested grade with the number of items developed for each standard.
2. Documentation showing that the full range of knowledge is assessed for each required tested grade for reading and mathematics.
3. Results of the item review panel, including the number of items reviewed, rejected, and revised, as well as alignment to benchmark and depth of knowledge levels for each required tested grade for reading and mathematics.
4. Documentation showing how the State addressed each of the cells in the December 2006 Rob Ely alignment analysis that resulted in ratings of "weak" or "no" alignment, including the number and extent of changes made.

*HSAA*:

1. Evidence that the State has taken steps to ensure alignment between its alternate assessments and its academic content and alternate student academic achievement standards.
2. Evidence that the State has developed ongoing procedures to maintain and improve alignment between the alternate assessment(s) and academic content and alternate student academic achievement standards over time, particularly if gaps have been noted.

*HAPA*:

1. Evidence showing how the State addressed or will address the concerns from the September 2006 Rob Ely alignment analysis.
2. Documentation demonstrating how the State addressed or will address the comments related to "Source of Challenge" identified by reviewers participating in the alignment analysis.

## INCLUSION

*HSA*:

1. Statewide spring 2007 participation rates for reading and mathematics in the required grades. Totals must be disaggregated by gender, ethnicity, special education status, LEP status, economically disadvantaged status, and migrant status.

*HSAA*:

1. Evidence that the State has implemented alternate assessments for students whose disabilities do not permit them to participate in the regular assessment even with accommodations.

2. Evidence of guidelines and training that the State has in place to ensure that all students with disabilities taking the alternate assessment are included appropriately in the State assessment system.
3. Evidence that the State has developed clear guidelines for Individualized Educational Program (IEP) Teams to apply in determining which assessment is most appropriate for a student.
4. Regarding the alternate academic achievement standards:
    a. Evidence that the State has developed clear guidelines for IEP Teams to apply in determining when a child's cognitive disability justifies assessment based on alternate academic achievement standards; and
    b. Evidence showing the steps the State has taken to instruct regular and special education teachers and appropriate staff on how to properly administer assessments (including making use of accommodations) for students with the most significant cognitive disabilities.

**REPORTING**

*HSA*:
1. Samples of the school-level achievement reports disaggregated by required subgroups by grade level and subject area for 2007.
2. Statewide achievement results disaggregated by the required subgroups by grade level and subject areas for 2007.

*HSAA*:
1. Evidence that the State's reporting system facilitates appropriate, credible, and defensible interpretation and use of its assessment data.
2. Evidence that the State has provided for the production of individual interpretive, descriptive, and (non-clinical) diagnostic reports that indicate relative strengths and instructional needs and possess the following characteristics:
    a. Express results in terms of the State's alternate academic achievement standards rather than numerical values (*e.g.*, scale scores or percentiles);
    b. Provide information for parents, teachers, and principals to help them understand and address a student's specific academic needs; and
    c. Display the information in a format and language that is understandable to parents, teachers, and principals (*e.g.*, through the use of descriptors that describe what students know and can do at different performance levels) and include interpretative guidance for these audiences.
3. Evidence that the State ensures that these individual student reports will be delivered to parents, teachers, and principals as soon as possible after the alternate assessment has been administered.

*HAPA*:
1. A complete set of reports for individual students and schools.

C. HIDOE Cannot Correct Immediately Its Noncompliance With the Title I Standards and Assessment Requirements

Under Title I, HIDOE was required to implement its final assessment system no later than the 2005–2006 school year. 20 U.S.C. § 6311(b)(3). The evidence that HIDOE submitted in August 2007 indicated that, well after the statutory deadline had passed, its standards and assessment system still did not fully meet Title I requirements. In addition, due to the enormity and complexity of the work that is needed to be done to bring HIDOE's standards and assessment system into full compliance, HIDOE cannot immediately comply with all of the Title I requirements. As a result, the Assistant Secretary finds that it is not genuinely feasible for HIDOE to come into compliance until a future date.

D. HIDOE Can Meet the Terms and Conditions of a Compliance Agreement and Come Into Full Compliance with the Requirements of Title I Within Three Years

At the public hearing, which was held on March 27, 2008, HIDOE presented evidence of its commitment and capability to come into compliance with the Title I standards and assessment requirements within three years. For example, HIDOE has begun working with a technical advisory committee and is providing clarifying information and gathering evidence related to the Hawaii State Assessment and the Hawaiian Aligned Portfolio Assessment. HIDOE also plans to work with technical advisors to develop a new alternate assessment based on alternate academic achievement standards for students with disabilities who are unable to participate in the general assessment, even with appropriate accommodations.

Finally, HIDOE has developed a comprehensive action plan, incorporated into the compliance agreement, which sets out a very specific schedule that HIDOE has agreed to meet during the next three years for attaining compliance with the Title I standards and assessment requirements. As a result, HIDOE is committed not only to coming into full compliance within three years but to meeting a stringent, but reasonable, schedule for doing so. The action plan also sets out documentation and reporting requirements with which HIDOE must comply. These provisions will allow the Assistant Secretary to ascertain promptly whether HIDOE is meeting each of its commitments under the compliance agreement and is on schedule to achieve full compliance within the effective period of the agreement.

The task of developing a standards and assessment system that meets the Title I requirements is not a quick or easy one. However, the Assistant Secretary has determined that, given the commitment of HIDOE to comply with the terms and conditions of the compliance agreement, it is possible for HIDOE to come into full compliance with the Title I standards and assessment requirements within three years.

## IV. Conclusion

For the foregoing reasons, the Assistant Secretary finds the following: (1) that full compliance by HIDOE with the standards and assessment requirements of Title I is genuinely not feasible until a future date; and (2) that HIDOE can meet the terms and conditions of the attached compliance agreement and come into full compliance with the standards and assessment requirements of Title I within three years of the date of these

findings. Therefore, the Assistant Secretary has determined that it is appropriate to enter into a compliance agreement with HIDOE. Under the terms of 20 U.S.C. § 1234f, that compliance agreement becomes effective on the date of these findings.

Dated: November 6, 2008

/s/

Kerri L. Briggs, Ph.D.
Assistant Secretary
Office of Elementary and Secondary Education

# Appendix B

*Compliance Agreement*

*Under Title I of the Elementary and*

*Secondary Education Act*

*Between*

*The United States Department of Education*

*And*

*The Hawaii Department of Education*

*August 29, 2008*

# COMPLIANCE AGREEMENT UNDER TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT BETWEEN THE UNITED STATES DEPARTMENT OF EDUCATION AND THE HAWAII DEPARTMENT OF EDUCATION

Title I of the Elementary and Secondary Education Act of 1965 (Title I), as amended by the No Child Left Behind Act of 2001, requires each State receiving Title I funds to satisfy certain requirements.

Each State was required to adopt academic content and student academic achievement standards in at least mathematics, reading or language arts, and, beginning in the 2005-2006 school year, science. These standards must include the same knowledge and levels of achievement expected of all public school students in the State. Content standards must specify what all students are expected to know and be able to do; contain coherent and rigorous content; and encourage the teaching of advanced skills. Achievement standards must be aligned with the State's academic content standards and must describe at least three levels of proficiency to determine how well students in each grade are mastering the content standards. A State must provide descriptions of the competencies associated with each student's academic achievement level and must determine the assessment scores ("cut scores") that differentiate among the achievement levels.

Each State was also required to implement a student assessment system used to evaluate whether students are mastering the subject material reflected in the State's academic content standards. By the 2005-2006 school year, States were required to administer mathematics and reading or language arts assessments yearly during grades 3-8 and once during grades 10-12. Further, beginning with the 2007-2008 school year, each State is required to administer a science assessment in at least one grade in each of the following grade spans: 3-5, 6-9, and 10-12. A State's assessment system must:

- Be the same assessment system used to measure the achievement of all public school students in the State;
- Be designed to provide coherent information about student attainment of State academic content standards across grades and subjects;
- Provide for the inclusion of all students in the grades assessed, including students with disabilities and limited English proficient (LEP) students;
- Be aligned with the State's academic content and student academic achievement standards;
- Express student results in terms of the State's student academic achievement standards;
- Be valid, reliable, and of adequate technical quality for the purposes for which they are used and be consistent with nationally recognized professional and technical standards;
- Involve multiple measures of student academic achievement, including measures that assess higher order thinking skills and understanding of challenging content;
- Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal family beliefs and attitudes;
- Enable results to be disaggregated by gender, each major racial and ethnic group, migrant status, students with disabilities, English proficiency status, and economically disadvantaged students;
- Provide individual student reports; and

- Enable itemized score analyses.

In addition to a general assessment, States were required to develop and administer at least one alternate assessment for students with disabilities who cannot participate in the general assessment, with or without accommodations. An alternate assessment may be based on grade-level achievement standards, alternate achievement standards, or modified achievement standards. Like the general assessment, any alternate assessment must satisfy the requirements for high technical quality, including validity, reliability, accessibility, objectivity, and consistency with nationally recognized professional and technical standards.

States were also required to implement an annual assessment of English language proficiency in the four domains of reading, writing, speaking, and listening.

The Hawaii Department of Education (HIDOE) failed to timely meet certain requirements relating to its Hawaii State Assessment, Hawaiian Aligned Portfolio Assessment, and Hawaii State Alternate Assessment. In order to be eligible to continue to receive Title I funds while working to comply with the statutory and regulatory requirements, Patricia Hamamoto, Superintendent of Education, indicated HIDOE's interest in entering into a compliance agreement with the United States Department of Education (Department). On March 27, 2008, the Department conducted a public hearing regarding: (1) whether HIDOE's full compliance with Title I is not feasible until a future date; and (2) HIDOE's ability to come into compliance with the Title I requirements for an alternate assessment system within three years.

Pursuant to this Compliance Agreement under 20 U.S.C. Section 1234f, HIDOE must be in full compliance with the outstanding requirements no later than three years from the date of the Assistant Secretary's written findings, a copy of which is attached to, and incorporated by reference into, this Agreement. In order to achieve compliance with the standards and assessment requirements, HIDOE must submit the following evidence:

**ACADEMIC ACHIEVEMENT STANDARDS**

*Hawaii State Assessment (HSA)*:

3. The subject area representation for panels that reviewed the performance level descriptors.
4. A plan and process for the future selection of panels to ensure representation of all relevant stakeholder groups.

*Hawaii State Alternate Assessment (HSAA)*:

5. Evidence of approved and adopted alternate academic achievement standards for students with the most significant cognitive disabilities in reading and mathematics for each of grades 3-8 and 10.
6. Evidence that the alternate academic achievement standards include the following for each content area:
    a. At least three levels of achievement, including two levels of high achievement (*e.g.*, proficient and advanced) that determine how well students are mastering the State's academic content standards, and a third level of achievement (*e.g.*, basic) to provide information about the progress of lower-achieving students toward mastering the two levels of high achievement;

b. Descriptions of the competencies associated with each achievement level; and

c. Assessment scores ("cut scores") that differentiate among the achievement levels.

7. Documentation that the State has reported separately the number and percentage of students with disabilities assessed using an alternate assessment based on alternate academic achievement standards, an alternate assessment based on grade-level academic achievement standards, and the general HSA assessment, both with and without accommodations.
8. Evidence that the State has documented the involvement of diverse stakeholders in the development of its alternate academic achievement standards.

**TECHNICAL QUALITY**

*HSA*:

5. Plan and timeline for conducting a consequential validity study.
6. Documentation of how the State will address inter-rater agreement rates for short-answer and extended-response items that were less than the established target.
7. Procedures for the standardization of the accommodation that allows for the explanation of directions using simplified vocabulary.
8. Plan and timeline for conducting a study to determine the extent to which the use of accommodations and alternate assessments yield meaningful scores including the use of simplified language and read aloud accommodations (consistent with requirements described under Critical Elements 4.3 d and 4.5 c & d of the Peer Review Guidance).

*HSAA*:

8. Evidence that the State has documented validity (in addition to the alignment of the HSAA with the academic content standards), as described in the *Standards for Educational and Psychological Testing* (AERA/APA/NCME, 1999).
9. Evidence that the State has provided documentation of the standards-setting process, including a description of the selection of judges, methodology employed, and final results.
10. Evidence that the State has considered the issue of reliability, as described in the *Standards for Educational and Psychological Testing* (AERA/APA/NCME, 1999).
11. Evidence that the State has ensured that its alternate assessment system is fair and accessible to all eligible students, including students with limited English proficiency.
12. Evidence that the State has taken steps (such as bias review of items) to ensure fairness in the development of the alternate assessment.
13. If different test forms or formats are used for the alternate assessment, evidence that the State has ensured that the meaning and interpretation of the results are consistent.
14. Evidence that the State has established:
    a. Clear criteria for the administration, scoring, analysis, and reporting components of its alternate assessment; and
    b. A system for monitoring and improving the on-going quality of its alternate assessment.

*Hawaii Aligned Portfolio Assessment (HAPA)*:

5. Evidence that the cut scores for 2007 operationalize the content-specific performance level descriptors that are used for both the HAPA and the HSA. This evidence should include documentation related to the process of reviewing the 2006 cut scores for use in 2007, including a description of the preparation of the panel(s) for their task, a demographic description of the participants, and results of their deliberations.
6. Evidence that the State's scoring for oral fluency is valid and consistent across scorers.
7. Evidence that all students are being included in the assessment program.
8. Documentation of the comparability of the oral fluency tasks for the HAPA and the items from the HSA.

**ALIGNMENT**

*HSA*:

5. The blueprints for reading and mathematics for each required tested grade with the number of items developed for each standard.
6. Documentation showing that the full range of knowledge is assessed for each required tested grade for reading and mathematics.
7. Results of the item review panel, including the number of items reviewed, rejected, and revised, as well as alignment to benchmark and depth of knowledge levels for each required tested grade for reading and mathematics.
8. Documentation showing how the State addressed each of the cells in the December 2006 Rob Ely alignment analysis that resulted in ratings of "weak" or "no" alignment, including the number and extent of changes made.

*HSAA*:

3. Evidence that the State has taken steps to ensure alignment between its alternate assessments and its academic content and alternate student academic achievement standards.
4. Evidence that the State has developed ongoing procedures to maintain and improve alignment between the alternate assessment(s) and academic content and alternate student academic achievement standards over time, particularly if gaps have been noted.

*HAPA*:

3. Evidence showing how the State addressed or will address the concerns from the September 2006 Rob Ely alignment analysis.
4. Documentation demonstrating how the State addressed or will address the comments related to "Source of Challenge" identified by reviewers participating in the alignment analysis.

**INCLUSION**

*HSA*:

2. Statewide spring 2007 participation rates for reading and mathematics in the required grades. Totals should be disaggregated by gender, ethnicity, special education status, LEP status, economically disadvantaged status, and migrant status.

*HSAA*:

5. Evidence that the State has implemented alternate assessments for students whose disabilities do not permit them to participate in the regular assessment even with accommodations.
6. Evidence of guidelines and training that the State has in place to ensure that all students with disabilities taking the alternate assessment are included appropriately in the State assessment system.
7. Evidence that the State has developed clear guidelines for Individualized Educational Program (IEP) Teams to apply in determining which assessment is most appropriate for a student.
8. Regarding the alternate academic achievement standards:
    c. Evidence that the State has developed clear guidelines for IEP Teams to apply in determining when a child's cognitive disability justifies assessment based on alternate academic achievement standards; and
    d. Evidence showing the steps the State has taken to instruct regular and special education teachers and appropriate staff on how to properly administer assessments (including making use of accommodations) for students with the most significant cognitive disabilities.

**REPORTING**

*HSA*:

3. Samples of the school-level achievement reports disaggregated by required subgroups by grade level and subject area for 2007.
4. Statewide achievement results disaggregated by the required subgroups by grade level and subject areas for 2007.

*HSAA*:

4. Evidence that the State's reporting system facilitates appropriate, credible, and defensible interpretation and use of its assessment data.
5. Evidence that the State has provided for the production of individual interpretive, descriptive, and (non-clinical) diagnostic reports that indicate relative strengths and instructional needs and possess the following characteristics:
    a. Express results in terms of the State's alternate academic achievement standards rather than numerical values (*e.g.*, scale scores or percentiles);
    b. Provide information for parents, teachers, and principals to help them understand and address a student's specific academic needs; and
    c. Display the information in a format and language that is understandable to parents, teachers, and principals (*e.g.*, through the use of descriptors that describe what students know and can do at different performance levels) and include interpretative guidance for these audiences.
6. Evidence that the State ensures that these individual student reports will be delivered to parents, teachers, and principals as soon as possible after the alternate assessment has been administered.

*HAPA*:

2. A complete set of reports for individual students and schools.

During the duration of this Compliance Agreement, HIDOE is eligible to receive Title I, Part A funds if it complies with the terms and conditions of this Agreement, the

provisions of Title I, Part A beyond those covered in this Compliance Agreement, and other applicable Federal statutory and regulatory requirements. The attached action steps provide a detailed plan and specific timeline for how HIDOE will come into compliance with the Title I standards and assessment requirements. These action steps are incorporated into this Compliance Agreement and may be amended by joint written agreement of the parties, provided full compliance is still feasible by the expiration of the Agreement.

In addition to all terms and conditions set forth above, HIDOE agrees that its continued eligibility to receive Title I, Part A funds is predicated upon its compliance with all statutory and regulatory requirements of that program beyond those covered in this Compliance Agreement, including those that are not specifically addressed by this Agreement, such as any amendments to the No Child Left Behind Act of 2001.

If HIDOE fails to comply with any of the terms and conditions of this Compliance Agreement, including the action steps attached hereto, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including the withholding of funds or the issuance of a cease and desist order. 20 U.S.C. §1234f(d).

The effective date of this agreement shall be this 29th day of August, 2008.

For the Hawaii Department of Education:

/s/ — July 30, 2008

Patricia Hamamoto — Date
Superintendent of Education

For the United States Department of Education:

/s/ — August 29, 2008

Kerri L. Briggs, Ph.D. — Date
Assistant Secretary
Office of Elementary and Secondary Education

Date this Compliance Agreement becomes effective: August 29, 2008

Expiration Date of this Agreement: August 29, 2011

# *Action Plan and Timeline for*

# *Compliance Agreement*

# *Between*

# *The United States Department of Education*

# *And*

# *The Hawaii Department of Education*

**State of Hawaii Department of Education**
**Compliance Agreement - Action Plan and Timeline**
**July 29, 2008**

**2.0 ACADEMIC ACHIEVEMENT STANDARDS**

**HSA:**

| Description | Action Steps | Evidence | Office Responsible | Fiscal Resources | Completion Time |
|---|---|---|---|---|---|
| 1. The subject area representation for panels that reviewed the performance level descriptors. | • Communicate to ED that subject area information not previously collected.<br>• Provide assurance to ED that subject area information will be collected whenever future panels are convened. | • Letter to ED. | SAO | None | Submission of evidence to ED: August 30, 2008. |
| 2. A plan and process for future selection of panels to ensure representation of all relevant stakeholder groups. | • Discuss with TAC at March 2008 meeting for recommendations.<br>• Draft panel selection policy and guidelines.<br>• Present policy and guidelines to the BOE for review and adoption.<br>• Present the policy to ED. | • Panel selection policy and guidelines.<br>• Minutes of BOE meeting affirming adoption.<br>• Distribute new policy and guidelines to TAC at October 2008 meeting. | SAO | None | Submission of evidence to ED: August 30, 2008. |

**HSAA:**

| | | | | | |
|---|---|---|---|---|---|
| 1. Evidence of approved and adopted alternate academic achievement standards for students with the most significant cognitive disabilities in reading and mathematics for each of grades 3-8 and 10. | • Reorganize document to increase and clarify the focus on the essences (or extended standards) and reduce the number of AAIs (or objectives) to establish a more precise number of assessment targets that are clearly linked to the extended standards. Convene stakeholders to review and revise.<br>• Define alternate academic achievement descriptors to reflect student achievement expectations at the elementary (grades 3-5), middle (grades 6-8), and high school (grades 9-12) levels. These new descriptors will be foundational to subsequent standard setting activities. | • Incorporate these action steps in RFP.<br>• Convene a panel of educators to assist the DOE in clarifying the extended standards and objectives that will become the assessment targets.<br>• Convene a group of stakeholders to advise the DOE in developing the new alternate student academic achievement standards.<br>• Summary report of efforts with stakeholders and results of those efforts. | SAO<br>SPED | Est. cost<br>$25,000 | Action steps in contract awarded February 28, 2009.<br><br>New student alternate academic achievement standards finalized by May 31, 2009. The standards will be forwarded for Board of Education review and adoption at a time to be scheduled subsequently but not later than October 1, 2009.<br><br>Summary report of work with stakeholders by May 31, 2009.<br><br>Descriptor and cut scores differentiation affirmed by May 31, 2009. |

| Description | Action Steps | Evidence | Office Responsible | Fiscal Resources | Completion Time |
|---|---|---|---|---|---|
| 2. Evidence that the alternate academic achievement standards include the following for each content area:<br>a. At least three levels of achievement, including two levels of high achievement (e.g., proficient and advanced) that determine how well students are mastering the State's academic content standards, and a third level of achievement (e.g., basic) to provide information about the progress of lower-achieving students toward mastering the two levels of high achievement;<br>b. Descriptions of the competencies associated with each achievement level; and<br>c. Assessment scores ("cut scores") that differentiate among the achievement levels. | • Simultaneous with the revisions of the Essence document, alternate academic achievement descriptors will be developed. Simultaneous development will expedite revision reflecting a clear horizontal alignment of the proficient level descriptor with the Essence document and vertical alignment of the performance levels within and across grade levels based on the proficient level.<br>• Content and skills descriptors will be developed for each performance level at each grade span.<br>• Cut scores will be established after the first administration of the revised assessment to reflect changes in the assessment.<br>• Cut scores will be submitted to the Hawaii State Board of Education for review and adoption. | • Provide documentation of the revision process and outcomes to ED.<br>• Provide documentation to ED.<br>• Documentation for Standard Setting process, methodology, participants, results, and technical report.<br>• Documentation of adoption by the Hawaii State Board of Education as shown in Board minutes. | SAO<br>SPED<br>SAO<br>SPED<br>SAO<br>Contractor<br>SAO | Est. cost $25,000<br>Est. cost $25,000<br>Est. cost $100,000<br>None | Revision process documented by November 30, 2009.<br>Content and skills descriptors developed by November 30, 2009.<br>Documentation completed for inclusion in Technical Manual to be completed by December 31, 2010.<br>Completed by September 30, 2010. |
| 3. Documentation that the State has reported separately the number and percentage of students with disabilities assessed using an alternate assessment based on alternate academic achievement standards, an alternate assessment based on grade-level | • Cut scores for the existing alternate assessment were adopted on June 22, 2006, by the Hawaii State Board of Education.<br>• Guidelines and parent information process currently exit. Review to ensure guidelines continue appropriateness for the revised assessment.<br>• Training information will be examined and revised for modifications related to revised assessment.<br>• State will continue reporting and documenting number and percent assessed based on alternate | • Revised cut scores need to be developed following the first administration of the revised assessment to reflect changes in the assessment.<br>• Contractor will lead a stakeholder committee in standard setting using a recognized methodology, will thoroughly document that standard setting procedure, activities and results, and report this | Contractor<br>SAO<br>SPED<br>SAO<br>SPED<br>Contractor<br>SAO<br>SPED<br>SAO | Est. cost $100,000<br>None | Revised cut scores adopted by August 30, 2010.<br>Standard setting process conducted in Spring 2010 with reports completed by August 30, 2010.<br>Training materials |

| | | | | | |
|---|---|---|---|---|---|
| academic achievement standards, and<br><br>the general HSA assessment with and<br><br>without accommodations. | achievement standards. | information in a technical report and a supporting document as appropriate.<br>• Documentation of training materials<br><br>• State report on number and percent assessed | | | revised by November 30, 2009.<br><br>State report completed by August 30, 2010. |
| 4. Evidence that the State has documented the involvement of diverse stakeholders in the development of its alternate academic achievement standards. | • State will document that diverse stakeholders with both content and special education expertise, participate in development of the revised alternate assessment. | • Documentation of stakeholder participation collected and maintained | SAO<br>SPED | None | Participation documented and related summary reports completed by July 31, 2009 |

| 3.0 STATEWIDE ASSESSMENT SYSTEM | | | | | |
|---|---|---|---|---|---|
| **HSAA:** | | | | | |
| **Description** | **Action Steps** | **Evidence** | **Office Responsible** | **Fiscal Resources** | **Completion Time** |
| 1. Evidence that the State demonstrates comparable results and alignment with the academic content and achievement standards. | • The State will issue an RFP[1] to revise the alternate assessment that ensures compliance with all requirements of NCLB and Peer Review guidelines. The alternate assessment design will provide alignment with the academic content and alternate achievement standards and comparability across forms, students, scores, and years. The design will also consider adding items annually to provide a means of continuously improving the assessment and ensuring that students do not repeatedly encounter the same items. | • Issue RFP | SAO | Est. cost to develop the RFP $25,000 | Submission of evidence to ED: Upon completion and issuance of the Request for Proposals for a new HSAA[3] November 30, 2008. |
| | • Review with TAC. | • TAC minutes | SAO | None | March 31, 2009. |
| | | • Alignment study and report. | Contractor SAO | Est. cost $25,000[2] | September 30, 2010. |

[1] Almost all action steps and the generation of related evidence will be included in the RFP as prerequisites for development of a new HSAA. Thus, related information will be included in the contract that is awarded to the successful bidder. The RFP will be submitted to the TAC for review and comment prior to its release.

[2] The estimated three-year cost to develop, field-test, and implement a new HSAA is $9M including staff development activities. Thus, all costs listed in this column of the action plan and timeline for HSAA activities are estimates only at this time and will be adjusted once a contractor is selected.

[3] Most of the completion times for HSAA associated activities are dependent on developing and issuing an RFP for the new assessment and also on awarding of a contract for that purpose. Thus, it is highly likely that some timelines will have to be revised after the contract is awarded.

| 4.0 TECHNICAL QUALITY | | | | | |
|---|---|---|---|---|---|
| **HSA:** | | | | | |
| **Description** | **Action Steps** | **Evidence** | **Office Responsible** | **Fiscal Resources** | **Completion Time** |
| 1. Plan and timeline for conducting consequential validity study. | • Inform ED that study planned for fall 2007 was not conducted.<br>• Discussion with TAC at March 2008 meeting regarding a comprehensive study.<br>• Determine feasibility of various methodologies.<br>• Determine implementation plan and costs.<br>• Establish a plan and timeline for conducting study. | • Final consequential validity study plan and timeline. | SAO | Est. cost $35,000 | October 31, 2008. |
| 2. Documentation of how the State will address inter-rater agreement rates for short answer and extended-response items that were less than the established target. | • Inter-rater agreement rates and related analysis. | • Narrative description of how Hawaii addresses inter-rater agreement rates when they are less than the established targets. | Contractor | None | June 30, 2008. |
| 3. Procedures for the standardization of the accommodation that allows for the explanation of directions using simplified vocabulary. | • Describe how standardization of the accommodation for simplified vocabulary is assured across test administrations.<br>• Discuss at March 2008 TAC meeting. | • Clarification of how accommodation is reviewed in annual training for Administrators and Test Coordinators.<br>• TAC notes. | SAO | None | August 30, 2008. |
| 4. Plan and timeline for conducting a study to determine the extent to which the use of the accommodations and alternate assessments yield meaningful scores including the use of simplified language and read aloud accommodations (consistent with requirements described under Critical Elements 4.3 d and 4.5 c & d of the Peer Review Guidance). | • Discussion with TAC at March 2008 meeting regarding AIR proposal and elements of a comprehensive study.<br>• Review and evaluate AIR proposal with TAC at March 2008 meeting.<br>• Discuss with TAC various methodologies and approaches taken by other States.<br>• Evaluate TAC recommendations and finalize implementation plan and costs.<br>• Hire a consultant to develop | • Final study plan and timeline. | SAO | Est. cost $20,000 | August 30, 2008. |

| | | | | | |
|---|---|---|---|---|---|
| | study and timeline for conducting study in fall 2008.<br>• Review final plan with TAC in October 2008 prior to conducting study. | | | | |

**HSAA:**

| Description | Action Steps | Evidence | Office Responsible | Fiscal Resources | Completion Time |
|---|---|---|---|---|---|
| 1. Evidence that the State has documented validity (in addition to the alignment of the HSAA with the academic content standards), as described in the *Standards for Educational and Psychological Testing* (AERA/APA/NCME, 1999).<br>a. Decisions based on the results of its assessments consistent with the purposes for which the assessments were designed ***and***<br>b. Intended and unintended consequences ***and***<br>c. Scoring and reporting structures consistent with sub-domain structures of its academic content standards (i.e., are item interrelationships consistent with the framework from which the test arises)? ***and***<br>d. Test and item scores related to internal or external variables as intended (e.g., scores are correlated strongly with relevant measures of academic achievement and are weakly correlated, if at all, with irrelevant characteristics, such as demographics)?<br>e. Standard setting process. Describe the selection of judges, methodology. | • The State will issue an RFP to revise the alternate assessment that sets forth the intended purpose of the assessment.<br>• These requirements will be included in the RFP as factors that must be addressed and reported in the Technical Manual that will be developed for the new HSAA.<br>• Discussion with TAC. | • Documentation of required evidence for validity.<br>• Documentation of the standard setting methodology, process, participants, and results.<br>• Technical Manual.<br>• TAC minutes. | SAO<br>SAO Contractor<br>SAO Contractor<br>SAO | Est. cost $275,000<br>None | Submission of evidence to ED in two parts:<br>First will be the awarded RFP documenting the plan to establish validity by February 28, 2009.<br>Second will be the Technical Manual by December 31, 2010.<br>Fall 2009. |

| Description | Action Steps | Evidence | Office Responsible | Fiscal Resources | Completion Time |
|---|---|---|---|---|---|
| 2. Reliability, as described in the *Standards for Educational and Psychological Testing* (AERA/APA/NCME, 1999), with respect to ***all*** of the following categories:<br>a. Reliability of the scores, based on data for its own student population and each reported subpopulation? ***and***<br>b. Conditional standard error of measurement and student classification that is consistent at each cut score specified in its academic achievement standards? ***and***<br>c. Evidence of generalizability for all relevant sources, such as variability of groups, internal consistency of item responses, variability among schools, consistency from form to form of the test, and inter-rater consistency in scoring. | • The State will issue an RFP to revise the alternate assessment. The revised assessment will have a clear plan for standardization of administration, scoring parameters, and protocols.<br>• Reliability study and results that document all categories a-c included in the Technical Manual.<br>• Technical Manual with all reliability evidence required by Peer Review guidelines.<br>• Discussion with TAC. | • RFP Documentation<br>• Documentation of required evidence for reliability.<br>• Technical Manual<br>• TAC minutes | SAO<br>SAO Contractor | Est. cost $175,000 all related activities | Submission of evidence to ED in two parts:<br>First will be the awarded RFP documenting the plan to establish validity by February 28, 2009.<br>Second will be the Technical Manual by December 31, 2010. |
| 3. The assessment is fair and accessible assessment for target population<br>a. Appropriate variety of accommodations for students with disabilities? ***and***<br>b. Appropriate variety of linguistic accommodations for students with limited English proficiency? ***and***<br>c. DIF analysis or bias review of items, to ensure fairness ***and***<br>d. Use of accommodations and/or alternate assessments yield meaningful scores | • The State will issue an RFP to revise the alternate assessment.<br>• Accommodations list specifically relevant to all the target population of the alternate assessment will be developed.<br>• Studies of accommodations specific to the to students with limited English Language proficiency<br>• Bias and content reviews of all items of all items to ensure fairness.<br>• Study relevant to the use of accommodations as related to scores | • Documentation of accommodations policies and list.<br>• Accommodations list relevant to the ELL population of the alternate assessment.<br>• Documentation of bias and content reviews<br>• Documentation of study | SAO<br>SAO Contractor<br>SAO SPED<br>SAO Contractor | Est. cost $10,000<br>Estimated cost $10,000<br>Estimated Cost $100,000 | February 28, 2009.<br>March 31, 2009.<br>April 30, 2010.<br>August 30, 2011. |

| Description | Action Steps | Evidence | Office Responsible | Fiscal Resources | Completion Time |
|---|---|---|---|---|---|
| 4. When different test forms or formats are used, ensure that the meaning and interpretation of results are consistent.<br>a. Consistency of test forms over time.<br>b. On-line and paper and pencil test comparability, if both are used. | • Development of a methodology for ensuring consistency in the meaning and interpretation of test results by 2010.<br>• Contactor will be required to ensure consistency when test forms are refreshed with new items.<br>• Contractor will ensure that if alternate assessment consists of online and paper-pencil that the test is comparable for both forms. | • Documentation of methodology to be applied related to determining consistency in meaning and interpretation of test results from year to year.<br>• Documentation ensuring consistency between test forms and types. | SAO<br>Contractor<br>SAO<br>Contractor | Est. cost<br>$50,000 | Submission of evidence to ED in two parts:<br>First will be the awarded RFP documenting the plan to establish validity by February 28, 2009.<br>Second will be the Technical Manual by December 31, 2010. |
| 5. The State has established:<br>a. Clear criteria for the administration, scoring, analysis, and reporting components of its assessment system, including alternate assessment(s);<br>b. System for monitoring and improving the on-going quality of its assessment system. | • Contractor will document criteria for administration, scoring, analysis, and reporting components of the assessment.<br>• Procedures will be established for monitoring all elements of the assessment. | • Documentation (manuals, reports, etc.) developed to report criteria for administration, scoring, analysis, and reporting components.<br>• Documentation showing monitoring procedures. | SAO<br>Contractor<br>SAO<br>Contractor | Est. cost<br>$50,000<br>$5,000 | Submission of evidence to ED in two parts:<br>First will be the awarded RFP documenting the plan to establish validity by February 28, 2009.<br>Second will be the Technical Manual by December 31, 2010. |
| 6. The State evaluates use of accommodations.<br>a. Accommodations consistent with instruction and monitor availability of accommodations during test administration.<br>b. Scores for students with disabilities based on accommodated administration conditions are valid | • Develop plan to establish, implement, and review results from accommodations monitoring.<br>• Conduct study to review results and analyze if scores are valid using accommodations. | • Documentation from monitoring plan for accommodations.<br>• Documentation from study on score validity. | SAO<br>Contractor<br>Contractor<br>External<br>Contractor | Est. cost<br>$15,000<br>Est. cost<br>$25,000 | Submission of evidence to ED in two parts:<br>First will be the awarded RFP documenting the plan to establish validity by February 28, 2009.<br>Second will be the Technical Manual by December 31, 2010. |

| Description | Action Steps | Evidence | Office Responsible | Fiscal Resources | Completion Time |
|---|---|---|---|---|---|
| **HAPA:** | | | | | |
| 1. Evidence that the cut scores for 2007 operationalize the content-specific performance level descriptors that are used for both the HAPA and HSA. This evidence should include documentation related to the process of reviewing the 2006 cut scores for use in 2007, including a description of the preparation of the panel(s) for their task, a demographic description of the participants, and the results of their deliberations. | • Clarify that cut scores for HAPA were set in 2006. Cut scores for HSA were set in 2007.<br>• Affirm that PLDs are same as those in HSA.<br>• Describe how cut scores align with PLDs.<br>• Describe training of panelists who review PLDs. | • May 11, 2007, review of PLDs (PowerPoint presentation).<br>• List of reviewers and demographics.<br>• Written confirmation that PLDs are used with HSA.<br>• Performance level descriptor review committee report (Appendix 5c, Technical Manual 2007). | SAO | None | Submission of evidence to ED: August 30, 2008. |
| 2. Evidence that the State's scoring for oral fluency is valid and consistent across scorers. | • Provide documentation related to scoring procedures for oral fluency. | • HAPA technical manual, 2005-2006 (pages 45-46).<br>• HAPA scoring center paper. | SAO | None | Submission of evidence to ED: August 30, 2008. |
| 3. Evidence that all students are being included in the assessment program. | • Describe steps the State will take to ensure full participation of all students in the State's annual assessment system; especially those participating in HAPA.<br>• Review by State staff of HAPA participation rates. Where those rates fall below 95% at the school level, a meeting will be held with administrators to develop plans to ensure full participation of all eligible students. | • Critical Element 2.1, State Accountability Workbook.<br>• Written description of how the State ensures full participation. | SAO | None | Submission of evidence to ED: August 30, 2008. |
| 4. Documentation of the comparability of the oral fluency tasks for the HAPA and the items from the HSA. | • Review evidence related to scoring for oral fluency to determine whether it is consistent and valid in the same way across scorers. | • Review determines that the requirement is met, documented, and interpretive narrative is provided. | SAO | None | Submission of evidence to ED: August 30, 2008. |

| 5.0 ALIGNMENT | | | | | |
|---|---|---|---|---|---|
| **HSA:** | | | | | |
| **Description** | **Action Steps** | **Evidence** | **Office Responsible** | **Fiscal Resources** | **Completion Time** |
| 1. The blueprints for reading and mathematics for each required tested grade with the number of items developed for each standard. | • Send blueprints to ED. | • Blueprints.<br>• Statement from AIR affirming that 2006 assessment used for alignment study was an intact version of the new HSA. | Contractor | None | Submission of evidence to ED: August 30, 2008. |
| 2. Documentation showing that the full range of knowledge is assessed for each required tested grade for reading and mathematics. | • Review the Rob Ely study (December 2006) regarding DOK levels.<br>• Discussion at March 2008 TAC meeting.<br>• Develop responses to the Rob Ely report findings indicating steps the State has taken to address DOK deficiencies. | • Recommendations from and State responses to TAC regarding Ely alignment study findings.<br>• Technical Manual.<br>• State's responses to Rob Ely alignment study findings to address DOK levels. | Contractor | None | Submission of evidence to ED: August 30, 2008. |
| 3. Results of the item review panel, including the number of items reviewed, rejected, and revised, as well as alignment to benchmarks and depth of knowledge levels for each required tested grade for reading and mathematics. | • Request AIR to provide information. | • Report from AIR. | Contractor | None | Submission of evidence to ED: August 30, 2008. |
| 4. Documentation showing how the State addressed each of the cells in the December 2006 Rob Ely alignment analysis that resulted in a rating of "weak" or "no" alignment, including the number and extent of changes made. | • Review the Rob Ely study (December 2006) regarding alignment ratings.<br>• Discussion at March 2008 TAC meeting.<br>• Develop responses to the Rob Ely report findings indicating steps the State has taken to address alignment ratings. | • Recommendations from and State responses to TAC regarding Ely alignment ratings.<br>• Technical Manual.<br>• State's responses to Rob Ely alignment study findings to address alignment ratings. | Contractor | None | Submission of evidence to ED: August 30, 2008. |

| HSAA: | | | | | |
|---|---|---|---|---|---|
| Description | Action Steps | Evidence | Office Responsible | Fiscal Resources | Completion Time |
| 1. Evidence that the State has taken steps to ensure alignment between alternate assessment and the academic content and student academic achievement standards. | • Develop preliminary plan to guide conduct of new alignment study based on 2010 operational test.<br>• Review plan with TAC. | • A plan to guide the alignment study.<br>• TAC minutes.<br>• Documentation of alignment study on 2010 operational test.<br>• Technical Manual. | SAO Contractor | Est. cost $30,000 | Preliminary plan completed by September 30, 2009.<br>Documentation of alignment study by September 30, 2010.<br>Technical Manual by December 31, 2010. |
| 2. Evidence that the State alternate assessment is based on alternate academic achievement standards and shows a clear link to the content standards. That the alternate assessment and the standards are aligned comprehensively, reflecting the full range of content standards. | • Develop preliminary plan to guide conduct of new alignment study based on 2010 operational test.<br>• Develop plan and procedures to guide Hawaii DOE in maintaining and improving alignment between HSAA and State academic content standards over time. | • Related plan and procedures.<br>• Documentation of alignment study on 2010 operational test.<br>• Technical Manual. | SAO Contractor | Est. cost $10,000 | Preliminary plan completed by September 30, 2009.<br>Documentation of alignment study by September 30, 2010.<br>Technical Manual by December 31, 2010. |
| 3. Evidence that the assessment and the standards are aligned in terms of both content and process. | • Develop preliminary plan to guide conduct of new alignment study based on 2010 operational test. | • Documentation of alignment study on 2010 operational test.<br>• Technical Manual. | SAO Contractor | Est. cost $10,000 | Preliminary plan completed by September 30, 2009.<br>Documentation of alignment study by September 30, 2010.<br>Technical Manual by December 31, 2010. |

| Description | Action Steps | Evidence | Office Responsible | Fiscal Resources | Completion Time |
|---|---|---|---|---|---|
| 4. Evidence the state assessment and alternate assessment reflect the same degree and pattern of emphasis. | • Documentation of alignment study on 2010 operational test.<br>• Technical Manual. | • Documentation of alignment study on 2010 operational test.<br>• Technical Manual. | SAO Contractor | Est. cost $15,000 | Preliminary plan completed by September 2009. Documentation of alignment study by September 30, 2010.<br>Technical Manual by December 31, 2010. |
| 5. Evidence that the assessment yields scores that reflect the full range of achievement implied by the State's alternate academic achievement standards. | • Develop a detailed blueprint that maps the complexity and difficulty of items.<br>• Documentation of study that shows scores reflect the full range of achievement. | • Test Blueprint.<br>• Study on range of scores that reflect range of achievement.<br>• Technical Manual. | SAO Contractor | Est. cost $75,000 | Test blueprint completed by September 30, 2009.<br>Study completed by September 30, 2010.<br>Technical Manual by December 31, 2010. |
| 6. Evidence that the assessment results express terms of the alternate achievement standards. | • Develop score reports and informational documents that explain meaning of alternate academic achievement standards at each grade-level skill | • Documentation of score reports and parent informational report. | SAO Contractor | Est. cost $10,000 | Develop score reports and information documents by February 28, 2010.<br>Include related information in Technical Manual December 31, 2010. |
| 7. Evidence of procedures for maintaining and improving alignment between the assessment and standards over time. | • Documentation of alignment study on 2010 operational test.<br>• Technical Manual. | • Documentation of alignment study on 2010 operational test.<br>• Technical Manual. | SAO Contractor | $10,000 | Preliminary plan completed by September 30, 2009.<br>Documentation of alignment study by September 30, 2010.<br>Technical Manual by December 31, 2010. |

**HAPA:**

| Description | Action Steps | Evidence | Office Responsible | Fiscal Resources | Completion Time |
|---|---|---|---|---|---|
| 1. Evidence showing how the State addressed or will address the concerns from the September 2006 Rob Ely alignment analysis. | • Staff review and analysis of concerns. | • List and description of changed items by subject and grade. | SAO | None | Submission of evidence to ED: August 30, 2008. |
| 2. Documentation demonstrating how the State addressed or will address the comments related to "Source of Challenge" identified by reviewers participating in the alignments analysis. | • Staff review and analysis of comments. | • Clarification of meaning and impact on alignment of Ely Source of Challenges.<br>• List of reviewers' perceived "Source of Challenges" and changes made to items as a result. | SAO | None | Submission of evidence to ED: August 30, 2008. |

| 6.0 INCLUSION | | | | | |
|---|---|---|---|---|---|
| **HSA:** | | | | | |
| **Description** | **Action Steps** | **Evidence** | **Office Responsible** | **Fiscal Resources** | **Completion Time** |
| 1. Statewide spring 2007 participation rates for reading and mathematics in the required grades. Totals should be disaggregated by gender, ethnicity, special education status, LEP status, economically disadvantaged status, and migrant status. | • Provide disaggregated spring 2007 statewide participation rates. | • Statewide spring 2007 disaggregated participation rates. | SAO | None | Submission of evidence to ED: August 30, 2008. |
| **HSAA:** | | | | | |
| 1. Evidence that the State's participation data indicates that all students in the tested grade ranges are included in the assessment system. | • Develop documentation that demonstrates that all eligible students are included in the alternate assessment. | • Analysis of participation data and changes, if any, to eligibility criteria.<br>• Test Administrator Manual.<br>• Technical Manual. | SAO | Est. cost $15,000 | Analysis of participation data by August 30, 2010.<br>Test Administrator Manual by February 28, 2010.<br>Technical Manual by December 31, 2010. |
| 2. Evidence of guidelines and training that the State has in place to ensure that all students with disabilities taking the alternate assessment are included appropriately in the State accountability system. | • Review related program materials and procedures.<br>• Determine changes needed in guidelines and training and develop those.<br>• Plan and conduct survey of teacher opinions related to HSAA, including guidelines, training, student eligibility, and areas needing improvement. | • Analysis of participation data and changes, if any, to eligibility criteria.<br>• List of changes in guidelines and training procedures.<br>• Training Materials.<br>• Test Administrator Manual. | SAO<br>OCISS | Est. cost of materials review, development of training materials, and survey $50,000 | Review of related materials by February 28, 2009.<br>Training materials by November 30. 2009.<br>Test Administrator Manual by November 30, 2010.<br>Complete survey by July 31, 2010. |

| | | | | | |
|---|---|---|---|---|---|
| | | • Results and analysis of teacher survey. | | | |

| Description | Action Steps | Evidence | Office Responsible | Fiscal Resources | Completion Time |
|---|---|---|---|---|---|
| 3. Evidence that the State has in place guidelines for including all students with limited English Proficiency in the tested grade range in the assessment system. | • Review files for related documentation.<br>• Review eligibility criteria with respect to understanding and implementation by IEP teams and others.<br>• Review eligibility criteria to ensure the assessment is available to all qualified students. | • Results and related changes, if any, made to eligibility criteria as well as to guidelines and training provided to teachers.<br>• Training Materials.<br>• Test Administrator Manual. | SAO OCISS<br>SAO Contractor<br>SAO Contractor<br>SAO Contractor | Est. cost $25,000<br>None<br>None<br>RFP contract<br>RFP contract | Results and related changes by November 30, 2009.<br>Training materials by November 30, 2009.<br>Test Administrator Manual by November 30, 2009.<br>Submission of evidence to ED: Upon completion of the Request for Proposals for a new HSAA. |
| 4. Evidence that the State's policies and practices have in place to ensure the identification and inclusion of migrant and other mobile students in the tested grade span in the assessment system. | • Review files for related documentation.<br>• Review eligibility criteria to ensure the assessment is available to all qualified students. | • Results and related changes, if any, made to eligibility criteria as well as to guidelines and training provided to teachers.<br>• Test Administrator Manual.<br>• Technical Manual. | SAO OCISS<br>SAO Contractor<br>SAO Contractor | Est. cost $150,000<br>None<br>None | Results and related changes by November 30, 2009.<br>Test Administrator Manual by November 30, 2009.<br>Technical Manual by December 31, 2010.<br>Submission of evidence to ED: Upon completion of the Request for Proposals for a new HSAA. |

| 7.0 REPORTING | | | | | |
|---|---|---|---|---|---|
| **HSA:** | | | | | |
| **Description** | **Action Steps** | **Evidence** | **Office Responsible** | **Fiscal Resources** | **Completion Time** |
| 1. Samples of the school-level achievement reports disaggregated by required subgroups by grade level and subject area for 2007. | • Collect samples of school level of achievement reports as specified. | • Reports provided to ED. | SAO | None | Submission of evidence to ED: August 30, 2008. |
| 2. Statewide achievement results disaggregated by the required subgroups by grade level and subject areas for 2007. | • Provide disaggregated spring 2007 statewide achievement results. | • Statewide spring 2007 disaggregated achievement results. | Contractor | None | Submission of evidence to ED: August 30, 2008. |
| **HSAA:** | | | | | |
| 1. Evidence that the State's reporting system facilitates appropriate, credible, and defensible interpretation and use of its alternate assessment data. | • Review the State's procedures related to reporting student achievement results and otherwise evaluate all interpretive materials to ensure that they meet expected standards.<br>• Develop statement and identify supporting evidence related to how the State believes that its reporting system meets the NCLB requirements. | • Summary of results of State's study of its reporting procedures and materials including changes, if any, made as a result.<br>• Statement and supporting evidence. | SAO<br>Contractor | Est. cost $10,000<br>Est. cost $10,000 | Complete review of State's procedures by November 30, 2009.<br>Develop statement and supporting evidence by February 28, 2010. |
| 2. Evidence that the State reports participation and assessment results for all students and for each of the required subgroups in its reports at the school, LEA, and State levels. | • Review the State's procedures related to reporting student achievement results and otherwise evaluate all interpretive materials to ensure that they meet expected standards.<br>• Develop statement and identify supporting evidence related to how the State believes that its reporting system meets the NCLB requirements. | • Summary of results of State's study of its reporting procedures and materials including changes, if any, made as a result.<br>• Statement and supporting evidence. | SAO<br>Contractor | Est. cost $10,000<br>Est. cost $10,000 | Complete review of State's procedures by November 30, 2009.<br>Develop statement and supporting evidence by February 28, 2010. |
| 3. Evidence that the State provides for the production of individual interpretive, descriptive, and diagnostic reports following each administration of its assessments.<br>a. That individual student reports provide valid and reliable information | • Review the State's procedures related to reporting student achievement results and otherwise evaluate all interpretive materials to ensure that they meet expected standards.<br>• Review reports with TAC.<br>• Develop statement and identify supporting evidence related to how the State believes | • Summary of results of State's study of its reporting procedures and materials including changes, if any, made as a result.<br>• TAC minutes.<br>• Documentation and illustration as to | SAO<br>Contractor<br>SAO | Est. cost $10,000<br>Est. cost $10,000 | Develop summary and report by September 30, 2009.<br>Document and illustrate reporting by January 31, 2010. |

| | | | | | |
|---|---|---|---|---|---|
| regarding achievement on the assessments.<br>b. Individual student reports provide information for parents, teachers, and principals to help understand and address a student's needs.<br>c. Ensure that individual student reports will be delivered to parents, teachers, and principals in a timely manner. | that its reporting system meets the NCLB requirements.<br>• Convene focus groups that include parents, teachers, and administrators to provide feedback on the adequacy and understandability of the reports and where improvements may be needed. | how the State reports meet the related criteria in March 2007 Peer Review.<br>• Summary of focus group discussions | SAO Contractor | Est. cost $25,000 | Convene focus groups and prepare summary of feedback and changes made as a result by February 28, 2010. |
| **Description** | **Action Steps** | **Evidence** | **Office Responsible** | **Fiscal Resources** | **Completion Time** |
| 4. Evidence that the State ensures that student-level assessment data are maintained securely to protect student confidentiality. | • Review the State's procedures related to reporting student achievement results and otherwise evaluate all interpretive materials to ensure that they meet expected standards.<br>• Review training procedures to ensure student confidentiality is secure. | • Summary of State's reporting procedures and materials including description of changes, if any, made as result of the review.<br>• Summary report of training procedures reviewed, processes used in the review, and changes, if any, made as a result of the review. | SAO Contractor | $5,000<br>$10,000 | Complete review of reporting procedures by November 30, 2009.<br>Complete review of training procedures by November 30, 2009. |
| 5. Evidence that the State produces itemized score analyses so that parents, teachers, and principals can interpret and address the specific academic needs of students. | • Review the State's procedures related to reporting student achievement results and otherwise evaluate all interpretive materials to ensure that they meet expected standards.<br>• Develop statement and identify supporting evidence related to how the State believes that its reporting system meets the NCLB requirements. | • Summary of results of State's study of its reporting procedures and materials including changes, if any, made as a result.<br>• Statement developed and supporting evidence, identified. | SAO Contractor | Est. cost $30,000 | Complete review and evaluation by November 30, 2009.<br>Statement developed and evidence collected by February 28, 2010. |
| **HAPA:** | | | | | |
| 1. Complete set of reports for individual students and schools. | • Collect set of required reports. | • Reports submitted to ED. | SAO | None | Submission of evidence to ED: August 30, 2008. |



[FR Doc. E8–26862 Filed 11–12–08; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Thursday,
November 13, 2008

# Part IV

# Postal Regulatory Commission

**39 CFR Part 3020**

**Administrative Practice and Procedure, Postal Service; Final Rule**

**POSTAL REGULATORY COMMISSION**

**39 CFR Part 3020**

**[Docket Nos. MC2009–3 and CP2009–4; Order No. 127]**

## Administrative Practice and Procedure, Postal Service

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adding Express Mail Contract 2 (MC2009–3) to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a related Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

**DATES:** Effective November 13, 2008.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 73 FR 65708 (November 4, 2008).

The Postal Service seeks to add a new product identified as Express Mail Contract 2 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

### I. Background

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. The Postal Service asserts that Express Mail Contract 2 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–3.[1]

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 has been assigned Docket No. CP2009–4. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision, which also includes an analysis of the Express Mail Contract 2;[2] (2) a redacted version of the contract; which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;[3] (3) requested changes in the MCS product list;[4] (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;[5] and (5) certification of compliance with 39 U.S.C. 3633(a).[6]

In the Statement of Supporting Justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial analysis provided by the Postal Service, that the contract complies with 39 U.S.C. 3633(a). *See id.*, Attachment E.

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.

In Order No. 121, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[7]

### II. Comments

Comments were filed by the Public Representative.[8] No filings were submitted by other interested parties. The Public Representative's comments focus principally on confidentiality and pricing under the contract. Public Representative Comments at 2–4.

The Public Representative states that a sufficient rationale for maintaining the confidentiality of the documents under seal has been provided by the Postal Service. Also, based upon a review of materials filed by the Postal Service in this proceeding, the Public Representative concludes that the contract is beneficial to both parties as well as the general public. *Id.* at 2–3.

The Public Representative notes that the contract is intended to promote new volumes for the Postal Service and provide incentives for the shipper. He concludes, *inter alia*, that the contract should generate sufficient revenue to cover the product's attributable costs, and contribute to the recovery of total institutional costs assigned to competitive products. *Id.* at 3–4.

### III. Commission Analysis

The Commission has reviewed the contract and the financial analysis provided under seal that accompanies the agreement as well as the comments filed by the Public Representative.

*Statutory requirements.* The Commission's statutory responsibilities, in this instance, entail assigning Express Mail Contract 2 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

*Product list assignment.* In determining whether to assign Express Mail Contract 2 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those that use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can

[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).

[2] Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

[3] Attachment B to the Request.

[4] Attachment C to the Request.

[5] Attachment D to the Request.

[6] Attachment E to the Request.

[7] PRC Order No. 121, Notice and Order Concerning Express Mail Contract 2 Negotiated Service Agreement, October 29, 2008 (Order No. 121).

[8] Public Representative Comments in Response to United States Postal Service Request to Add Express Mail Contract 2 to Competitive Product List, November 5, 2008 (Public Representative Comments).

provide similar services. Thus, the market precludes the Postal Service from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at 2. The Postal Service also contends that the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the product list to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that due to the fact that the expedited delivery market requires a substantial infrastructure to support a national network, only large carriers serve the market under consideration. Accordingly, the Postal Service is unaware of any small business concerns that could offer comparable service for this customer. *Id.*

No commenter opposes the proposed classification of Express Mail Contract 2 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail Contract 2 is appropriately classified as a competitive product and should be added to the Competitive Product List.

*Cost considerations.* The Postal Service's filing seeks to establish a new domestic Express Mail product. The contract is predicated on unit costs for major mail functions, *e.g.*, window service, mail processing, and transportation, based on the shipper's mail characteristics.

The Postal Service contends that adding the Express Mail Contract 2 product will result in processing Express Mail pieces that are less costly for the Postal Service than the average Express Mail piece. *See id.*, Attachment A. It believes that its financial analysis shows that these cost savings can be accomplished while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. *Id.*, Attachment E, at 1.

Based on the data submitted and the comments received, the Commission finds that Express Mail Contract 2 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Express Mail Contract 2 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall promptly notify the Commission when the contract terminates no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Express Mail Contract 2 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this order.

## IV. Ordering Paragraphs

*It is Ordered:*

1. Express Mail Contract 2 (MC2009–3 and CP2009–4) is added to the Competitive Product List as a new product under Negotiated Service Agreement, Domestic.

2. The Postal Service shall notify the Commission of the termination date of the contract as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

## List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

**Steven W. Williams,**

*Secretary.*

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

## PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

**Authority:** 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

## Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail
  Single-Piece Letters/Postcards
  Bulk Letters/Postcards
  Flats
  Parcels
  Outbound Single-Piece First-Class Mail International
  Inbound Single-Piece First-Class Mail International
Standard Mail (Regular and Nonprofit)
  High Density and Saturation Letters
  High Density and Saturation Flats/Parcels
  Carrier Route
  Letters
  Flats
  Not Flat-Machinables (NFMs)/Parcels
Periodicals
  Within County Periodicals
  Outside County Periodicals
Package Services
  Single-Piece Parcel Post
  Inbound Surface Parcel Post (at UPU rates)
  Bound Printed Matter Flats
  Bound Printed Matter Parcels
  Media Mail/Library Mail
Special Services
  Ancillary Services
  International Ancillary Services
  Address List Services
  Caller Service
  Change-of-Address Credit Card Authentication
  Confirm
  International Reply Coupon Service
  International Business Reply Mail Service
  Money Orders
  Post Office Box Service
Negotiated Service Agreements
  HSBC North America Holdings Inc. Negotiated Service Agreement
  Bookspan Negotiated Service Agreement
  Bank of America corporation Negotiated Service Agreement
  The Bradford Group Negotiated Service Agreement
Market Dominant Product Descriptions
First-Class Mail [Reserved for Class Description]
  Single-Piece Letters/Postcards [Reserved for Product Description]
  Bulk Letters/Postcards [Reserved for Product Description]
  Flats [Reserved for Product Description]
  Parcels [Reserved for Product Description]
  Outbound Single-Piece First-Class Mail International [Reserved for Product Description]
  Inbound Single-Piece First-Class Mail International [Reserved for Product Description]
Standard Mail (Regular and Nonprofit) [Reserved for Class Description]
  High Density and Saturation Letters [Reserved for Product Description]
  High Density and Saturation Flats/Parcels [Reserved for Product Description]
  Carrier Route [Reserved for Product Description]
  Letters [Reserved for Product Description]
  Flats [Reserved for Product Description]
  Not Flat-Machinables (NFMs)/Parcels [Reserved for Product Description]
Periodicals [Reserved for Class Description]
  Within County Periodicals [Reserved for Product Description]
  Outside County Periodicals [Reserved for Product Description]
Package Services [Reserved for Class Description]
  Single-Piece Parcel Post [Reserved for Product Description]
  Inbound Surface Parcel Post (at UPU rates) [Reserved for Product Description]
  Bound Printed Matter Flats [Reserved for Product Description]
  Bound Printed Matter Parcels [Reserved for Product Description]
  Media Mail/Library Mail [Reserved for Product Description]

Special Services [Reserved for Class Description]
Ancillary Services [Reserved for Product Description]
Address Correction Service [Reserved for Product Description]
Applications and Mailing Permits [Reserved for Product Description]
Business Reply Mail [Reserved for Product Description]
Bulk Parcel Return Service [Reserved for Product Description]
Certified Mail [Reserved for Product Description]
Certificate of Mailing [Reserved for Product Description]
Collect on Delivery [Reserved for Product Description]
Delivery Confirmation [Reserved for Product Description]
Insurance [Reserved for Product Description]
Merchandise Return Service [Reserved for Product Description]
Parcel Airlift (PAL) [Reserved for Product Description]
Registered Mail [Reserved for Product Description]
Return Receipt [Reserved for Product Description]
Return Receipt for Merchandise [Reserved for Product Description]
Restricted Delivery [Reserved for Product Description]
Shipper-Paid Forwarding [Reserved for Product Description]
Signature Confirmation [Reserved for Product Description]
Special Handling [Reserved for Product Description]
Stamped Envelopes [Reserved for Product Description]
Stamped Cards [Reserved for Product Description]
Premium Stamped Stationery [Reserved for Product Description]
Premium Stamped Cards [Reserved for Product Description]
International Ancillary Services [Reserved for Product Description]
International Certificate of Mailing [Reserved for Product Description]
International Registered Mail [Reserved for Product Description]
International Return Receipt [Reserved for Product Description]
International Restricted Delivery [Reserved for Product Description]
Address List Services [Reserved for Product Description]
Caller Service [Reserved for Product Description]
Change-of-Address Credit Card Authentication [Reserved for Product Description]
Confirm [Reserved for Product Description]
International Reply Coupon Service [Reserved for Product Description]
International Business Reply Mail Service [Reserved for Product Description]
Money Orders [Reserved for Product Description]
Post Office Box Service [Reserved for Product Description]
Negotiated Service Agreements [Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]
Bookspan Negotiated Service Agreement [Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement
Part B—Competitive Products
Competitive Product List
Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M-Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Outbound International
Global Expedited Package Services (GEPS) Contracts GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10)
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
Competitive Product Descriptions
Express Mail [Reserved for Group Description]
Express Mail [Reserved for Product Description]
Outbound International Expedited Services [Reserved for Product Description]
Inbound International Expedited Services [Reserved for Product Description]
Priority [Reserved for Product Description]
Priority Mail [Reserved for Product Description]
Outbound Priority Mail International [Reserved for Product Description]
Inbound Air Parcel Post [Reserved for Product Description]
Parcel Select [Reserved for Group Description]
Parcel Return Service [Reserved for Group Description]
International [Reserved for Group Description]
International Priority Airlift (IPA) [Reserved for Product Description]
International Surface Airlift (ISAL) [Reserved for Product Description]
International Direct Sacks—M-Bags [Reserved for Product Description]
Global Customized Shipping Services [Reserved for Product Description]
International Money Transfer Service [Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]
International Ancillary Services [Reserved for Product Description]
International Certificate of Mailing [Reserved for Product Description]
International Registered Mail [Reserved for Product Description]
International Return Receipt [Reserved for Product Description]
International Restricted Delivery [Reserved for Product Description]
International Insurance [Reserved for Product Description]
Negotiated Service Agreements [Reserved for Group Description]
Domestic [Reserved for Product Description]
Outbound International [Reserved for Group Description]
Part C—Glossary of Terms and Conditions [Reserved]
Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E8–26901 Filed 11–12–08; 8:45 am]
BILLING CODE 7710–FW–P

Federal Register

Thursday,
November 13, 2008

# Part V

# Department of Homeland Security

## Customs and Border Protection

## The Electronic System for Travel Authorization: Mandatory Compliance Required for Travel Under the Visa Waiver Program; Notice

## DEPARTMENT OF HOMELAND SECURITY

### Customs and Border Protection

**[USCBP–2008–003; CBP Dec. No. 08–44]**

## The Electronic System for Travel Authorization: Mandatory Compliance Required for Travel Under the Visa Waiver Program

**AGENCY:** Customs and Border Protection, DHS.

**ACTION:** General notice.

**SUMMARY:** The Department of Homeland Security (DHS) announces that, beginning January 12, 2009, all nonimmigrant aliens traveling to the United States under the Visa Waiver Program (VWP) must obtain an approved travel authorization from the Department's Electronic System for Travel Authorization (ESTA). To comply with ESTA, VWP travelers must provide electronically to U.S. Customs and Border Protection (CBP) the information currently collected on the I–94W Nonimmigrant Alien Arrival/Departure (Form I–94W) through the CBP ESTA Web site and receive authorization to travel before embarking on travel to the United States.

**DATES:** Nonimmigrant aliens traveling to the United States under the VWP on or after January 12, 2009 are required to obtain travel authorization through ESTA.

**ADDRESSES:**

- To apply for travel authorization under ESTA, visit the Web site: *https://esta.cbp.dhs.gov/*.
- For additional information on ESTA, visit the Web site: *http://www.cbp.gov/esta*.

**FOR FURTHER INFORMATION CONTACT:** Beverly Good, Office of Field Operations, *CBP.ESTA@dhs.gov* or (202) 344–3710.

**SUPPLEMENTARY INFORMATION:**

### Background

Citizens and eligible nationals of participating Visa Waiver Program (VWP) countries may apply for admission to the United States at a U.S. port of entry for a period of 90 days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. *See* 8 CFR 217. The countries which are currently eligible to participate in the VWP are listed in 8 CFR 217.2(a).[1]

Section 711 of the Implementing the Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a fully automated electronic travel authorization system. Section 711 requires that this system collect such biographical and other information that the Secretary of Homeland Security determines necessary to evaluate, in advance of travel, the eligibility of the alien to travel to the United States, and whether such travel poses a law enforcement or security risk. Section 711 also requires the Secretary of Homeland Security to publish a notice in the **Federal Register** no less than 60 days before DHS implements ESTA as a mandatory program. Public Law No. 110–53, Title VII, § 711(d)(2); 8 U.S.C. 1187 note.

On June 9, 2008, DHS published an interim final rule in the **Federal Register** (73 FR 23440) establishing the ESTA program for aliens traveling to the United States under the VWP.[2] As required under section 711 of the 9/11 Act, the interim final rule provided that ESTA would be implemented as a mandatory program 60 days after publication of a notice in the **Federal Register**. See 8 CFR 217.5(g). This notice satisfies the requirements of the 9/11 Act and the interim final rule.

ESTA is designed to improve the security of the VWP by requiring that nonimmigrant aliens traveling to the United States under the VWP provide biographical information and answer VWP travel eligibility questions before departing for the United States. Each approved ESTA generally is valid for a period of two years, such that an alien may travel to the United States repeatedly within a two-year period without obtaining another ESTA. Travelers whose ESTA applications are approved, but whose passports will expire in less than two years, will receive an ESTA that will be valid until the passport's expiration date. Travelers from countries that have not entered into agreements relating to passport validity for purposes of return of the traveler to his or her home country will not be issued an ESTA that will remain valid more than six months before to the expiration of his or her passport. For more information about ESTA, please refer to the interim final rule published in the **Federal Register** on June 9, 2008, at 73 FR 32440.

### Implementation Notice

This notice announces that all nonimmigrant aliens traveling to the United States under the VWP on or after January 12, 2009 must obtain travel authorization under ESTA prior to embarking on an air or sea carrier for travel to the United States. DHS continues to recommend that VWP travelers obtain travel authorizations as soon as they begin to plan a trip to visit the United States, in order to facilitate timely departures.

Dated: November 7, 2008.

**Michael Chertoff,**

*Secretary.*

[FR Doc. E8–26997 Filed 11–12–08; 8:45 am]

BILLING CODE 9111–14–P

[1] Further details regarding the VWP are contained in the background section of the June 9, 2008 interim final rule, at 73 FR 23440 and on the Web site *www.cbp.gov/esta*.

[2] The comment period for the interim final rule expired on August 8, 2008. CBP is in the process of analyzing the comments received.

Federal Register

Thursday,
November 13, 2008

# Part VI

# The President

## Notice of November 10, 2008—Continuation of the National Emergency with Respect to Iran

Federal Register
Vol. 73, No. 220
Thursday, November 13, 2008

# Presidential Documents

**Title 3—**

## The President

**Notice of November 10, 2008**

## Continuation of the National Emergency with Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2008. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
*November 10, 2008.*

[FR Doc. E8–27171
Filed 11–12–08; 11:15 am]
Billing code 3195–W9–P

# Reader Aids

**Federal Register**

Vol. 73, No. 220

Thursday, November 13, 2008

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, NOVEMBER

65241–65494 ..... 3
65495–65714 ..... 4
65715–65966 ..... 5
65967–66142 ..... 6
66143–66486 ..... 7
66487–66712 .....10
66713–67098 .....12
67099–67358 .....13

## CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
8313 .....65491
8314 .....65493
8315 .....65961
8316 .....65963
8317 .....65965
8318 .....66713
**Executive Orders:**
13477 .....65967
**Administrative Orders:**
Notices:
Notice of November 10, 2008 .....67097
Notice of November 10, 2008 .....67357

**5 CFR**

294 .....66143
300 .....66157
359 .....66143
362 .....66143
451 .....66143
530 .....66143
531 .....66143
532 .....65495, 66143, 66487
534 .....66143
536 .....66143
550 .....66143
591 .....65241, 66143
630 .....65496, 66143
731 .....66489
831 .....66143
842 .....66143

**6 CFR**

**Proposed Rules:**
Ch. I .....65783

**7 CFR**

248 .....65246
915 .....66715
981 .....66719
1427 .....65715
1735 .....65724
1980 .....65503
3560 .....65505
**Proposed Rules:**
305 .....66200
319 .....66200, 66807
340 .....66563
1735 .....65783

**9 CFR**

94 .....65255

**10 CFR**

611 .....66721
**Proposed Rules:**
50 .....66000

**12 CFR**

19 .....66493
201 .....65967
204 .....65506
370 .....66160
585 .....65257
**Proposed Rules:**
Ch. VI .....65567

**13 CFR**

120 .....67099

**14 CFR**

23 .....65968, 66163
25 .....65968
29 .....65968
33 .....65968
35 .....65968
39 .....65507, 65509, 65511, 65972, 65975, 65977, 65979, 66497, 66512, 66737, 66738, 66740, 66743, 66745, 66747
71 .....66514, 66515
73 .....67102
93 .....66516, 66517
97 .....66517
**Proposed Rules:**
39 .....67110, 67112
25 .....66205
71 .....66207
121 .....66205, 67115
125 .....67115
129 .....66205
135 .....67115

**15 CFR**

740 .....65258
772 .....65258
774 .....65258

**17 CFR**

190 .....65514
232 .....65516
270 .....65516

**18 CFR**

35 .....65526

**19 CFR**

102 .....66171

**20 CFR**

404 .....65541, 66520
416 .....65541, 66520
**Proposed Rules:**
404 .....66563, 66564
405 .....66563
416 .....66563, 66564

**21 CFR**

1 .....66294
17 .....66750
101 .....66754
884 .....66522

**Proposed Rules:**
17 ..... 66811
1310 ..... 66815

**23 CFR**

**Proposed Rules:**
620 ..... 67117
635 ..... 67117
636 ..... 67117
710 ..... 67117

**25 CFR**

15 ..... 67256
18 ..... 67256
179 ..... 67256

**26 CFR**

1 ..... 65981, 65982, 66539
602 ..... 65982
702 ..... 67103
**Proposed Rules:**
1 ..... 66001, 66568

**30 CFR**

56 ..... 66171
57 ..... 66171
71 ..... 66171
**Proposed Rules:**
926 ..... 66569

**31 CFR**

359 ..... 65543
560 ..... 66541
**Proposed Rules:**
103 ..... 65567, 65568, 65569, 66414
Ch. X ..... 66414

**32 CFR**

578 ..... 66754

**33 CFR**

117 ..... 66542, 66543
165 ..... 65544, 65982, 67104
**Proposed Rules:**
117 ..... 66001, 66571

**36 CFR**

223 ..... 65546
261 ..... 65984
**Proposed Rules:**
7 ..... 65784

**37 CFR**

1 ..... 66754
201 ..... 66173
255 ..... 66173

**38 CFR**

1 ..... 65258
3 ..... 65726
4 ..... 66543
17 ..... 65260, 65552
20 ..... 65726
21 ..... 65260
**Proposed Rules:**
3 ..... 65280
17 ..... 65282

**39 CFR**

3020 ..... 67350

**40 CFR**

49 ..... 67107
50 ..... 66964
51 ..... 66964
52 ..... 66182, 66554, 66555, 66759
53 ..... 66964
55 ..... 65269
58 ..... 66964
59 ..... 66184
75 ..... 65554
81 ..... 66759
131 ..... 65735
147 ..... 65556
180 ..... 65739, 66775, 66780
355 ..... 65452
370 ..... 65452
721 ..... 65743
**Proposed Rules:**
52 ..... 66209
55 ..... 65804
59 ..... 66209
63 ..... 66694

**41 CFR**

61–250 ..... 65766

**42 CFR**

440 ..... 66187

**43 CFR**

4 ..... 67256
11 ..... 65274
30 ..... 67256

**44 CFR**

64 ..... 65775
65 ..... 65777
67 ..... 65778
**Proposed Rules:**
67 ..... 65811, 66574

**47 CFR**

73 ..... 66198, 66199, 66559, 66560
**Proposed Rules:**
51 ..... 66585, 66821
54 ..... 66821
61 ..... 66821
69 ..... 66821
73 ..... 66002, 66210, 66588, 66589, 66830

**48 CFR**

Ch. 1 ..... 67064, 67093
2 ..... 67064
3 ..... 67064
9 ..... 67064
42 ..... 67064
52 ..... 67064

**49 CFR**

385 ..... 65565
395 ..... 65565
571 ..... 66786
585 ..... 66786
1244 ..... 66802

**50 CFR**

20 ..... 65274, 65926
21 ..... 65926
222 ..... 65277, 66803
223 ..... 65277, 66803
679 ..... 66561, 66805
**Proposed Rules:**
17 ..... 66003, 66831
226 ..... 65283

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT NOVEMBER 13, 2008

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Avocados Grown in South Florida:

Revisions to Grade and Container Requirements; published 11-12-08

**ENVIRONMENTAL PROTECTION AGENCY**

Stay of Effectiveness of Control Measure Regulating Dust Emissions at the Four Corners Power Plant; Navajo Nation; published 11-13-08

**FEDERAL COMMUNICATIONS COMMISSION**

Amendment of Section 90.20(e)(6) of the Commission's Rules; published 10-14-08

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Security Zones; Escorted Vessels, Mobile, AL, Captain of the Port Zone; published 11-13-08

**NUCLEAR REGULATORY COMMISSION**

Policy Statement on the Regulation of Advanced Reactors; published 10-14-08

**PERSONNEL MANAGEMENT OFFICE**

Disabled Veterans Documentation; published 10-14-08

**SMALL BUSINESS ADMINISTRATION**

Business Loan Program Regulations:

Incorporation of London Interbank Offered Rate Base Rate and Secondary Market Pool Interest Rate Changes; published 11-13-08

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness Directives:

Boeing Model 737-300, -400, and -500 Series Airplanes; published 10-9-08

Airworthiness directives:

Boeing Model 737-600, -700, -700C, -800, and -900 Series Airplanes Equipped with CFM56-7 Engines; published 10-9-08

Airworthiness Directives:

Boeing Model 767 200, 300, and 400ER Series Airplanes; published 10-9-08

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Payments from the Presidential Primary Matching Payment Account; published 11-13-08

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Tomatoes Grown In Florida; Increased Assessment Rate; comments due by 11-19-08; published 10-20-08 [FR E8-24919]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Bovine Spongiform Encephalopathy:

Minimal-Risk Regions and Importation of Meat, Meat Byproducts, and Meat Food Products Derived from Bovines 30 Months of Age or Older; comments due by 11-17-08; published 9-18-08 [FR E8-21786]

National Animal Identification System:

Use of 840 Animal Identification Numbers for U.S.-Born Animals Only; comments due by 11-17-08; published 9-18-08 [FR E8-21787]

Tuberculosis; Amend the Status of California from Accredited Free to Modified Accredited Advanced; comments due by 11-17-08; published 9-18-08 [FR E8-21814]

**COMMERCE DEPARTMENT**

**Economic Analysis Bureau**

International Services Surveys:

BE-150, Quarterly Survey of Cross-Border Credit, Debit, and Charge Card Transactions; comments due by 11-17-08; published 9-18-08 [FR E8-21896]

**COMMERCE DEPARTMENT**

**Industry and Security Bureau**

Export Administration Regulations:

Establishment of License Exception Intra-Company Transfer (ICT); comments due by 11-17-08; published 10-3-08 [FR E8-23506]

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Atlantic Coastal Fisheries Cooperative Management Act Provisions:

American Lobster Fishery; comments due by 11-20-08; published 10-6-08 [FR E8-23568]

Fisheries of the Exclusive Economic Zone Off Alaska:

Revised Management Authority for Dark Rockfish in the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska; comments due by 11-17-08; published 9-17-08 [FR E8-21745]

Revised Management Authority for Dark Rockfish in the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska; comments due by 11-17-08; published 9-24-08 [FR E8-22441]

Revisions to the Pollock Trip Limit Regulations in the Gulf of Alaska; comments due by 11-19-08; published 10-20-08 [FR E8-24923]

**COMMODITY FUTURES TRADING COMMISSION**

Execution of Transactions; Regulation 1.38 and Guidance on Core Principle (9); comments due by 11-17-08; published 9-18-08 [FR E8-21865]

**ENVIRONMENTAL PROTECTION AGENCY**

Approval and Promulgation of Air Quality Implementation Plans:

Metropolitan Washington Nonattainment Area; Determination of Attainment of the Fine Particle Standard; comments due by 11-21-08; published 10-22-08 [FR E8-25160]

Wisconsin; comments due by 11-21-08; published 10-22-08 [FR E8-25040]

Approval and Promulgation of Implementation Plans:

1-Hour Ozone Extreme Area Plan for San Joaquin Valley, CA; comments due by 11-17-08; published 10-16-08 [FR E8-24416]

Environmental Statements; Notice of Intent:

Coastal Nonpoint Pollution Control Programs; States and Territories—

Florida and South Carolina; Open for comments until further notice; published 2-11-08 [FR 08-00596]

Idaho: Proposed Authorization of State Hazardous Waste Management Program Revision Extension of Comment Period; comments due by 11-20-08; published 10-28-08 [FR E8-25685]

Inert Ingredient; Exemption from the Requirement of a Tolerance:

Amylopectin, acid-hydrolyzed, 1-octenylbutanedioate and for amylopectin, hydrogen 1-octadecenylbutanedioate; comments due by 11-17-08; published 9-17-08 [FR E8-21737]

Tolerance Actions:

2,4-D, Bensulide, Chlorpyrifos, DCPA, Desmedipham, Dimethoate, Fenamiphos, Metolachlor, Phorate, Sethoxydim, Terbufos, Tetrachlorvinphos, and Triallate; comments due by 11-17-08; published 9-17-08 [FR E8-21736]

Treatment of Data Influenced by Exceptional Events (Exceptional Event Rule):

Revised Exceptional Event Data Flagging Submittal and Documentation Schedule to Support Initial Area Designations for the 2008 Ozone NAAQS; comments due by 11-20-08; published 10-6-08 [FR E8-23520]

Revised Exceptional Event Data Submittal and Documentation Schedule for Monitoring Data Used in Designations for the 2008 Ozone NAAQS; comments due by 11-20-08; published 10-6-08 [FR E8-23524]

**FARM CREDIT ADMINISTRATION**

Funding and Fiscal Affairs, Loan Policies and

Operations, and Funding Operations, etc.; comments due by 11-21-08; published 11-4-08 [FR E8-26273]

**FEDERAL COMMUNICATIONS COMMISSION**

Television Broadcasting Services:

Danville, KY; comments due by 11-19-08; published 10-20-08 [FR E8-24913]

Huntsville, AL; comments due by 11-19-08; published 10-20-08 [FR E8-24911]

Omaha, NE; comments due by 11-19-08; published 10-20-08 [FR E8-24924]

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Assessments; comments due by 11-17-08; published 10-16-08 [FR E8-24186]

**FEDERAL ELECTION COMMISSION**

Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-financed Candidates; comments due by 11-21-08; published 10-20-08 [FR E8-24505]

**FEDERAL RESERVE SYSTEM**

Capital Adequacy Guidelines:

Treatment of Perpetual Preferred Stock Issued to the United States Treasury under the Emergency Economic Stabilization Act of 2008; comments due by 11-21-08; published 10-22-08 [FR E8-25117]

Regulation D, Reserve Requirements of Depository Institutions; comments due by 11-21-08; published 10-9-08 [FR E8-24003]

**FEDERAL TRADE COMMISSION**

Used Motor Vehicle Trade Regulation Rule; comments due by 11-19-08; published 9-25-08 [FR E8-22415]

**GENERAL SERVICES ADMINISTRATION**

Acquisition Regulation:

Cooperative Purchasing-Acquisition of Security and Law Enforcement Goods and Services by State and Local Governments Through Federal Supply Schedules; comments due by 11-18-08; published 9-19-08 [FR E8-21927]

General Services Acquisition Regulation:

GSAR Case 2008-G503; Rewrite of GSAR Part 505, Publicizing Contract Actions; comments due by 11-17-08; published 9-16-08 [FR E8-21121]

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Beverages; Bottled Water; comments due by 11-17-08; published 9-17-08 [FR E8-21619]

**HOMELAND SECURITY DEPARTMENT**

**Coast Guard**

Passenger Weight and Inspected Vessel Stability Requirements; comments due by 11-18-08; published 8-20-08 [FR E8-18791]

**HOMELAND SECURITY DEPARTMENT**

Privacy Act of 1974:

Implementation of Exemptions; Grievances, Appeals, and Disciplinary Action System of Records; comments due by 11-19-08; published 10-20-08 [FR E8-24805]

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and Threatened Wildlife and Plants:

Revised Critical Habitat for the California Red-Legged Frog (Rana aurora draytonii); comments due by 11-17-08; published 9-16-08 [FR E8-20473]

Revised Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx (Lynx canadensis); comments due by 11-20-08; published 10-21-08 [FR E8-24827]

**INTERIOR DEPARTMENT**

**Minerals Management Service**

Production Measurement and Training Requirements; Technical Changes; comments due by 11-17-08; published 9-17-08 [FR E8-21488]

**INTERIOR DEPARTMENT**

**National Park Service**

Special Regulations; Areas of the National Park System; comments due by 11-20-08; published 11-5-08 [FR E8-26447]

**JUSTICE DEPARTMENT**

National Motor Vehicle Title Information System (NMVTIS); comments due by 11-21-08; published 9-22-08 [FR E8-22070]

**LABOR DEPARTMENT**

**Occupational Safety and Health Administration**

Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Limited Reopening of Record; comments due by 11-21-08; published 10-22-08 [FR E8-25079]

**LABOR DEPARTMENT**

**Wage and Hour Division**

Protecting the Privacy of Workers:

Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction; comments due by 11-19-08; published 10-20-08 [FR E8-24762]

**MINE SAFETY AND HEALTH FEDERAL REVIEW COMMISSION**

**Federal Mine Safety and Health Review Commission**

Procedural Rules; comments due by 11-17-08; published 10-21-08 [FR E8-24994]

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

NASA Mentor-Protege Program; comments due by 11-18-08; published 9-19-08 [FR E8-21984]

**NATIONAL CREDIT UNION ADMINISTRATION**

Accuracy of Advertising and Notice of Insured Status; comments due by 11-21-08; published 10-22-08 [FR E8-25116]

**OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE**

**National Intelligence, Office of the Director**

Procedures Governing the Acceptance of Service of Process Upon the Office of the Director of National Intelligence and Its Employees; comments due by 11-17-08; published 10-17-08 [FR E8-24744]

Regulations Governing the Production of Office of the Director of National Intelligence Information or Material in Proceedings; comments due by 11-17-08; published 10-17-08 [FR E8-24747]

**PERSONNEL MANAGEMENT OFFICE**

Adverse Actions; comments due by 11-17-08; published 9-18-08 [FR E8-21523]

**SECURITIES AND EXCHANGE COMMISSION**

Indexed Annuities and Certain Other Insurance Contracts; comments due by 11-17-08; published 10-17-08 [FR E8-24625]

Self-Regulatory Organizations; Proposed Rule Changes:

Boston Stock Exchange, Inc.; comments due by 11-17-08; published 10-27-08 [FR E8-25536]

Chicago Board Options Exchange, Inc.; comments due by 11-17-08; published 10-27-08 [FR E8-25502]

NYSE Alternext US LLC; comments due by 11-17-08; published 10-27-08 [FR E8-25528]

**SMALL BUSINESS ADMINISTRATION**

Small Business Energy Efficiency Program; comments due by 11-17-08; published 10-17-08 [FR E8-24599]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness Directives:

Boeing Model 727 Airplanes; comments due by 11-21-08; published 10-7-08 [FR E8-23668]

Bombardier Model CL-600-1A11 (CL-600), CL-600-2A12 (CL-601), et al., Airplanes, and Model CL-600-2B19 Airplanes; comments due by 11-17-08; published 10-16-08 [FR E8-24549]

Dowty Propellers R408 Series Propellers; comments due by 11-17-08; published 10-16-08 [FR E8-24252]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB 135ER, 135KE, et al. Airplanes and Model EMB 145, 145ER, et al. Airplanes; comments due by 11-17-08; published 10-16-08 [FR E8-24582]

Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135BJ Airplanes; comments due by 11-17-08; published 10-16-08 [FR E8-24583]

Eurocopter France Model EC 155B and EC155B1 Helicopters; comments due by 11-20-08; published 10-21-08 [FR E8-24986]

Proposed Establishment of Class D and Class E Airspace:

Conroe, TX; comments due by 11-21-08; published 10-7-08 [FR E8-23753]

Proposed Establishment of Class E Airspace:

Edinburg, TX; comments due by 11-21-08; published 10-7-08 [FR E8-23768]

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

Fair Market Value and Design-Build Amendments; comments due by 11-21-08; published 11-13-08 [FR E8-26936]

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Federal Motor Vehicle Safety Standards:

Motorcycle Brake Systems; comments due by 11-17-08; published 9-17-08 [FR E8-21568]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**H.R. 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**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.