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Vol. 73, No. 227
Monday, November 24, 2008

Presidential Documents

Title 3—

The President

Proclamation 8320 of November 19, 2008

National Farm-City Week, 2008

By the President of the United States of America

A Proclamation

Farmers and ranchers display the values of hard work and good stewardship, and National Farm-City Week is an opportunity to recognize these individuals and their urban partners for contributing to our Nation's well-being.

Farming, America's first industry, helps feed and clothe our citizens and increasingly provides more of our energy. The agricultural sector also employs more than a million people across our Nation. Farming has been a cornerstone of our country since its founding and continues to be a vital part of our economy.

Our farmers and ranchers provide a safe, healthy, and abundant food supply, yet they could not succeed in doing so without essential partnerships with urban communities to supply, sell, and deliver finished products across our country and around the world. These cooperative efforts help to create a prosperous future for our citizens and people everywhere.

Since 2001, my Administration has been committed to strengthening our agricultural sector, and we have worked to create an environment that will stimulate growth by opening new markets, encouraging free and fair trade, and keeping taxes low. As we celebrate this week, we recognize the vital work of farmers and ranchers, and we pay tribute to all those who strengthen the relationships between our rural and urban communities.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 21 through November 27, 2008, as National Farm-City Week. I encourage all Americans to join in recognizing farmers, ranchers, and all those who contribute to the strength of America's agricultural industry.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of November, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E8–28002
Filed 11–21–08; 8:45 am]
Billing code 3195–W9–P

Federal Register
Vol. 73, No. 227
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Presidential Documents

Title 3—

The President

Proclamation 8321 of November 20, 2008

National Family Week, 2008

By the President of the United States of America

A Proclamation

During National Family Week, we reflect on the important values and character that families instill in their children and in our society.

Families offer a stable and nurturing environment for children by providing support and comfort. A child's parents, siblings, grandparents, aunts and uncles, and other family members show them love and teach them right from wrong. Strong families set a positive example and help young people grow into compassionate and responsible citizens.

My Administration believes families strengthen our communities and help shape the character and future of our Nation. Over the years, we have demonstrated our deeply held commitment to supporting America's families by signing laws that respect the sanctity of life, lower taxes, double the child tax credit, reduce the marriage penalty, and empower parents to make choices about their children's education. In addition, the Helping America's Youth initiative, led by First Lady Laura Bush, is dedicated to raising awareness about the importance of positive youth development by keeping children connected to family, school, and community.

National Family Week is also a time to show our appreciation to our Nation's military families. We recognize their sacrifices, and we pray for their loved ones in the Armed Forces who are laying a foundation of peace for future generations. We owe a debt of gratitude to the brave men and women who have answered the call to serve our country and their families who support them.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 23 through November 29, 2008, as National Family Week. I invite the States, communities, and all the people of the United States to join together in observing this week with appropriate ceremonies and activities to honor our Nation's families.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord two thousand eight, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E8–27997
Filed 11–21–08; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 73, No. 227
Monday, November 24, 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.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 402, 407 and 457

RIN 0563–AC19

Catastrophic Risk Protection Endorsement; Group Risk Plan of Insurance Regulations; and the Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Catastrophic Risk Protection Endorsement, the Group Risk Plan of Insurance Regulations, and the Common Crop Insurance Regulations, Basic Provisions to revise those provisions affected by the changes mandated by the Food, Conservation, and Energy Act of 2008 (Farm Bill 2008).

DATES: This rule is effective November 19, 2008. Written comments and opinions on this rule will be accepted until the close of business January 23, 2009 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit comments, titled ''2008 Farm Bill Interim Rule,'' by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205.
- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131–3055.
- *E-Mail: DirectorPDD@rma.usda.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.

FOR FURTHER INFORMATION CONTACT: Erin Albright, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926-7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

The purpose of this rule is to implement changes to the crop insurance program as mandated by the Farm Bill 2008. The changes within this rule will not have a significant impact on a large number of insured producers as follows: (1) Incorporates a new definition of ''organic crop'' in the Basic Provisions; however, this revision will have no impact on organic producers or the insurance coverage currently afforded to them; (2) Clarifies that lawsuits by producers for denials of claims under section 508(j)(2) of the Act can only be brought against FCIC or the Secretary in the United States district court when a claim is denied by an approved insurance provider. Prior provisions were not clear with respect to when a producer could directly sue FCIC and this change simply clarifies such and will have little, if any impact, on producers over the current provisions; (3) Allows producers with farm-stored production to elect to extend the settlement of their claim for up to four months after the last date on which claims may be submitted under the policy. This change simply means producers no longer have to get the approved insurance provider's approval to delay settlement of the claim and is only limited to cases where there is farm-stored production, thereby not impacting a large number of insured producers; and (4) Provides at the election of the Governor of a State designated within the Prairie Pothole National Priority Area, native sod acreage located in a county contained within the Prairie Pothole National Priority Area that is tilled for the production of an annual crop will be ineligible for crop insurance during the first 5 crop years of planting. The Prairie Pothole National Priority Area consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota or South Dakota. This change will not have a significant impact on a large number of insured producers since it only impacts specific acreage of native sod tilled by insured producers in certain counties in only these 5 States and only at the election of the Governors of these States.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The

provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (Act) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On May 22, 2008, the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) was enacted. FCIC must revise those provisions of the Catastrophic Risk Protection Endorsement (CAT Endorsement), Group Risk Plan of Insurance Regulations (GRP), and the Common Crop Insurance Regulations Basic Provisions (Basic Provisions) to implement program changes mandated by the 2008 Farm Bill and clarify existing policy provisions. Provisions in the 2008 Farm Bill that require revisions in the regulations are as follows:

a. Section 12001 of the 2008 Farm Bill contains a definition of ''organic crop'' that will require this definition to be incorporated in the Basic Provisions.

b. Section 12013 of the 2008 Farm Bill clarifies that lawsuits by producers for denials of claims under section 508(j)(2) of the Act can only be brought against FCIC or the Secretary in the United States district court when a claim is denied by an approved insurance provider on behalf of the Federal Crop Insurance Corporation. Prior provisions were not clear with respect to when a producer could directly sue FCIC. This rule clarifies that it is only if FCIC elects to get involved in the claims process or directs the approved insurance provider to pay the claim for a certain amount or deny the claim that FCIC can be sued by the producer directly. In all other cases, the producer's lawsuit would remain only against the approved insurance provider.

c. Section 12014 of the 2008 Farm Bill allows producers with farm-stored production to elect to extend the settlement of their claim for up to four months after the last date on which claims may be submitted under the policy. Currently, claims must be submitted by 60 days after the end of the insurance period, unless an extension has been requested by the producer and granted by the approved insurance provider. This change means that the producers no longer have to get the approved insurance provider's approval to delay settlement of the claim. However, this delay is limited to cases where there is farmed-stored production.

d. Section 12020 of the 2008 Farm Bill stated that, at the election of the Governor of a State designated within the Prairie Pothole National Priority Area, native sod acreage located in a county contained within the Prairie Pothole National Priority Area that is tilled for the production of an annual crop will be ineligible for crop insurance during the first 5 crop years of planting. Native sod is defined as land on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing; and that has not been tilled for the production of an annual crop as of the date of enactment of the 2008 Farm Bill. Areas of 5 acres or less are exempt from the terms of the provision. The Prairie Pothole National Priority Area consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota or South Dakota as specified on the RMA Web site at *http://www.rma.usda.gov/*. The 2008 Farm Bill is specific in that, at the election of the Governors of these states, any acreage of native sod that is tilled for production of an annual crop after the date of enactment will be ineligible for insurance for the first 5 crops years of planting. Therefore, the Governors of these states will be contacted by the RMA and encouraged to make this election by February 15, 2009 (30 days before the March 15, 2009, sales closing date for the 2009 crop year) so that insured producers may make timely and appropriate insurance decisions with respect to their farming operation. If the decision to implement the provisions is made after this date, any producer who insured native sod that had been tilled after enactment of the 2008 Farm Bill may be required to repay any indemnities or other payments made on native sod acreage during the period the acreage is ineligible for insurance, and approved insurance providers may be required to remove such acreage from the insurance policy and refund any premium for such acreage. Further, if a Governor makes an election under section 508(o) of the Act to make acreage of native sod planted to an annual crop no longer eligible for crop insurance for the specified period, such election will be announced by FCIC via a Manager's Bulletin and posted on the RMA Web site at *http://www.rma.usda.gov/*.

To implement these provisions, FCIC is revising the CAT Endorsement, GRP

policy and the Basic Provisions, and making such other conforming amendments as are necessary to incorporate such changes.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause to make the rule effective upon filing at the Office of the Federal Register exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest. The changes in this rule are statutorily mandated.

With respect to the provisions of this rule, it would be contrary to the public interest to delay its implementation. If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the next crop year for those crops having a contract change date prior to the effective date of this publication. This would mean that the affected producers would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective upon filing with the Office of the Federal Register.

The amendments in this rule are applicable for the 2009 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule, and for the 2010 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule.

1. The specific changes to the Catastrophic Risk Protection Endorsement (7 CFR part 402) are as follows:

a. Section 1—FCIC is deleting the definitions of ''crop of economic significance,'' ''insurance is available,'' and ''linkage requirement.'' These provisions are only used in relation to the linkage requirements. Section 508(b)(7) of the Act and the new disaster programs included in the 2008 Farm Bill do require the purchase of crop insurance to be eligible for certain USDA benefits. However, the question of eligibility is for the other farm programs to enforce, not crop insurance. Therefore, those other programs should specify the conditions of eligibility, including the requirement to purchase insurance. Including it in the crop insurance policy is not effective because the producer must purchase the policy to know of the linkage requirement and by that time the issue is effectively rendered moot. Removing provisions dealing with ''linkage'' will also prevent any conflicts between the crop insurance policy provisions and other USDA program requirements. As a result, FCIC will be removing all provisions relating to linkage from the policy;

b. Section 2—FCIC is removing section 2(a)(1) because the General Crop Insurance Policy (7 CFR 401.8) referenced in these provisions no longer exists;

c. Section 4—FCIC is removing section 4(a) because the provisions were only relevant for the 1995 through 1998 crop years and are no longer applicable.

FCIC is also revising sections 4(b) and (c) (redesignated sections 4(a) and (b)) to remove the reference to different catastrophic risk protection (CAT) coverage levels for the 1995 through 1998 crop years versus the 1999 and succeeding crop years;

d. Section 6—FCIC is revising section 6(e) to remove the reference to section 12. Section 12 is removed by this rule because, as stated above, any requirement that the producer obtain crop insurance to be eligible for another USDA program benefit is more appropriately contained in the rules for such program, not the crop insurance policy; therefore, this reference is no longer needed;

e. Section 7—FCIC is removing current section 7(b) because tobacco marketing cards are no longer being used by the Farm Service Agency.

FCIC is revising redesignated section 7(b) to remove the reference to linkage requirements. As stated above, any requirement that the producer obtain crop insurance to be eligible for another USDA program benefit is more appropriately contained in the rules for such program, not the crop insurance policy;

f. FCIC is removing current section 9(b) because section 35 of the Basic Provisions contains similar provisions. Therefore, this language is redundant;

g. Section 10—FCIC is revising section 10(b) to remove provisions indicating a new application is required after a policy has been voided. When a policy is void, it means no coverage is in place for a certain crop year, but does not automatically mean the policy is canceled or terminated for succeeding crop years. FCIC is also removing provisions referring to the waiver of disaster assistance because the waiver is no longer being used by the Farm Service Agency;

h. Section 11—FCIC is revising section 11(a) to remove the reference to the Late Planting Agreement Option because the option no longer exists; and

i. FCIC is removing section 12 because, as stated above, any requirement that the producer obtain crop insurance to be eligible for another USDA program benefit is more appropriately contained in the rules for such program, not the crop insurance policy. This will prevent any conflicts between the crop insurance policy provisions and other USDA program requirements.

2. The specific changes to the Group Risk Plan of Insurance Regulations (7 CFR part 407) are as follows:

a. Section 1—FCIC is adding the definition of ''native sod'' and ''Prairie Pothole National Priority Area'' consistent with section 12020 of the 2008 Farm Bill. FCIC is also adding the definition of ''organic crop'' and revising the definition of ''organic farming practice'' consistent with section 12001 of the 2008 Farm Bill;

b. Section 3—FCIC is adding a new section 3(d) to specify when native sod is ineligible for crop insurance in accordance with section 12020 of the 2008 Farm Bill;

c. Section 16 [Reinsured policy]—FCIC is revising section 16(e) to specify lawsuits must be filed in the United States district court when an approved insurance provider denies a claim on behalf of the Federal Crop Insurance Corporation consistent with section 12013 of the 2008 Farm Bill; and

d. Section 20—FCIC is removing this section and reserving it because it relates to the linkage requirements that the producer obtain crop insurance to be eligible for another USDA program benefit because such provisions are more appropriately contained in the rules for such program, not the crop insurance policy.

3. The specific changes to the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457) are as follows:

a. Section 1—FCIC is revising the definition of ''catastrophic risk protection'' to remove the language pertaining to the requirement for CAT coverage to be eligible for other USDA programs and the waiver of disaster assistance because the waiver is no longer being used by the Farm Service Agency. FCIC is adding the definition of ''native sod'' and ''Prairie Pothole National Priority Area'' consistent with section 12020 of the 2008 Farm Bill. FCIC is also adding the definition of ''organic crop'' and revising the definition of ''organic farming practice'' consistent with section 12001 of the 2008 Farm Bill;

b. Section 3—FCIC is removing the language referring to linkage and crops of economic significance in section 3(b)(1) because, as stated above, any requirement that the producer obtain crop insurance to be eligible for another USDA program benefit is more

appropriately contained in the rules for such program, not the crop insurance policy;

c. Section 9—FCIC is adding a new section 9(e) to specify when native sod is ineligible for crop insurance consistent with section 12020 of the 2008 Farm Bill;

d. Section 14—FCIC is revising section 14(c) (Your Duties) to specify producers with farm-stored production can elect to extend the settlement of their claim for up to four months after the last date on which claims may be submitted under the policy consistent with section 12014 of the 2008 Farm Bill;

e. Section 20 [Reinsured Policies]—FCIC is revising section 20(e) to specify lawsuits must be filed in the United States district court when an approved insurance provider denies a claim on behalf of the Federal Crop Insurance Corporation consistent with section 12013 of the 2008 Farm Bill; and

f. Section 35—FCIC is removing the reference to an additional coverage plan of insurance in section 35(a). With the removal of section 9(b) of the Catastrophic Risk Protection Endorsement, the language in section 35(a) will apply to both catastrophic risk protection and additional levels of coverage.

List of Subjects in 7 CFR Parts 402, 407 and 457

Crop insurance, Reporting and recordkeeping requirements.

Interim Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR parts 402, 407 and 457 as follows:

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT

■ 1. The authority citation for 7 CFR part 402 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 402.4 as follows:

■ a. Amend section 1 by removing the definitions of ''crop of economic significance;'' ''insurance is available;'' and ''linkage requirement;''

■ b. Amend section 2 by removing section 2(a)(1) and redesignating sections 2(a)(2), (3), and (4) as sections 2(a)(1), (2), and (3), respectively;

■ c. Amend section 4 by removing section 4(a) and redesignating sections 4(b), (c), (d), and (e) as sections 4(a), (b), (c), and (d), respectively;

■ d. Amend redesignated section 4(a) by removing the phrase ''for the 1999 and subsequent crop years,'';

■ e. Revise redesignated section 4(b);

■ f. Amend section 6(e) by removing the phrase ''as set out in section 12, and all such benefits already received for the crop year must be refunded'';

■ g. Amend section 7 by removing section 7(b) and redesignating section 7(c) as section 7(b);

■ h. Amend redesignated section 7(b) introductory text by removing the phrase ''to satisfy linkage requirements'';

■ i. Amend section 9 by removing section 9(b) and redesignating section 9(a) as introductory text to section 9 (remove the paragraph designation ''(a)'');

■ j. Revise section 10(b);

■ k. Amend section 11(a) by removing the phrase '', except the Late Planting Agreement Option''; and

■ l. Remove section 12.

The revised text reads as follows:

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

* * * * *

4. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(b) If the crop policy denominates coverage in dollars per acre or other measure, or any other alternative method of coverage, such coverage will be converted to the amount of coverage that would be payable at fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the expected market price.

* * * * *

10. Concealment or Fraud.

* * * * *

(b) The voidance will be effective for the crop year during which any such act or omission occurred.

* * * * *

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 407 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 407.9 as follows:

■ a. Amend section 1 by adding definitions of ''native sod,'' ''organic crop,'' and ''Prairie Pothole National Priority Area'' and revising the definition of ''organic farming practice;''

■ b. Amend section 3 by adding a new paragraph (d);

■ c. Amend section 16(a) introductory text [Reinsured policy] by adding the phrase ''or (e)'' after the phrase ''section 16(d)'';

■ d. Amend section 16(a)(1) introductory text [Reinsured policy] by adding the phrase ''or (e)'' after the phrase ''section 16(d)'';

■ e. Revise section 16(e) [Reinsured policy]; and

■ f. Remove and reserve section 20.

The revised and added text reads as follows:

§ 407.9 Group risk plan common policy.

* * * * *

1. Definitions.

* * * * *

Native sod. Acreage on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and that has no record of being tilled (determined in accordance with FSA records) for the production of an annual crop on or before May 22, 2008.

* * * * *

Organic crop. An agricultural commodity that is organically produced consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

Organic farming practice. A system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

* * * * *

Prairie Pothole National Priority Area. Consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota or South Dakota as specified on the RMA Web site at *http://www.rma.usda.gov/*.

* * * * *

3. Insured and Insurable Acreage.

* * * * *

(d) If the Governor of a State designated within the Prairie Pothole National Priority Area elects to make section 508(o) of the Act effective for the State, any native sod acreage greater than 5 acres located in a county contained within the Prairie Pothole National Priority Area that has been tilled for the production of an annual crop after May 22, 2008, is not insurable for the first 5 crop years of planting following the date the native sod acreage is tilled. If the Governor makes this election after you have received an indemnity or other payment for native sod acreage, you may be required to repay the amount received and any premium for such acreage may be refunded to you.

* * * * *

[Reinsured policy]

16. Mediation, Arbitration, Appeals, and Administrative and Judicial Review.

* * * * *

(e) Except as provided in section 16(d), if you disagree with any other determination made by FCIC or any claim where FCIC is directly involved in the claims process or directs us in the resolution of the claim, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal).

(1) If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal.

(2) Such suit must be brought in the United States district court for the district in which the insured acreage is located.

(3) Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.

* * * * *

20. [Reserved]

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PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 is revised to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(o).

■ 2. Amend § 457.8 as follows:

■ a. Amend section 1 by adding the definitions of ''native sod,'' ''organic crop,'' and ''Prairie Pothole National Priority Area'' and revising the definitions of ''catastrophic risk protection'' and ''organic farming practice;''

■ b. Amend section 3(b)(1) by removing the last sentence;

■ c. Amend section 9 by adding a new paragraph (e);

■ d. Revise section 14(c) (Your Duties);

■ e. Amend section 20(a) introductory text [For Reinsured Policies] by adding the phrase ''or (e)'' after the phrase ''section 20(d)'';

■ f. Amend section 20(a)(1) introductory text [For Reinsured Policies] by adding the phrase ''or (e)'' after the phrase ''section 20(d)'';

■ g. Revise section 20(e) [For Reinsured Policies]; and

■ h. Amend section 35(a) by removing the phrase ''under an additional coverage plan of insurance''.

The revised and added text reads as follows:

§ 457.8 The application and policy.

1. Definitions.

* * * * *

Catastrophic risk protection. The minimum level of coverage offered by FCIC.

* * * * *

Native sod. Acreage on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and that has no record of being tilled (determined in accordance with FSA records) for the production of an annual crop on or before May 22, 2008.

* * * * *

Organic crop. An agricultural commodity that is organically produced consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

Organic farming practice. A system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

* * * * *

Prairie Pothole National Priority Area. Consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota or South Dakota as specified on the RMA Web site at *http://www.rma.usda.gov/*.

* * * * *

9. Insurable Acreage.

* * * * *

(e) Notwithstanding the provisions in section 9(a)(1), if the Governor of a State designated within the Prairie Pothole National Priority Area elects to make section 508(o) of the Act effective for the State, any native sod acreage greater than 5 acres located in a county contained within the Prairie Pothole National Priority Area that has been tilled for the production of an annual crop after May 22, 2008, is not insurable for the first 5 crop years of planting following the date the native sod acreage is tilled. If the Governor makes this election after you have received an indemnity or other payment for native sod acreage, you may be required to repay the amount received and any premium for such acreage may be refunded to you.

* * * * *

14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage.

Your Duties—

* * * * *

(c) In addition to complying with the notice requirements, you must submit a claim for indemnity declaring the amount of your loss:

(1) Not later than 60 days after the end of the insurance period unless, prior to the end of the 60 day period, you:

(i) Request an extension in writing and we agree to such request (Extensions will only be granted if the amount of loss cannot be determined within such time period because the information needed to determine the amount of the loss is not available.); or

(ii) Have farm-stored production and elect, in writing, to delay measurement of your farm-stored production and settlement of any potential associated claim for indemnity (Extensions will be granted for this purpose up to 180 days after the end of the insurance period.); and

(2) That includes all information we require to settle the claim. Failure to submit a claim or provide the required information will result in no indemnity, prevented planting payment or replant payment (even though no indemnity or other payment is due, you will still be required to pay the premium due under the policy for the unit).

* * * * *

[For Reinsured Policies]

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

* * * * *

(e) Except as provided in section 20(d), if you disagree with any other determination made by FCIC or any claim where FCIC is directly involved in the claims process or directs us in the resolution of the claim, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal).

(1) If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal.

(2) Such suit must be brought in the United States district court for the district in which the insured acreage is located.

(3) Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory or any other damages from FCIC.

* * * * *

Signed in Washington, DC on November 18, 2008.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E8–27845 Filed 11–19–08; 4:15 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1232; Directorate Identifier 2008–CE–070–AD; Amendment 39–15747; AD 2008–24–07]

RIN 2120–AA64

Airworthiness Directives; Eclipse Aviation Corporation Model EA500 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Eclipse Aviation Corporation (Eclipse) Model EA500 airplanes equipped with a Pratt and Whitney Canada, Corp. (PWC) PW610F–A engine. This AD requires you to incorporate operating limitations into Section 2, Limitations, of the airplane flight manual (AFM). This AD results from several incidents of engine surge. We are issuing this AD to prevent hard carbon buildup on the static vane, which could result in engine surges. Engine surges may result in a necessary reduction in thrust and decreased power for the affected engine. In some cases, this could result in flight and landing under single-engine conditions.

DATES: This AD becomes effective on December 4, 2008.

We must receive any comments on this AD by January 23, 2009.

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

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

To view the comments to this AD, go to *http://www.regulations.gov.* The docket number is FAA–2008–1232; Directorate Identifier 2008–CE–070–AD.

FOR FURTHER INFORMATION CONTACT: Mitchell Soth, Flight Test Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137; *telephone:* (817) 222–5104; *fax:* (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

While in cruising flight at 40,000 feet altitude, an Eclipse EA500 airplane experienced a shudder from the right engine. This was followed by a ''RT ENGINE EXCEEDANCE'' Crew Alerting System (CAS) message. The crew reduced the throttle to idle and the shudder disappeared. The right engine remained at idle until approximately 10,000 feet altitude. The crew increased the power on the right engine and again felt the shudder. The crew reduced the power on the right engine to idle and landed without incident using single-engine procedures. PWC did a borescope inspection and found carbon buildup on the static vane, which caused the engine surging.

When the PW610F–A engine is operated above 37,000 feet altitude, for over an hour, and with high bleed flow, hard carbon forms due to high local fuel air ratio near the combustor wall. The hard carbon may break loose and obstruct one of the high pressure turbine vane gas path passages, thus decreasing the surge margin to the point where engine surging occurs.

There have been several reports of engine surges that have required reduced power, and, in some cases, the engine power was unrecoverable and remained at reduced power for the remainder of the flight.

This condition, if not corrected, could result in hard carbon buildup on the static vane, which could result in engine surges. Engine surges may result in a necessary reduction in thrust and decreased power for the affected engine. In some cases, this could result in flight and landing under single-engine conditions.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD requires you to incorporate operating limitations into Section 2, Limitations, of the AFM.

The PW610F–A engines are currently only installed in the Eclipse Model EA500 airplanes. If these engines were installed in other airplanes, we would consider immediate AD action on those airplanes since the engine would be of the same type design and the unsafe condition could exist or develop in products of the same type design.

The FAA considers the altitude limitation to be interim action. The PWC PW610F–A engine is certificated in Canada and is certificated as a foreign type validated engine under FAA TCDS E00074EN. The FAA understands that Transport Canada (the airworthiness authority for Canada) and PWC are considering potential actions to address the engine aspects of this condition. In the meantime, the FAA is issuing this AD on the Eclipse Model EA500 to mandate an altitude limitation.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because hard carbon buildup on the static vane could result in engine surges. Engine surges may require decreased power for the affected engine and, in some cases, flight and landing under single-engine conditions. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''FAA–2008–1232; Directorate Identifier 2008–CE–070–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701,

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

Regulatory Findings

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

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

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

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

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

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

Examining the AD Docket

You may examine the AD docket that contains the 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, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2008–24–07 Eclipse Aviation Corporation: Amendment 39–15747; Docket No. FAA–2008–1232; Directorate Identifier 2008–CE–070–AD.

Effective Date

(a) This AD becomes effective on December 4, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EA500 airplanes, all serial numbers, that are:

(1) Equipped with a Pratt and Whitney Canada, Corp. PW610F–A engine; and

(2) Certificated in any category.

Unsafe Condition

(d) This AD is the result of several incidents of engine surge. We are issuing this AD to prevent hard carbon buildup on the static vane, which could result in engine surges. Engine surges may result in a necessary reduction in thrust and decreased power for the affected engine. In some cases, this could result in flight and landing under single-engine conditions.

Compliance

(e) Prior to further flight, unless already done, incorporate the following language into Section 2, Limitations, of your airplane flight manual (AFM): ''Per AD 2008–24–07, LIMIT THE MAXIMUM OPERATING ALTITUDE TO 37,000 FEET (11277M) PRESSURE ALTITUDE.''

(1) A person holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the operating limitations into Section 2, Limitations, of the AFM. Make an entry into the aircraft logbook showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(2) You may incorporate paragraph (e) of this AD into Section 2, Limitations, of your AFM to comply with this AD.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification Office, 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:* Mitchell Soth, Aerospace Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137; *telephone:* (817) 222–5104; *fax:* (817) 222–5960. 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.

Issued in Kansas City, Missouri, on November 17, 2008.

Kim Smith,

Manager Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–27699 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1028]

Drawbridge Operation Regulations; Connecticut River, Old Lyme, CT, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Amtrak Railroad Bridge, across the Connecticut River, mile 3.4, at Old Lyme, Connecticut. Under this temporary deviation the bridge may remain in the closed position for nine days in December and twelve days in January to facilitate required bridge maintenance.

DATES: This deviation is effective from December 5, 2008 through January 26, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1028 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Amtrak Railroad Bridge, across the Connecticut River, mile 3.4, at Old Lyme, Connecticut, has a vertical clearance in the closed position of 19 feet at mean high water and 22 feet at

mean low water. The existing regulations are listed at 33 CFR 117.205.

The owner of the bridge, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation to facilitate scheduled mechanical maintenance, tread and track plate replacement, at the bridge.

Under this temporary deviation the bridge may remain in the closed position as follows:

From 6 a.m. on December 5, 2008 through 6 a.m. on December 8, 2008.

From 6 a.m. on December 12, 2008 through 6 a.m. on December 15, 2008.

From 6 a.m. on December 19, 2008 through 6 a.m. on December 22, 2008.

From 6 a.m. on January 2, 2009 through 6 a.m. on January 5, 2009.

From 6 a.m. on January 9, 2009 through 6 a.m. on January 12, 2009.

From 6 a.m. on January 16, 2009 through 6 a.m. on January 19, 2009.

From 6 a.m. on January 23, 2009 through 6 a.m. on January 26, 2009.

Vessels that can pass under the draw without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 10, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–27842 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1084]

Drawbridge Operation Regulations; Jamaica Bay, New York, NY, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Beach Channel Railroad Bridge at mile 6.7, across Jamaica Bay, at New York City, New York. Under this temporary deviation the Beach Channel Railroad Bridge may remain in the closed position for two weekends in December. This deviation is necessary to facilitate bridge track repairs.

DATES: This deviation is effective from December 6, 2008 through December 14, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1084 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Beach Channel Railroad Bridge, across Jamaica Bay, mile 6.7, at New York, New York, has a vertical clearance in the closed position of 26 feet at mean high water and 31 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.5.

The owner of the bridge, New York City Transit Authority, requested a temporary deviation to facilitate maintenance repairs to the bridge rails.

Under this temporary deviation the Beach Channel Railroad Bridge need not open for the passage of vessel traffic on Saturday and Sunday between 6 a.m. and 9 p.m., on December 6, 7, 13, and 14, 2008.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 10, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–27843 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1081]

RIN 1625–AA00

Safety Zone: Oregon Inlet, North Carolina, Dredge Project

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the Dredge R.S. Weeks during dredging operations in Oregon Inlet, North Carolina. This safety zone will enhance the safety of vessels transiting Oregon Inlet, North Carolina during periods of dredging operations. This project is being undertaken to increase the water depth in Oregon Inlet, North Carolina to 14 feet. Entry into the safety zone is prohibited unless authorized by the Captain of the Port, North Carolina.

DATES: This rule is effective from 8 a.m. on November 7, 2008 through 5 p.m. November 30, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1081 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–1081 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the United States Sector North Carolina, 2301 East Fort Macon Road, Atlantic Beach, North Carolina 28512 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call CWO4 Stephen Lyons, Waterways Management Division Chief, Sector North Carolina, at (252) 247–4570. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when 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) with respect to this rule because the publishing of an NPRM would be impracticable and contrary to public interest since immediate action is needed to protect the maritime public form the hazards associated with the dredge project in Oregon Inlet, North Carolina.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

Due to the dynamic nature of Oregon Inlet, near continuous dredging and frequent realignment of the approach channel east of the Herbert C. Bonner Bridge have become routine. Passage of tropical storms and strong low pressure systems accelerate the shoaling and need for maintenance dredging. The Federal Navigation Project is maintained by the U.S. Army Corps of Engineers (USACE) through the employment of USACE assets or by contracts issued and administered by the USACE. The Army Corps of Engineers has contracted Weeks Marine Inc. of Covington, LA to perform maintenance dredging in Oregon Inlet, NC. The contractor will be utilizing the 280 foot hydraulic Dredge R.S. Weeks. The dredge has a 65 foot beam and uses a 30 inch diameter 1600 foot floating discharge line that will be connected to a submerged shore connection. During periods of operation the dredge may reduce the available horizontal clearance of Oregon Inlet by 1880 feet and may entirely obstruct the navigational channel to vessel traffic. Vessel use of the alternate spans will not be sanctioned by the Coast Guard because the alternate spans are not clearly marked by navigational aids. In addition, due to concerns about the structural integrity of the bridge, potential vessel strikes, and the absence of a fender system in the alternate spans, the only safe passage for vessels is through the main navigational span.

Discussion of Rule

This safety zone is necessary to safeguard mariners from the hazards associated with dredging on the waters of Oregon Inlet, North Carolina. This regulation establishes a 100 yard moving safety zone on the waters of Oregon Inlet around the perimeter of the Dredge R.S. Weeks during dredging operations. In addition, it establishes a 50 yard safety zone around the perimeter of the floating discharge line which leads from the dredge to the submerged shore connection. Entry into these zones will be prohibited unless authorized by the Captain of the Port.

Alternate routes for any vessel wishing to transit through Oregon Inlet include traveling through Hatteras Inlet, Beaufort Inlet, or through the Atlantic Intracoastal Waterway.

Law enforcement, aids to navigation, and other waterway maintenance vessels are specifically exempt from this regulation.

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

Regulatory Planning and Review

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

Although this regulation will restrict access to Oregon Inlet, the effect of this rule will not be significant because: (i) The safety zones only restrict vessels during dredging operations; (ii) the Coast Guard will make extensive notifications of the safety zone to the maritime public via maritime advisories so mariners can adjust their plans accordingly; (iii) the safety zones will be in effect for a limited duration of time; and (iv) mariners will have alternate routes to transit through Oregon Inlet, including traveling through Hatteras Inlet, Beaufort Inlet, or through the Atlantic Intracoastal Waterway.

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 will affect vessels intending to transit on the waters of Oregon Inlet, North Carolina from 8 a.m. on November 7, 2008 through 5 p.m. on November 30, 2008. Although the safety zones will apply to the waters of the Oregon Inlet the zones will not have significant impact on small entities because the safety zones only restrict vessels during dredging operations, the Coast Guard will make extensive notifications of the safety zone to the maritime public via maritime advisories so mariners can adjust their plans accordingly, the safety zones will be in enforced for a limited duration of time, and mariners will have alternate routes to transit through Oregon Inlet, including traveling through Hatteras Inlet, Beaufort Inlet, or through the Atlantic Intracoastal Waterway.

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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under 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 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 set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—SAFETY ZONES

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–1081 to read as follows:

§ 165.T05–1081 Safety Zone; Oregon Inlet, NC.

(a) *Definitions.* Captain of the Port Representative means the Commander, Sector North Carolina, or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the Captain of the Port's behalf.

(b) *Location.* The following area is a safety zone: Waters of Oregon Inlet within 100 yards of the Dredge R.S. Weeks and within 50 yards of the floating discharge line.

(c) *Regulations.* (1) The general regulations governing safety zones found in § 165.23 of this part apply to the safety zone described in paragraph (b) of this section.

(2) In accordance with the general regulations in section 165.23 of this part, entry into these safety zones is prohibited unless authorized by the Captain of the Port or a Captain of the Port Representative. All vessel movement within the safety zones is prohibited except as specifically authorized by the Captain of the Port or a Captain of the Port Representative.

(3) This section applies to all vessels operating within the safety zone except vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation; and

(iii) Surveying, maintaining or improving waters in the safety zone.

(4) Any deviation from paragraph (c)(2) of this section due to extreme circumstances must be authorized by the Captain of the Port or a Captain of the Port representative. Vessels granted permission to transit must do so in accordance with the directions provided by the Captain of the Port or a Captain of the Port representative to that vessel. To seek permission to transit the area, the Captain of the Port can be contacted at telephone number (252) 247–4570.

(5) Due to continual shoaling in Oregon Inlet, all vessels should use caution while transiting the area. Mariners are advised to view the latest U.S. Army Corps of Engineers survey

data prior to attempting to transit the area. Mariners can view the survey at *http://www.saw.usace.army.mil/nav/OREGON.htm.*

(6) Mariners are reminded that the fendered span of the Herbert C. Bonner Bridge is the only recommended route for passing under the bridge. Passing through any unfendered span presents a significant hazard to the vessel and the bridge.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the regulated navigation area by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8 a.m. November 7, 2008, through 5 p.m. November 30, 2008.

Dated: November 7, 2008.

J.E. Ryan,

Captain, U.S. Coast Guard, Captain of the Port, North Carolina.

[FR Doc. E8–27844 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0912]

RIN 1625–AA00

Safety Zone; Fireworks Display, Potomac River, National Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone upon specified waters of the Potomac River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a discharge barge located at National Harbor, in Prince Georges County, Maryland. This safety zone is intended to protect the maritime public in a portion of the Potomac River.

DATES: This rule is effective from 6:30 p.m. through 9:30 p.m. on November 28, 2008, and if necessary due to inclement weather, from 6:30 p.m. through 9:30 p.m. on November 29, 2008.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0912 and are available online at *http://www.regulations.gov*. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Mr. Ronald L. Houck, Coast Guard Sector Baltimore, at 410–576–2674 or 410–576–2693. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 16, 2008, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Fireworks Display, Potomac River, National Harbor, MD'' in the **Federal Register** (73 FR 53398). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying its effective date would be contrary to the public interest, because immediate action is needed to ensure the safety of the maritime public on the Potomac River against the hazards associated with fireworks displays, such as the accidental discharge of fireworks and falling hot embers or other debris.

Background and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The accidental discharge of fireworks and falling hot embers or other debris are a safety concern during such events. The Coast Guard has the authority to impose appropriate controls on marine events that may pose a threat to persons, vessels and facilities under its jurisdiction. The purpose of this rule is to promote maritime safety, and to protect mariners transiting the area from the potential hazards associated with a fireworks display. The rule is needed to ensure the safety of the maritime public in a portion of the waterway that is expected to be populated by vessel operators and persons seeking to view the fireworks display, as well as mariners operating unknowingly too close to the fireworks discharge site.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held. We will implement a temporary final rule with no changes to the NPRM.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This exception is based on the fact that there is little vessel traffic associated with recreational boating and commercial fishing in the area during the enforcement period. Because the safety zone lies entirely outside the federal navigation channel, vessel operators may transit safely around the zone. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

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 would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate, remain or anchor within certain waters of the Potomac River, at National Harbor, Maryland, from 6:30 p.m. through 9:30 p.m. on November 28, 2008, and if necessary due to inclement weather, from 6:30 p.m. through 9:30 p.m. on November 29, 2008. Because the zone is of limited duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will

issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected area. In addition, smaller vessels not constrained by their draft, which are more likely to be small entities, may transit around the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under 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. This rule establishes a safety zone.

An environmental analysis checklist and a categorical exclusion determination will be 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. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T05–0912 to read as follows:

§ 165.T05–0912 Safety Zone; Fireworks Display, Potomac River, National Harbor, MD.

(a) *Definitions*. For the purposes of this section, *Captain of the Port Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain

of the Port Baltimore, Maryland to act on his or her behalf.

(b) *Regulated Area*. The following area is a safety zone: All waters of the Potomac River, surface to bottom, within an area bounded by a line drawn from the following points: latitude 38°47′18″ N, longitude 077°01′01″ W; thence to latitude 38°47′11″ N, longitude 077°01′26″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to the point of origin, located at National Harbor, Maryland. All coordinates reference North American Datum 1983.

(c) *Regulations*. (1) The general regulations governing safety zones, found in 33 CFR 165.23, apply to the safety zone described in paragraph (b) of this section.

(2) Entry into or remaining in this zone is prohibited, unless authorized by the Captain of the Port Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the safety zone must first request authorization from the Captain of the Port Baltimore, Maryland to seek permission to transit the area. The Captain of the Port Baltimore, Maryland can be contacted at telephone number 410–576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF Channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the person or vessel shall proceed as directed. If permission is granted, all persons or vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland.

(d) *Enforcement*. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(e) *Enforcement period*. This rule is effective from 6:30 p.m. through 9:30 p.m. on November 28, 2008, and if necessary due to inclement weather, from 6:30 p.m. through 9:30 p.m. on November 29, 2008.

Dated: October 30, 2008.

Austin J. Gould,

Commander, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland, Acting.

[FR Doc. E8–27841 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI–19–1222c; FRL–8733–6]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is updating the materials submitted by Rhode Island that are incorporated by reference (IBR) into the State implementation plan (SIP). In this action, EPA is also notifying the public of the correction of certain typographical errors within the IBR Tables. The regulations affected by this update have been previously submitted by the Rhode Island Department of Environmental Management (DEM) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

DATES: *Effective Date:* This action is effective November 24, 2008.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, New England Regional Office (Region 1), One Congress Street, Suite 1100, Boston, MA 02114–2023; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Donald Cooke, Environmental Scientist, at the above EPA New England Region address or at (617) 918–1668 or by e-mail at *cooke.donald@epa.gov*.

SUPPLEMENTARY INFORMATION: The SIP is a living document which the State can revise as necessary to address its unique air pollution problems. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968), EPA revised the procedures for incorporation by reference for Federally-approved SIPs, as a result of consultations between EPA and the Office of Federal Register (OFR). The description of the revised SIP document, IBR procedures and ''Identification of plan'' format are discussed in further detail in the May 22, 1997 **Federal Register** document. On August 9, 1999 (64 FR 43083), EPA published a **Federal Register** beginning the new IBR procedure for Rhode Island. On June 11, 2003 (68 FR 34813) and July 14, 2006 (71 FR 40014), EPA published updates to the IBR Material for Rhode Island.

In this document, EPA is doing the following:

■ 1. Announcing the update to the Rhode Island IBR material as of October 15, 2008.

2. Making a correction in the paragraph 52.2070(c) chart, fifteenth entry ''Air Pollution Control Regulation 15.''—Typographic error corrected in the explanations column by changing the word ''except'' to read ''exception''.

3. Making a correction in the paragraph 52.2070(d) chart, third entry ''Keene Corporation, East Providence, RI.''—Typographic error corrected in the explanations column by changing ''sixpaper'' to read ''six paper''.

3. Making corrections to the date format listed in paragraphs 52.2070(c), (d) and (e) charts.—Revise the date format in the ''state effective date,'' column as well as the ''EPA approval date,'' column for consistency. Dates are numerical month/day/year without additional zeros.

4. Making corrections to the abbreviation for nitrogen oxides in paragraphs 52.2070(c), (d) and (e) charts.—Revise the format of the abbreviation for nitrogen oxides (NO_X) for consistency.

EPA has determined that today's rule falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies

provisions which are already in effect as a matter of law in Federal and approved State programs, and corrects typographical errors. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment is ''unnecessary''' and ''contrary to the public interest'' since the codification (and typographical corrections) only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect chart entries.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act, pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Rhode Island SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this ''Identification of plan'' reorganization update action for Rhode Island.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 16, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart OO—Rhode Island

■ 2. Section 52.2070 is amended by revising paragraphs (b), (c), (d) and (e) to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(b) Incorporation by reference. (1) Material listed as incorporated by reference in paragraphs (c) and (d) of this section was approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after October 15, 2008, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 1 certifies that the rules/regulations provided by EPA at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of October 15, 2008.

(3) Copies of the materials incorporated by reference may be inspected at the New England Regional Office of EPA at One Congress Street, Suite 1100, Boston, MA 02114–2023; the EPA, Air and Radiation Docket and Information Center, Room Number 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration [NARA]. If

you wish to obtain materials from a docket in the EPA Regional Office, please call telephone number (617) 918–1668; for material from a docket in EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number (202) 566–1742. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(c) EPA Approved regulations.

EPA-APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control Regulation 1.	Visible emissions	2/22/1977	5/7/1981, 46 FR 25446.	
Air Pollution Control Regulation 2.	Handling of soft coal	2/22/1977	5/7/1981, 46 FR 25446.	
Air Pollution Control Regulation 3.	Particulate emissions from industrial processes.	2/22/1977	5/7/1981, 46 FR 25446.	
Air Pollution Control Regulation 4.	Open fires	2/22/1977	5/7/1981, 46 FR 25446.	
Air Pollution Control Regulation 5.	Fugitive dust	2/22/1977	5/7/1981, 46 FR 25446.	
Air Pollution Control Regulation 6.	Continuous emission monitors.	11/22/1989	9/30/1991, 56 FR 49414.	RI Air Pollution Control Regulation Number 6 is also referred to by the title ''Opacity Monitors''.
Air Pollution Control Regulation 7.	Emission of air contaminants detrimental to persons or property.	7/19/1977	5/7/1981, 46 FR 25446.	
Air Pollution Control Regulation 8.	Sulfur content of fuels	5/2/1985	1/8/1986, 51 FR 755.	
Air Pollution Control Regulation 9.	Air pollution control permits.	4/8/1996	12/2/1999, 64 FR 67495.	Definition of VOC revised. All of No. 9 is approved with the exception of Sections 9.13, 9.14, 9.15, and Appendix A which Rhode Island did not submit as part of SIP revision.
Air Pollution Control Regulation 10.	Air pollution episodes	2/22/1977	5/7/1981, 46 FR 25446.	
Air Pollution Control Regulation 11.	Petroleum liquids marketing and storage.	1/31/1993	12/17/1993, 58 FR 65930.	
Air Pollution Control Regulation 12.	Incinerators	4/22/1981	4/26/1982, 47 FR 17816.	
Air Pollution Control Revisions to Regulation 13.	Particulate emissions from fossil fuel fired steam or hot water generating units.	10/5/1982	3/29/1983, 48 FR 13026.	
Air Pollution Control Regulation 14.	Recordkeeping and reporting.	4/8/1996	12/2/1999, 64 FR 67495.	Definition of VOC revised.
Air Pollution Control Regulation 15.	Control of organic solvent emissions.	4/8/1996	12/2/1999, 64 FR 67495.	Limited approval. Applicability threshold decreased to 50 tpy. Definition of VOC revised. All of No. 15 is approved with the exception of 15.2.2 which Rhode Island did not submit as part of the SIP revision.
Air Pollution Control Regulation 16.	Operation of air pollution control system.	2/22/1977	5/7/1981, 46 FR 25446.	
Air Pollution Control Regulation 17.	Odors	2/22/1977	5/7/1981, 46 FR 25446.	
Air Pollution Control Regulation 18.	Control of Emissions from Organic Solvent Cleaning.	Withdrawn	12/2/1999, 64 FR 67495.	No. 18 is superseded by No. 36.
Air Pollution Control Regulation 19.	Control of Volatile Organic Compounds from Surface Coating Operations.	3/7/1996	12/2/1999, 64 FR 67495.	Definition of VOC revised. Wood products requirements deleted because state adopted new Regulation No. 35 which addresses wood products. Except 19.2.2.
Air Pollution Control Regulation 21.	Control of Volatile Organic Compounds from Printing Operations.	4/8/1996	12/2/1999, 64 FR 67495.	Applicability threshold decreased to 50 tpy. Definition of VOC revised. All of No. 21 is approved with the exception of Section 21.2.3 which the State did not submit as part of the SIP revision.
Air Pollution Control Regulation 25.	Control of VOC Emissions from Cutback and Emulsified Asphalt.	4/8/1996	12/2/1999, 64 FR 67495.	Definition of VOC revised. All of No. 25 is approved with the exception of Section 25.2.2 which the state did not submit as part of the SIP revision.

EPA-APPROVED RHODE ISLAND REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanations
Air Pollution Control Regulation 26.	Control of Organic Solvent Emissions from Manufacture of Synthesized Pharmaceutical Products.	4/8/1996	12/2/1999, 64 FR 67495.	Definition of VOC revised. All of No. 26 is approved with the exception of 26.2.3 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 27.	Control of nitrogen oxide emissions.	1/16/1996	9/2/1997, 62 FR 46202.	
Air Pollution Control Regulation 29.3.	Emissions Caps	4/28/1995	3/22/1996, 61 FR 11731.	This rule limits a source's potential to emit, therefore avoiding RACT, Title V Operating Permit.
Air Pollution Control Regulation 30.	Control of VOCs from Automotive Refinishing Operations.	4/8/1996	12/2/1999, 64 FR 67495.	Definition of VOC revised. All of No. 30 is approved with the exception of Section 30.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 31.	Control of VOCs from Commercial and Consumer Products.	4/8/1996	12/2/1999, 64 FR 67495.	Definition of VOC revised. All of No. 31 is approved with the exception of Section 31.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 32.	Control of VOCs from Marine Vessel Loading Operations.	4/8/1996	12/2/1999, 64 FR 67495.	Definition of VOC revised. All of No. 32 is approved with the exception of Section 32.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 33.	Control of VOCs from Architectural Coatings and Industrial Maintenance Coatings.	4/8/1996	12/2/1999, 64 FR 67495.	Definition of VOC revised. All of No. 33 is approved with the exception of Section 33.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 34.	Rhode Island Motor Vehicle Inspection/Maintenance Program.	3/30/2000	2/9/2001, 66 FR 9661	Department of Environmental Management regulation containing I/M standards.
Air Pollution Control Regulation 35.	Control of VOCs and Volatile Hazardous Air Pollutants from Wood Products Manufacturing Operations.	7/7/1996	12/2/1999, 64 FR 67495.	All of No. 35 is approved with the exception of Section 35.2.3 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 36.	Control of Emissions from Organic Solvent Cleaning.	4/18/1996	12/2/1999, 64 FR 67495.	All of No. 36 is approved with the exception of Section 36.2.2 which the state did not submit as part of the SIP revision.
Air Pollution Control Regulation 37.	Rhode Island's Low Emission Vehicle Program.	12/7/1999	3/9/2000, 65 FR 12476.	Includes National LEV as a compliance alternative.
Air Pollution Control Regulation 38.	Nitrogen Oxides Allowance Program.	6/10/1998	6/2/1999, 64 FR 29567.	
Air Pollution Control Regulation 41.	NO_X Budget Trading Program.	10/1/1999	12/27/2000, 65 FR 81743.	
Air Pollution Control Regulation 45.	Rhode Island Diesel Engine Anti-Idling Program.	7/19/2007	3/27/2008, 73 FR 16203.	Limits idling for diesel on-highway and non-road engines.
Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1.	Rhode Island Motor Vehicle Inspection/Maintenance Program.	1/31/2001	2/9/2001, 66 FR 9661	Department of Administration regulations for the I/M program.

(d) EPA-approved State Source specific requirements.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Narragansett Electric Company South Street Station in Providence.	A.H. File No. 83–12–AP.	8/29/1983	7/27/1984, 49 FR 30177.	Revisions to Air Pollution Control Regulation 8, ''Sulfur Content of Fuels,'' specifying maximum sulfur-in-coal limits (1.21 lbs/MMBtu on a 30-day rolling average and 2.31 lbs/MMBtu on a 24-hour average). These revisions approve Section 8.3.4, ''Large Fuel Burning Devices Using Coal,'' for South Street Station only.
Stanley Bostitch, Bostitch Division of Textron.	A.H. File No. 85–8–AP.	6/6/1985	12/11/1986, 51 FR 44604.	RIDEM and Bostitch administrative consent agreement effective 6/6/85. Requires Bostitch to reformulate certain solvent-based coatings to low/no solvent formulation by 12/31/86. Also addendum dated 9/20/85 defining emission limitations reformulated coatings must meet. (A) An administrative consent agreement between the RIDEM and Bostitch Division of Textron. (B) A letter to Bostitch Division of Textron from the RIDEM dated September 20, 1985 which serves as an addendum to the consent agreement. The addendum defines the emission limitations which Bostitch's Division of Textron reformulated coatings must meet.
Keene Corporation, East Providence, RI.	A.H. File No. 85–10–AP.	9/12/1985	8/31/1987, 52 FR 32793.	RIDEM and Keene Corporation administrative consent agreement effective 9/12/85. Granting final compliance date extension for the control of organic solvent emissions from six paper coating lines. (A) Letter from the RIDEM dated November 5, 1985 submitting revisions to the RI SIP. (B) An administrative consent agreement between the RIDEM and Keene Corporation.
Tech Industries	File No. 86–12–AP	11/24/1987	3/10/1989, 54 FR 10145.	RIDEM and Tech Industries original administrative consent agreement (86–12–AP) [except for provisions 7 and 8] effective 6/12/86, an addendum effective 11/24/87, defining and imposing reasonably available control technology to control volatile organic compounds. (A) An administrative consent agreement (86–12–AP), except for Provisions 7 and 8, between the RIDEM and Tech Industries effective June 12, 1986. (B) An addendum to the administrative consent agreement (86–12–AP) between the RIDEM and Tech Industries. The addendum was effective November 24, 1987. (C) Letters dated May 6, 1987; October 15, 1987; and January 4, 1988 submitted to the EPA by the RIDEM.
University of Rhode Island.	A.P. File No. 87–5–AP	3/17/1987	9/19/1989, 54 FR 38517.	Revisions to the SIP submitted by the RIDEM on April 28, 1989, approving a renewal of a sulfur dioxide bubble for the University of Rhode Island.
University of Rhode Island.	File No. 95–50–AP	3/12/1996	9/2/1997, 62 FR 46202.	An administrative consent agreement between RIDEM and University of Rhode Island, Alternative NO_X RACT (RI Regulation 27.4.8)
Providence Metallizing in Pawtucket, Rhode Island.	File No. 87–2–AP	4/24/1990	9/6/1990, 55 FR 36635.	Define and impose RACT to control volatile organic compound emissions. (A) Letter from the RIDEM dated April 26, 1990, submitting a revision to the RI SIP. (B) An administrative consent agreement (87–2–AP) between the RIDEM and Providence Metallizing effective July 24, 1987.

EPA-APPROVED RHODE ISLAND SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
				(C) An amendment to the administrative consent agreement (87–2–AP) between the RIDEM and Providence Metallizing effective May 4, 1989. (D) An addendum to the administrative consent agreement (87–2–AP) between the RIDEM and Providence Metallizing effective April 24, 1990.
Tillotson-Pearson in Warren, Rhode Island.	File No. 90–1–AP	6/5/1990	8/31/1990, 55 FR 35623.	Revisions to the SIP submitted by the RIDEM on May 24, 1990, to define and impose RACT to control volatile organic compound emissions. (A) Letter from the RIDEM dated May 24, 1990 submitting a revision to the RI SIP. (B) An Administrative consent agreement (90–1–AP) between the RIDEM and Tillotson-Pearson.
Rhode Island Hospital	File No. 95–14–AP	11/27/1995	9/2/1997, 62 FR 46202.	Alternative NO_X RACT. An administrative consent agreement between the RIDEM and RI Hospital.
Osram Sylvania Incorporated.	File No. 96–06–AP	9/4/1996	9/2/1997, 62 FR 46202.	Alternative NO_X RACT. (A) An Administrative consent agreement between the RIDEM and Osram Sylvania Incorporated, file no. 96–06–AP, effective September 4, 1996.
	Air Pollution Permit Approval, No. 1350.	.....	.....	(B) An air pollution Permit approval, no. 1350 Osram Sylvania Incorporated issued by RIDEM effective May 14, 1996.
Algonquin Gas Transmission Company.	File No. 95–52–AP	12/5/1995	9/2/1997, 62 FR 46202.	Alternative NO_X RACT. (A) Letter from the RIDEM dated September 17, 1996 submitting a revision to the RI SIP. (B) An administrative consent agreement between RIDEM and Algonquin Gas Transmission Company, effective on December 5, 1995.
Bradford Dyeing Association, Inc.	File No. 95–28–AP	11/17/1995	9/2/1997, 62 FR 46202.	Alternative NO_X RACT. An administrative consent agreement between RIDEM and Bradford Dyeing Association, Inc.
Hoechst Celanese Corporation.	File No. 95–62–AP	11/20/1995	9/2/1997, 62 FR 46202.	Alternative NO_X RACT. An administrative consent agreement between RIDEM and Hoechst Celanese Corporation.
Naval Education and Training Center in Newport.	File No. 96–07–AP	3/4/1996	9/2/1997, 62 FR 46202.	Alternative NO_X RACT. An administrative consent agreement between RIDEM and Naval Education and Training Center in Newport.
Rhode Island Economic Development.	File No. 96–04–AP	9/2/1997	6/2/1999, 64 FR 29567.	Alternative NO_X RACT. A consent agreement between RIDEM and Rhode Island Economic Development Corporation's Central Heating Plant in North Kingstown.
Cranston Print Works	A.H. File No. 95–30–AP.	12/19/1995	12/2/1999, 64 FR 67495.	Non-CTG VOC RACT Determination.
CCL Custom Manufacturing.	A.H. File No. 97–02–AP.	4/10/1997; and 10/27/1999.	12/2/1999, 64 FR 67495.	Non-CTG VOC RACT Determination.
Victory Finishing Technologies.	A.H. File No. 96–05–AP.	5/24/1996	12/2/1999, 64 FR 67495.	Non-CTG VOC RACT Determination.
Quality Spray and Stenciling.	A.H. File No. 97–04–AP.	10/21/1997; and 7/13/1999.	12/2/1999, 64 FR 67495.	Non-CTG VOC RACT Determination.
Guild Music	A.H. File No. 95–65–AP.	11/9/1995	12/2/1999, 64 FR 67495.	Non-CTG VOC RACT Determination.

(e) Nonregulatory.

RHODE ISLAND NON REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
Notice of public hearing.	Statewide	Submitted 2/9/1972	6/15/1972, 37 FR 11914.	Proposed Implementation Plan Regulations, RI Department of Health.
Miscellaneous non-regulatory additions to the plan correcting minor deficiencies.	Statewide	Submitted 2/29/1972	7/27/1972, 37 FR 15080.	Approval and promulgation of Implementation Plan Miscellaneous Amendments, RI Department of Health.
Compliance schedules	Statewide	Submitted 4/24/1973	6/20/1973, 38 FR 16144.	Submitted by RI Department of Health.
AQMA identifications for the State of Rhode Island.	Statewide	Submitted 4/11/1974	4/29/1975, 40 FR 18726.	Submitted by RI Department of Health.
Letter identifying Metropolitan Providence as an AQMA.	Metropolitan Providence.	Submitted 9/6/1974	4/29/1975, 40 FR 18726.	Submitted by the Governor.
A comprehensive air quality monitoring plan, intended to meet requirements of 40 CFR part 58.	Statewide	Submitted 1/8/1980	1/15/1981, 46 FR 3516.	Submitted by the RI Department of Environmental Management Director.
Attainment plans to meet the requirements of Part D of the Clean Air Act, as amended in 1977, Included are plans to attain the carbon monoxide and ozone standards and information allowing for the re-designation of Providence to non-attainment for the primary TSP standard based on new data.	Statewide	Submitted 5/14/1979; 6/11/1979; 8/13/1979; 1/8/1980; 1/24/1980; 3/10/1980; 3/31/1980; 4/21/1980; 6/6/1980; 6/13/1980; 8/20/1980; 11/14/1980; 3/4/1981; 3/5/1981; and 4/16/81.	5/7/1981, 46 FR 25446.	Attainment plans to meet the requirements of Part D of the Clean Air Act, as amended in 1977.
A program for the review of construction and operation of new and modified major stationary sources of pollution in non-attainment areas.				
Certain miscellaneous provisions unrelated to Part D are also included.				
Section VI, Part II, ''Stationary Source Permitting and Enforcement'' of the narrative.	Statewide	Submitted 5/14/1982; and 7/1/1982.	6/28/1983, 48 FR 29690.	As submitted by RIDEM on May 14, 1982 and July 1, 1982 for review of new major sources and major modifications in non-attainment areas. Also included are revisions to add rules for banking emission reductions.
Revisions to the Rhode Island State Implementation Plan for attainment of the primary National Ambient Air Quality Standard for ozone.	Statewide	Submitted 5/14/1982; 7/1/1982; 7/7/1982; 10/4/1982; and 3/2/1983.	7/6/1983, 48 FR 31026.	Submitted by the Department of Environmental Management.
1982 Ozone Attainment Plan.				
Revisions to attain and maintain the lead NAAQS.	Statewide	Submitted 7/7/1983	9/15/1983, 48 FR 41405.	Submitted by the Department of Environmental Management.

RHODE ISLAND NON REGULATORY—Continued

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
Section VI, Part II of the associated narrative of the RI SIP.	Statewide	Submitted 2/6/1984; 1/27/1984; and 6/6/1984.	7/6/1984, 49 FR 27749.	To incorporate the requirements for the Prevention of Significant Deterioration of 40 CFR 51.24, permitting major stationary sources of lead and other miscellaneous changes.
Letter from RIDEM submitting an amendment to the RI State Implementation Plan.	Statewide	Submitted 1/14/1994; and 6/14/1994.	10/30/1996, 61 FR 55897.	A revision to the RI SIP regarding ozone monitoring. RI will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. The State's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.
Section VII of the RI SIP Ambient Air Quality Monitoring.				
Letter from RIDEM submitting revisions.	Statewide	Submitted 3/15/1994	10/30/1996, 61 FR 55897.	Revision to the RI SIP regarding the States' Contingency Plan.
Letter from RIDEM submitting revision—Rhode Island's 15 Percent Plan and Contingency Plan.	Statewide	Submitted 3/15/1994	4/17/1997, 62 FR 18712.	The revisions consist of the State's 15 Percent Plan and Contingency Plan. EPA approved only the following portions of these submittals: 15 Percent Plan—the EPA approved the calculation of the required emission reductions, and the emission reduction credit claimed from surface coating, printing operations, marine vessel loading, plant closures (0.79 tons per day approved out of 0.84 claimed), cutback asphalt, auto refinishing, stage II, reformulated gas in on-road and off-road engines, and tier I motor vehicle controls. Contingency Plan—the EPA approved the calculation of the required emission reduction, and a portion of the emission reduction credits claimed from Consumer and Commercial products (1.1 tons per day approved out of 1.9 tons claimed), and architectural and industrial maintenance (AIM) coatings (1.9 tons per day approved out of 2.4 tons claimed). EPA concurrently disapproved portions of these SIP submissions, as discussed within Section 52.2084(a)(2).
Letter from RIDEM submitting revision for Clean Fuel Fleet Substitution Plan.	Providence (all of Rhode Island) nonattainment area.	10/5/1994	3/9/2000, 65 FR 12474.	
Letter outlining commitment to National LEV.	Statewide	2/22/1999	3/9/2000, 65 FR 12476.	Includes details of the State's commitment to National LEV.
Negative Declaration for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation and Reactor Processes Control Techniques Guidelines Categories.	Statewide	Submitted 4/5/1995	12/2/1999, 64 FR 67495.	
October 1, 1999, letter from Rhode Island Department of Environmental Management.	Statewide	Submitted 10/1/1999	12/27/2000, 65 FR 81743.	Submitted Air Pollution Control Regulation No. 14, "NO_X Budget Trading Program," and the "NO_X State Implementation Plan (SIP) Call Narrative."
"NO_X State Implementation Plan (SIP) Call Narrative," September 22, 1999.	Statewide	Submitted 10/1/1999	12/27/2000, 65 FR 81743.	

RHODE ISLAND NON REGULATORY—Continued

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
November 9, 1999, letter from Rhode Island Department of Environmental Management.	Statewide	Submitted 11/9/1999	12/27/2000, 65 FR 81743.	Stating RI's intent to comply with applicable reporting requirements.
Negative Declaration for Aerospace Coating Operations Control Techniques Guideline Category.	Statewide	Submitted 3/28/2000	7/10/2000, 65 FR 42290.	
September 20, 2001 letter from Rhode Island Department of Environment Management.	Statewide	Submitted 9/20/2001	6/20/2003, 68 FR 36921.	Submitting the "NO_X State Implementation Plan (SIP) Call Narrative," revised September 2001.
NO_X State Implementation Plan (SIP) Call Narrative, revised September 2001.	Statewide	Submitted 9/20/2001	6/20/2003, 68 FR 36921.	

[FR Doc. E8–27864 Filed 11–21–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2008–0052–200803(a); FRL–8743–8]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Approval of Revisions to the Knox County Portion of the Tennessee State Implementation Plan—"Permit by Rule" Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the State Implementation Plan (SIP) revision submitted by the State of Tennessee on October 12, 2007. The revision pertains to the Knox County portion of the Tennessee SIP and includes changes to Knox County Air Quality Management Regulation (Knox County Regulation) Section 25.10—Permit by Rule. Specifically, Section 25.10 was changed so that it clearly states that turbines and other internal combustion engines are excluded from the "Permit by Rule" provision. This revision is considered by the Tennessee Department of Environment and Conservation (TDEC), to be as or more stringent than the State of Tennessee's SIP requirements. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

DATES: This direct final rule is effective January 23, 2009 without further notice, unless EPA receives adverse comment by December 24, 2008. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2008–0052, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: bradley.twunjala@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* "EPA–R04–OAR–2008–0052," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. "EPA–R04–OAR–2008–0052." 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 through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, 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 in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9352. Ms. Bradley can also be reached via electronic mail at *bradley.twunjala@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Analysis of Submittal

On October 12, 2007, the State of Tennessee submitted a revision to the Knox County portion of the Tennessee SIP. This revision changes Knox County Regulation Sections 25.10.B.1.a and 25.10.B.2.a, so that these sections clearly state that turbines and other internal combustion engines are excluded from the ''Permit by Rule'' provision. The intent of the ''Permit by Rule'' provision is to provide a simple compliance technique to limit a facility's potential emissions below that of the ''major source'' threshold, with respect to title V of the CAA. The ''Permit by Rule'' provision operates by using fuel loads to ensure that a source will not exceed the major source thresholds. Since internal combustion units and turbines emit more pollutant per fuel load than external combustion units, they are excluded from this ''Permit by Rule'' compliance technique and must instead follow the standard permitting approach.

II. Final Action

EPA is taking direct final action to approve the aforementioned changes into the SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 23, 2009 without further notice unless the Agency receives adverse comments by December 24, 2008.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 23, 2009 and no further action will be taken on the proposed rule.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Incorporation by reference,

Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: November 10, 2008.

Russell L. Wright,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220(c) is amended in Table 3 of the Knox County portion of the Tennessee State Implementation Plan by revising the entry for Section 25.0 to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 3—EPA APPROVED KNOX COUNTY, REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Section 25.0	Permits	12/10/2007	11/24/2008 [Insert citation of publication].	
*	*	*	*	*

* * * * *

[FR Doc. E8–27739 Filed 11–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0590; FRL–8732–4]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Mojave Desert Air Quality Management District, South Coast Air Quality Management District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Imperial County Air Pollution Control District (ICAPCD), Mojave Desert Air Quality Management District (MDAQMD), South Coast Air Quality Management District (SCAQMD), and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from storage of reactive organic compound liquids, polyester resin operations, coatings of metal parts and products, and adhesives and sealants. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on January 23, 2009 without further notice, unless EPA receives adverse comments by December 24, 2008. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0590, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: For questions regarding ICAPCD Rule 414, contact Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.* For questions regarding MDAQMD Rule 1162, contact Jerald Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov.* For questions regarding SCAQMD Rule 1107 or VCAPCD Rule 74.20, contact Francisco Dóñez, EPA Region IX, (213) 244–1834, *Donez.Francisco@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were

adopted by the local air agencies and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Agency	Rule #	Rule title	Adopted	Submitted	Complete
ICAPCD	414	Storage of Reactive Organic Compound Liquids	05/18/04	07/19/04	08/10/04
MDAQMD	1162	Polyester Resin Operations	08/27/07	03/07/08	04/17/08
SCAQMD	1107	Coating of Metal Parts and Products	01/06/06	05/08/07	07/23/07
VCAPCD	74.20	Adhesives and Sealants	01/11/05	07/15/05	08/18/05

On the dates listed above, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

ICAPCD Rule 414 was originally adopted on December 11, 1979. This version of the rule was approved into the SIP on January 27, 1981 (46 FR 8472). Rule 414 was later revised on September 14, 1999, and proposed for a limited approval/limited disapproval on July 7, 2003 (68 FR 40233). This proposed action was never finalized. If the May 18, 2004, version of Rule 414 is approved into the SIP, then it will replace the existing SIP-approved version (adopted on December 11, 1979) as well as the SIP-approved version of ICAPCD Rule 413, Definitions, that was also adopted on December 11, 1979, and approved into the SIP on January 27, 1981 (46 FR 8472). Rule 413, Definitions, has already been replaced by the ICAPCD with more recent rules, and is no longer an active District rule. The superseding of existing SIP ICAPCD Rule 413, Definitions, should not be confused with another SIP ICAPCD Rule also numbered 413, Organic Solvent Cleaning (see 67 FR 67314, November 5, 2002).

The MDAQMD inherited a version of South Coast Air Quality Management District (SCAQMD) Rule 1162, Polyester Resin Operations, amended by the SCAQMD on December 7, 1990, that is in the SIP for the Blythe/Palo Verde Valley portion of the MDAQMD. If the August 27, 2007, version of MDAQMD Rule 1162 is approved into the SIP, then it will apply throughout MDAQMD and replace the December 7, 1990, version of SCAQMD Rule 1162 that is in effect in the Blythe/Palo Verde Valley area.

We approved a version of SCAQMD Rule 1107 into the SIP on August 13, 2002 (67 FR 52611). We approved a version of VCAPCD Rule 74.20 into the SIP on December 4, 2003 (68 FR 67805).

C. What is the purpose of the submitted rule revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions.

ICAPCD Rule 414 reduces VOC emissions from storage tanks with capacities of 1,500 gallons or more that store reactive organic compound liquids. The rule expands the applicability of the equipment requirements, and adds testing methods, reporting and recordkeeping requirements. MDAQMD Rule 1162 limits VOC emissions from operations that use polyester resin material to fabricate, rework, repair, or touch-up products for commercial, military, or industrial uses. The rule applies across the entire district, and sets more stringent emission limits and updates work practice standards. SCAQMD Rule 1107 reduces VOC emissions from the coating of metal parts and products. SCAQMD Rule 1107 reduces the emissions limits for some coatings, increases the required efficiency of alternative coating application methods and air pollution control devices, and adds an exemption for some applications of liquid photoresist coating. VCAPCD Rule 74.20 limits emissions of reactive organic compounds resulting from the application of adhesives, adhesive primers, sealants, sealant primers, and solvents associated with these products. VCAPCD Rule 74.20 adds an exemption for glass bonding and priming processes in automobile convertible top manufacturing operations. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guideline (CTG) document as well as each major source in nonattainment areas (see section 182(a)(2)), and must not relax existing requirements (see sections 110(l) and 193). The ICAPCD, MDAQMD, SCAQMD and the VCAPCD regulate ozone nonattainment areas (see 40 CFR part 81), so ICAPCD Rule 414, MDAQMD Rule 1162, VCAPCD Rule 74.20 and SCAQMD Rule 1107 must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control Technique Guideline: Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks,'' EPA, December 1978, EPA–450/2–78–047.
5. ''Control Technique Guideline: Control of Volatile Organic Emissions from Petroleum Liquid Storage in Fixed Roof Tanks,'' EPA, December 1977, EPA–450/2–77–036.
6. ''Control Technique Guideline: Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products,'' EPA, June 1978, EPA–450/2–78–01.
7. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Adhesives and Sealants,'' California Air Resources Board, December 1998.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP

relaxations. In SCAQMD Rule 1107, the potential excess VOC emissions from the added exemption total 0.03 percent of total controlled VOC emissions from this source category; these emissions are therefore considered de minimis under Section 110(l) of the Clean Air Act. The remaining amendments to Rule 1107 clearly strengthen the rule requirements. In VCAPCD Rule 74.20, the estimated excess emissions from the added exemption total less than 0.1 percent of the VCAPCD's total reactive organic gas emissions from this source category, and are therefore considered de minimis under Section 110(l) of the Clean Air Act. The TSDs have more information on our evaluations.

C. EPA Recommendations To Further Improve the Rules

At present, EPA has no recommendations to further improve ICAPCD Rule 414, SCAQMD Rule 1107, or VCAPCD Rule 74.20. Regarding MDAQMD Rule 1162, we recommend that MDAQMD adopt an overall control efficiency of 90%. MDAQMD should also re-evaluate the exemptions in the rule. The TSD for MDAQMD Rule 1162 has more details on our recommendations.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 24, 2008, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 23, 2009. This will incorporate the rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 23, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 2, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(332)(i)(A)(*4*) and (c)(337)(i)(B)(*3*) and (c)(350)(i)(D)(*1*) and (c)(354)(i)(B)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(332) * * *

(i) * * *

(A) * * *

(*4*) Rule 414, Storage of Reactive Organic Compound Liquids, adopted on December 11, 1979, and revised on May 18, 2004.

* * * * *

(c) * * *

(337) * * *

(i) * * *

(B) * * *

(*3*) Rule 74.20, Adhesives and Sealants, adopted on June 8, 1993, and revised on January 11, 2005.

* * * * *

(c) * * *

(350) * * *

(i) * * *

(D) South Coast Air Quality Management District.

(*1*) Rule 1107, Coating of Metal Parts and Products, adopted on June 1, 1979, and amended on January 6, 2006.

* * * * *

(c) * * *

(354) * * *

(i) * * *

(B) Mojave Desert Air Quality Management District.

(*1*) Rule 1162, Polyester Resin Operations, adopted on August 27, 2007.

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[FR Doc. E8–27735 Filed 11–21–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 433

[CMS–2290–IFC]

RIN 0938–AP38

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2008 and Federal Fiscal Year 2009

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule with comment period makes technical changes to the existing methodology and process used to compute and issue each State's preliminary and final allotments available to pay the Medicare Part B premiums for qualifying individuals (QIs). The technical revisions conform the existing regulations to reflect continued funding of this program. Additionally, this rule contains charts providing the States' final QI allotments for the Federal fiscal year (FY) 2008 and preliminary QI allotments for FY 2009, determined in accordance with the methodology set forth in the October 2006 final rule, and reflecting funding for the QI program made available under recent legislation.

DATES: *Effective dates:* These regulations are effective on November 24, 2008. The final allotments for payment of Medicare Part B premiums for FY 2008 are effective October 1, 2007. The preliminary allotments for FY 2009 are effective October 1, 2008.

Comment date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 23, 2009.

ADDRESSES: In commenting, please refer to file code CMS–2290–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' and enter the filecode to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2290–IFC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. By express or overnight mail. You may send written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2290–IFC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses:

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in the comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Allotments Prior to Fiscal Year (FY) 2005

Section 1902 of the Social Security Act (the Act) sets forth the requirements for State plans for medical assistance. Before August 5, 1997, section 1902(a)(10)(E) of the Act specified that State Medicaid plans must provide for some or all types of Medicare cost-sharing for three eligibility groups of low-income Medicare beneficiaries. These three groups included qualified Medicare beneficiaries (QMBs), specified low-income Medicare

beneficiaries (SLMBs), and qualified disabled and working individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A with income at or below 100 percent of the Federal poverty level (FPL) and resources at the Supplemental Security Income (SSI) limit, which is below $4,000 for an individual and $6,000 for a couple. A SLMB is an individual who meets the QMB criteria, except that his or her income is above 100 percent of the FPL and does not exceed 120 percent of the FPL. A QDWI is a disabled individual who is entitled to enroll in Medicare Part A under section 1818A of the Act, whose income does not exceed 200 percent of the FPL, for a family of the size involved, whose resources do not exceed twice the amount allowed under SSI program, and who is not otherwise eligible for Medicaid. The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for premiums for Medicare Part B.

Section 4732 of the Balanced Budget Act of 1997 (BBA), (Pub. L. 105–33), enacted on August 5, 1997, amended section 1902(a)(10)(E) of the Act to require States to provide for Medicaid payment of the Medicare Part B premiums for two additional eligibility groups of low-income Medicare beneficiaries, referred to as qualifying individuals (QIs).

Specifically, under BBA, a new section 1902(a)(10)(E)(iv)(I) of the Act was added, under which States must pay the full amount of the Medicare Part B premium for QIs who are eligible QMBs but their income level is at least 120 percent of the FPL but less than 135 percent of the FPL for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan. The BBA also added the second group of QIs added under section 1902(a)(10)(E)(iv)(II) of the Act, which includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the FPL for a family of the size involved, who are not otherwise eligible for Medicaid under the approved State plan. These QIs were eligible for only a portion of Medicare cost-sharing consisting of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Coverage of the second eligibility group of QIs ended on December 31, 2002, and section 401 of the Welfare Reform Bill (Pub. L. 108–89), enacted on October 1, 2003, eliminated reference to the second QI benefit (for the Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the FPL for a family of the size involved, who are not otherwise eligible for Medicaid under the approved State plan). In 2002 and 2003, continuing resolutions extended the coverage of the first group of QIs (whose income is at least 120 percent but less than 135 percent of the FPL) through the following fiscal year, but maintained the annual funding at the FY 2002 level. Section 1933(g) of the Act was amended by the Extension of Medicare Cost-Sharing for Medicare Part B Premium for Qualifying Individuals Act, (Pub. L. 108–448), enacted December 8, 2004, which continued coverage of this group of QIs (whose income is at least 120 percent but less than 135 percent of the FPL) through September 30, 2005, again, with no change in funding.

The BBA also added a new section 1933 to the Act to provide for Medicaid payment of Medicare Part B premiums for QIs. (The previous section 1933 of the Act was re-designated as section 1934.) Section 1933(a) of the Act specifies that a State plan must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance. Section 1933(b) of the Act sets forth the rules that States must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State must permit all qualifying individuals to apply for assistance and must select individuals on a first-come, first-served basis (that is, the State must select QIs in the order in which they apply). Further, under section 1933(b)(2)(B) of the Act, in selecting persons who will receive assistance in years after 1998, States must give preference to those individuals who received assistance as QIs, QMBs, SLMBs, or QDWIs in the last month of the previous year and who continue to be (or become) QIs.

Under section 1933(b)(4) of the Act, persons selected to receive assistance in a calendar year are entitled to receive assistance for the remainder of the year, but not beyond, as long as they continue to qualify. The fact that an individual is selected to receive assistance at any time during the year does not entitle the individual to continued assistance for any succeeding year. Because the State's QI allotment is limited by law, section 1933(b)(3) of the Act provides that the State must limit the number of QIs so that the amount of assistance provided during the year is approximately equal to the allotment for that year.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums for QIs each fiscal year and specifies the formula that is to be used to determine an allotment for each State from this total amount. For States that executed a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion was allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002.

On March 29, 1999, we published a notice in the **Federal Register** (64 FR 14931) to advise States of the methodology used to calculate allotments and each State's specific allotment for that year. Following that notice, there was no change in methodology and States have been notified annually of their allotments. We did not include the methodology for computing the allocation in our regulations. Although the BBA originally provided coverage of QIs through FY 2002, based on several legislative actions, coverage has been continued through December 31, 2009.

The Federal medical assistance percentage, for Medicaid payment of Medicare Part B premiums for QIs, is 100 percent for expenditures up to the amount of the State's allotment. No Federal funds are available for expenditures in excess of the State allotment amount. The Federal matching rate for administrative expenses associated with the payment of Medicare Part B premiums for QIs remains at the 50 percent matching level. Federal financial participation in the administrative expenses is not counted against the State's allotment.

The amount available for each fiscal year is to be allocated among States according to the formula set forth in section 1933(c)(2) of the Act. The formula provides for an amount to each State that is based on each State's share of the Secretary's estimate of the ratio of: (a) An amount equal to the total number of individuals in the State who meet all but the income requirements for QMBs, whose incomes are at least 120 percent but less than 135 percent of the Federal poverty level, and who are not otherwise eligible for Medicaid, to (b) the sum of all individuals for all eligible States.

B. Allotments for FY 2005

In FY 2005, some States exhausted their FY 2005 allotments before the end of the fiscal year, which caused States to deny benefits to eligible persons under section 1933(b)(3) of the Act, while other States projected a surplus in

their allotments. We asked those States that exhausted or expected to exhaust their FY 2005 allotments before the end of the fiscal year to project the amount of funds that would be required to grant eligibility to all eligible persons in their State, that is, their need. We also asked those States that did not expect to use their full allotments in FY 2005 to project the difference between the amount they expected to spend and their allotment, that is, their surplus. After all States reported these figures, it was evident that the total surplus exceeded the total need. In spite of there being adequate overall funding for the QI benefit, some eligible individuals would have been denied benefits due to the allocation methodology initially used to determine the FY 2005 allotments.

We believe that it was the clear intent of the statute to provide benefits to eligible persons up to the full amount of funds made available for the program. We attributed the difference between the surplus in available QI allotments for some States and the need in other States in FY 2005 as due to the imprecision in the data that we used to provide States with their initial allocations under section 1933 of the Act. Therefore, on August 26, 2005, we published an interim final rule in the **Federal Register** (70 FR 50214) under which we compensated for this imprecision in order to enable States to enroll those QIs whom they would have been able to enroll had the data been more precise.

The August 26, 2005 interim final rule amended 42 CFR 433.10(c) to specify the formula and the data to be used to determine States' allotments and to revise, under certain circumstances, individual State allotments for a Federal fiscal year for the Medicaid payment of Medicare Part B premiums for qualifying individuals identified under section 1902(a)(10)(E)(iv) of the Act. Section 433.10(c)(5)(iv) states that CMS will notify States of any changes in allotments resulting from any reallocations.

The FY 2005 allotments were determined by applying the U.S. Census Bureau data to the formula set forth in section 1933(c)(2) of the Act. However, the statute requires that the allocation of the fiscal year allotment be based upon a ratio of the amount of ''total number of individuals described in section 1902(a)(10)(E)(iv) in the State'' to the sum of these amounts for all States. Because this formula requires an estimate of an unknown number, that is, the number of individuals who could be QIs (rather than the number of individuals who were QIs in a previous period), our use of the Census Bureau data in the formula represented a rough proxy to attain the statutory number. Actual expenditure data, however, revealed that the Census Bureau data yielded an inappropriate distribution of the total appropriated funds as evidenced by the fact that several States projected significant shortfalls in their allotments, while many other States projected a significant surplus by the end of the FY 2005. Census Bureau data were not accurate for the purpose of projecting States' needs because the data could not take into consideration all variables that contribute to QI eligibility and enrollment, such as resource levels and the application process itself. While section 1933 of the Act requires the Secretary to estimate the allocation of the allotments among the States, it did not preclude a subsequent readjustment of that allocation, when it became clear that the data used for that estimate did not effectuate the statutory objective. The interim final rule published in the **Federal Register** on August 26, 2005 permitted in this specific circumstance a redistribution of surplus funds, as it was demonstrated that the States' projections and estimates resulted in an inequitable initial allocation for FY 2005, such that some States were granted an allocation in excess of their total projected need, while the allocation granted to other States proved insufficient to meet their projected QI expenditures.

In the August 26, 2005 interim final rule, we codified the methodology we have been using to approximate the statutory formula for determining State allotments. However, since certain States projected a deficit in their allotment before the end of FY 2005, the rule permitted FY 2005 funds to be reallocated from the surplus States to the need States. The regulation specified the methodology for computing the annual allotments, and for reallocating funds in this circumstance. The formula used to reallocate funds was intended to minimize the impact on States with fiscal year QI allotments that might be greater than their QI expenditures for the fiscal year, to equitably distribute the total needed amount among those surplus States, and to meet the immediate needs for those States projecting deficits. At the time of the publication of the interim final rule on August 26, 2005, the authorization for the QI benefit was scheduled to expire at the end of calendar year (CY) 2005, and no additional funds were appropriated for the QI benefit beyond September 30, 2005; therefore, the regulation specified a sunset at the end of CY 2005.

C. Allotments for FY 2006 and FY 2007

On October 20, 2005, the QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005 (Pub. L. 109–91) was enacted. Section 101 of Public Law 109–91 extended the QI program through September 30, 2007 with no change in the level of funding; that is, under this legislation $400 million per fiscal year was appropriated for each of FY 2006 and FY 2007. The provisions of section 101 of Public Law 109–91 were effective as of September 30, 2005.

On October 16, 2006, we published a final rule in the **Federal Register** (71 FR 60663), which implemented the provisions of section 101 of Public Law 109–91 relating to the QI allotments for final FY 2006 allotments and preliminary FY 2007 allotments. As we stated in that final rule, we believe that the clear intent of the statute is to provide benefits to eligible persons up to the full amount of funds made available for the program in each fiscal year. We recognized that because of the imprecise data for computing the States' QI allotments for a fiscal year, some States would experience either surpluses or shortages in their FY 2006 and FY 2007 allotments. In accordance with 42 CFR 433.10(c), the FY 2006 and FY 2007 QI allotments were designed to compensate for the imprecise data to permit shortage States to enroll more QIs than otherwise would have been possible.

D. Allotments for FY 2008 and Thereafter

Section 3 of the TMA, Abstinence Education, and QI Program Extension Act of 2007, Public Law 110–90 (enacted on September 29, 2007) provided $100 million and extended the QI program through December 31, 2007. Section 203 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA) (Pub. L. 110–173, enacted on December 29, 2007) provided an additional $200 million and extended the QI program through June 30, 2008. Most recently, section 111 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275) enacted on July 15, 2008, and section 2 of the QI Program Supplemental Funding Act of 2008 (the SFA) enacted on October 8, 2008, (Pub. L. 110–379), extended and provided additional funds for the QI program. Under the current Medicaid statute, as amended by MIPPA and the SFA, a total of $415 million is available for the QI program for FY 2008, and $480 million

is available for the QI program for FY 2009. Additionally, $150 million is available for the QI program for the first quarter of FY 2010 (that is, October 1, 2009 through December 31, 2009). However, the existing regulation at § 433.10(c)(5)(v) authorizes the methodology for determining each State's QI allotment under the QI program only through CY 2007.

II. Provisions of the Interim Final Rule With Comment Period

Because § 433.10(c)(5) explicitly references funding for the QI program only through calendar year 2007, we are making minor, non-substantive technical changes to the regulation to address the funding availability for FY 2008 and thereafter. In § 433.10, we are revising paragraph (c)(5)(ii) by changing the statutory reference ''section 1933(c)(1)'' to ''section 1933(g)''. We are also revising paragraphs (c)(5)(iii) introductory text, (c)(5)(iii)(D), and (c)(5)(v) to more generally refer to the period for which QI program funding is available under the statute, rather than referring to particular years. These revisions implement the funding authority available under section 1933 of the Act. Henceforth, legislative extensions of QI program funding will not require revisions to our regulations. We would, however, continue to issue a notice in the **Federal Register** to announce the amount of the States' QI allotments to be provided in accordance with the extending legislation, and determined in accordance with the methodology referenced in the regulation.

The regulation at § 433.10(c)(5) currently specifies the methodology, formula, data, and process to be used for determining and issuing States' QI allotments. This methodology and process provides for an adjustment in the amounts of the QI allotments preliminarily determined for the Medicaid payment of Medicare Part B premiums for qualifying individuals identified under section 1902(a)(10)(E)(iv) of the Act.

As discussed in section I.B of this preamble, the methodology and process described in the existing regulation for determining States' QI allotments is currently based on the availability of funds with respect to a full fiscal year. It does not address a situation, such as existed for FY 2008 prior to the enactment of MIPPA and SFA, where funding under the applicable statute was available only for part of the fiscal year (that is, through June 30, 2008).

The statute and existing regulation both provide that the ''initial'' fiscal year QI allotments be determined by applying U.S. Census Bureau data to the formula set forth in section 1933(c)(2) of the Act. The current regulation sets forth a two step/two phase methodology and process for determining States' QI allotments for a fiscal year. Under the first step of phase one, an ''initial'' allocation is determined for each State under the formula specified in section 1933 of the Act and based only on the data obtained from the Census Bureau (the 3-year average of the number of Medicare beneficiaries in the State who are not enrolled in the Medicaid program but whose incomes are at least 120 percent of the FPL and less than 135 percent of the FPL). We further obtain States' projected QI expenditures for the fiscal year.

Under the second step of the process referenced in the existing regulation, we adjust the States' initial allocations by considering the States' updated projections of QI expenditures for the fiscal year. This would be done by proportionately reducing the QI allotments of States with surpluses for the fiscal year by the amount of the total need for States that do not have sufficient QI allotments for the fiscal year.

In this interim final rule, we are continuing to apply this methodology and process in two phases in each fiscal year. At the beginning of each fiscal year, we would determine the initial allocations based on the Census Bureau data, obtain States' projections of QI expenditures for the fiscal year, and make any adjustments based on the projected surpluses/needs for the fiscal year. The amounts of the States' QI allotments determined under this first phase at the beginning of the fiscal year are considered the States' ''preliminary'' QI allotments for the fiscal year. Then, under phase two of the process during the fourth quarter of the fiscal year, we obtain States' updated projected QI expenditures for the fiscal year. We then establish the ''final'' QI allotments for the fiscal year based on these updated projections.

The formula used to reallocate the available funds to need States is intended to minimize the impact on surplus States, to equitably distribute the total needed amount among those surplus States, and to meet the needs for those States projecting deficits.

Under the existing regulation, the methodology and process for determining the QI allotments is determined with respect to a full fiscal year. The existing regulation does not address situations in which the QI allotments may need to be determined for periods that are less than a full fiscal year. Furthermore, the current regulation only addresses situations in which the total projected surplus for States is greater than the amount of the total projected deficit; this has been the case with respect to the determination of fiscal year QI allotments for fiscal years before FY 2008. The existing regulation does not address situations in which the total projected deficits may be greater than the total projected surpluses.

Under the Medicaid statute, as existed just prior to the enactment of the MIPPA, the QI program was funded in FY 2008 only for the period October 1, 2008 through June 30, 2008 at a level of $300 million; in particular, this provided funding only with respect to 9 months or 75 percent of FY 2008. Additionally, under States' initial QI expenditure projections the total projected deficit for the 9-month period was greater than the total projected surplus. Although, with the enactment of the MIPPA, the QI program was funded for the entirety of FY 2008 at a level of $400 million, the States' current QI expenditure projections for the full FY 2008 is greater than the total projected allocation for the fiscal year. However, with the enactment of the SFA, funding for the QI program for FY 2008 is at a level of $415 million; this amount is sufficient to fully fund the program for FY 2008 based on the States' QI expenditure projections for FY 2008.

In order to ensure that our regulations address the different possible funding situations, for example, such as was the case prior to enactment of the SFA, we are making revisions to § 433.10(c)(5)(iii) to cover the full range of possibilities. We want to emphasize that the changes we are making do not change the fundamental process by which we determine State allocations. We are clarifying the language describing the QI allotment methodology included in the current regulations to address situations where the total amount of the funding available for the period is projected to be insufficient for the projected national needs for that period, such that the States' total projected deficits exceed total projected surpluses; situations that have occurred for past fiscal years (that is, when there were full levels of funding for a full fiscal year and the total projected surpluses exceeded total projected deficits); and situations that existed for FY 2008 prior to the enactment of the MIPPA (that is, where funding for the fiscal year was for a period that was less than the full fiscal year).

The methodology used to reallocate the available funds to need States is

intended to minimize the impact on surplus States and to equitably redistribute such surpluses from such States. In order to meet the needs for those States projecting deficits, we are adding a new paragraph (E), in § 433.10(c)(5)(iii). The final fiscal year QI allotments for a State with a surplus could only be reduced by no more than the State's projected surplus; and, in cases where the total projected deficits exceed the total projected surpluses, the States with such deficits would only receive a prorated proportion of the total surpluses.

Based on the timing of the recent enactment of the MIPPA and the SFA, we are not publishing *preliminary* FY 2008 allotments; rather, in this rule with respect to FY 2008, we are only publishing the *final* FY 2008 QI allotments. That is, as discussed above, just prior to the enactment of the MIPPA on July 15, 2008, funding for the QI program in FY 2008 would only have been with respect to the period ending June 30, 2008. As a result of the enactment of MIPPA and the SFA, funding for the QI program for FY 2008 has been extended for the entire fiscal year. Therefore, after obtaining States' updated QI expenditure estimates for FY 2008, we are now able to determine the *final* FY 2008 QI allotments. Thus, the publication of the preliminary FY 2008 QI allotments is unnecessary. The resulting final allotments for the entire FY 2008 are shown by State in the Chart 1 of this rule. Chart 2 presents the preliminary FY 2009 QI allotments:

Chart 1—Final Qualifying Individuals Allotments for October 1, 2007 through September 30, 2008

Chart 2—Preliminary Qualifying Individuals Allotments for October 1, 2008 through September 30, 2009

The following describes the information contained in the columns of Chart 1 and Chart 2:

Column A—*State*. Column A shows the name of each State.

Columns B through D show the determination of the States' Initial FY 2008 (Chart 1) or FY 2009 (Chart 2) QI Allotments, based on Census Bureau data.

Column B—*Number of Individuals*. Column B contains the estimated average number of Medicare beneficiaries for the years 2005 through 2007 (Chart 1, with respect to the Final FY 2008 QI allotment determination) or the years 2006 through 2007 (Chart 2, with respect to the Preliminary FY 2009 QI allotment) that are not covered by Medicaid whose family income is between 120 and 135 percent of the poverty level for each State, in thousands, as obtained from the Census Bureau's Annual Social and Economic Supplement to the Current Population Survey through December of 2007 (Chart 1) or through December 2008 (Chart 2).

Column C—*Percentage of Total.* Column C provides the percentage of the total number of individuals for each State, that is, the number of individuals for the State in Column B divided by the sum total of the number of individuals for all States in Column B.

Column D—*Initial QI Allotment.* Column D contains each State's initial FY 2008 (Chart 1) or FY 2009 (Chart 2) QI allotment, calculated as the State's percentage of total in Column C multiplied by $415,000,000 (Chart 1, for the Final FY 2008 QI Allotment) or $480,000,000 (Chart 2, for the Preliminary FY 2009 QI allotment), the total amount available for FY 2008 (Chart 1) or FY 2009 (Chart 2) for all States.

Columns E through L show the determination of the States' Final QI allotments for FY 2008 (Chart 1) or Preliminary QI allotments for FY 2009 (Chart 2).

Column E—*FY 2008 Estimated QI Expenditures.* Column E contains the States' estimates of their total QI expenditures for FY 2008 (Chart 1) or FY 2009 (Chart 2) as obtained from States in the summer of 2008.

Column F—*Need (Difference).* Column F contains the additional amount of QI allotment needed for those States whose estimated expenditures in Column E exceeded their Initial FY 2008 (Chart 1) or FY 2009 (Chart 2) QI allotments in Column D; for such States, Column F shows the amount in Column E minus the amount in Column D. For other ''Non-Need'' States, Column F shows ''NA''.

Column G—*Percent of Total Need States.* For States whose projected QI expenditures in Column E is greater than their Initial QI allotment in Column D for FY 2008 (Chart 1) or FY 2009 (Chart 2), Column G shows the percentage of total need, determined as the amount for each Need State in Column F divided by the sum of the amounts for all States in Column F. For Non-Need States, the entry in Column G is ''NA''.

Column H—*Reduction Pool for Non-Need States.* Column H shows the amount of the pool of surplus FY 2008 (Chart 1) or FY 2009 (Chart 2) QI allotments for those States that project QI expenditures for the fiscal year that are less than the initial QI allotment for the fiscal year (referred to as non-need States). For States whose estimates of QI expenditures for FY 2008 or FY 2009 in Column E are equal to or less than their Initial FY 2008 or FY 2009 QI allotments in Column D for FY 2008 or FY 2009, Column H shows the amount in Column D minus the amount in Column E. For the States with a need, Column H shows ''Need.'' The reduction pool of excess QI allotments is equal to the sum of the amounts in Column H.

Column I—*Percent of Total Non-Need States.* For States whose projected QI expenditures in Column E is less than their Initial QI allotment in Column D for FY 2008 (Chart 1) or FY 2009 (Chart 2), Column I shows the percentage of the total reduction pool in Column H, determined as the amount for each Non-Need State in Column H divided by the sum of the amounts for all States in Column H. For Need States, the entry in Column I is ''Need''.

Column J—*Reduction Adjustment for Non-Need States.* Column J shows the amount of adjustment to reduce the Initial FY 2008 (Chart 1) or FY 2009 (Chart 2) QI allotments in Column D for Non-Need States in order to address the total need shown in Column F. The amount in Column J is determined as the percentage in Column I for Non-Need States multiplied by the lesser of the total need in Column F (equal to the sum of Needs in Column F) or the total Reduction Pool in Column H (equal to the sum of the Non-Need amounts in Column H). For Need States, the entry in Column J is ''Need''.

Column K—*Increase Adjustment for Need States.* Column K shows the amount of adjustment to increase the Initial QI Allotment for FY 2008 (Chart 1) or FY 2009 (Chart 2) in Column D for Need States in order to address the total need shown in Column F. The amount in Column K is determined as the percentage in Column G for Need States multiplied by the lesser of the total need in Column F (equal to the sum of Needs in Column F) or the total Reduction Pool in Column H (equal to the sum of the Non-Need amounts in Column H). For Non-Need States, the entry in Column K is ''NA''.

Column L—Final *FY 2008 QI Allotment (Chart 1) of Preliminary FY 2009 QI Allotment (Chart 2).* Column L contains the Final QI allotment for each State for FY 2008 (Chart 1) or the Preliminary QI Allotment for FY 2009 (Chart 2). For States that need additional amounts based on their FY 2008 or FY 2009 Estimated QI Expenditures in Column E (States with a projected need amount in Column F), Column L is equal to the Initial FY 2008 or FY 2009 QI Allotment in Column D plus the amount determined in Column K for Need States. For Non-Need States

(States with a projected surplus in Column H), Column L is equal to the QI Allotment in Column D reduced by the Reduction Adjustment amount in Column J.

CHART 1 - FINAL QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008

STATE	Initial QI Allotments for FY 2008			FY 2008 Estimated QI Expenditures /1	Need (Difference)	Pct of Tot. Need States	Reduction Pool for Non-Need States	Pct of Tot. Non-Need States	Reduction Adj. For Non-Need States Col. I x	Increase Adj. For Need States Col. G x	Final FY 2008 QI Allotment /2
	Number of Individuals /3 (000s)	Percentage of Total Col B/Tot. Col B	Initial QI Allotment Col C x $415,000,000		If E>D, E-D	F/(Tot. of F)	If D >= E, D - E	H/(Tot. of H)	$83,186,881	$83,186,881	
A	B	C	D	E	F	G	H	I	J	K	L
Alabama	26	1.80%	$7,459,150	$18,841,519	$11,382,369	13.6829%	Need	Need	Need	$11,382,369	$18,841,519
Alaska	2	0.12%	$484,360	$110,454	NA	NA	$373,906	0.4300%	$357,732	NA	$126,629
Arizona	19	1.35%	$5,618,581	$12,159,928	$6,541,347	7.8634%	Need	Need	Need	$6,541,347	$12,159,928
Arkansas	18	1.26%	$5,231,092	$7,048,155	$1,817,063	2.1843%	Need	Need	Need	$1,817,063	$7,048,155
California	107	7.49%	$31,095,938	$17,857,329	NA	NA	$13,238,609	15.2259%	$12,665,926	NA	$18,430,012
Colorado	14	0.98%	$4,068,627	$2,745,232	NA	NA	$1,323,395	1.5221%	$1,266,147	NA	$2,802,480
Connecticut	15	1.03%	$4,262,372	$9,234,761	$4,972,389	5.9774%	Need	Need	Need	$4,972,389	$9,234,761
Delaware	3	0.23%	$968,721	$249,465	NA	NA	$719,256	0.8272%	$688,142	NA	$280,579
District of Columbia	3	0.19%	$774,977	$0	NA	NA	$774,977	0.8913%	$741,452	NA	$33,524
Florida	102	7.12%	$29,545,985	$32,801,932	$3,255,947	3.9140%	Need	Need	Need	$3,255,947	$32,801,932
Georgia	28	1.94%	$8,040,383	$20,541,502	$12,501,119	15.0278%	Need	Need	Need	$12,501,119	$20,541,502
Hawaii	4	0.28%	$1,162,465	$641,203	NA	NA	$521,262	0.5995%	$498,713	NA	$663,752
Idaho	5	0.37%	$1,549,953	$1,543,865	NA	NA	$6,088	0.0070%	$5,825	NA	$1,544,128
Illinois	69	4.83%	$20,052,521	$16,705,339	NA	NA	$3,347,182	3.8496%	$3,202,388	NA	$16,850,133
Indiana	45	3.17%	$13,174,603	$6,713,813	NA	NA	$6,460,790	7.4306%	$6,181,306	NA	$6,993,297
Iowa	10	0.70%	$2,906,162	$2,718,688	NA	NA	$187,474	0.2156%	$179,365	NA	$2,726,798
Kansas	9	0.61%	$2,518,674	$2,491,573	NA	NA	$27,101	0.0312%	$25,929	NA	$2,492,745
Kentucky	21	1.47%	$6,102,941	$10,319,172	$4,216,231	5.0684%	Need	Need	Need	$4,216,231	$10,319,172
Louisiana	23	1.59%	$6,587,302	$13,515,793	$6,928,491	8.3288%	Need	Need	Need	$6,928,491	$13,515,793
Maine	8	0.58%	$2,421,802	$2,525,085	$103,283	0.1242%	Need	Need	Need	$103,283	$2,525,085
Maryland	18	1.24%	$5,134,220	$4,093,930	NA	NA	$1,040,290	1.1964%	$995,289	NA	$4,138,931
Massachusetts	36	2.52%	$10,462,185	$8,936,343	NA	NA	$1,525,842	1.7549%	$1,459,836	NA	$9,002,349
Michigan	53	3.69%	$15,305,789	$10,241,907	NA	NA	$5,063,882	5.8240%	$4,844,826	NA	$10,460,963
Minnesota	21	1.47%	$6,102,941	$3,768,524	NA	NA	$2,334,417	2.6848%	$2,233,434	NA	$3,869,508
Mississippi	15	1.05%	$4,359,244	$9,567,050	$5,207,806	6.2604%	Need	Need	Need	$5,207,806	$9,567,050
Missouri	43	2.99%	$12,399,627	$4,137,754	NA	NA	$8,261,873	9.5021%	$7,904,476	NA	$4,495,151
Montana	8	0.54%	$2,228,058	$871,382	NA	NA	$1,356,676	1.5603%	$1,297,988	NA	$930,070
Nebraska	11	0.75%	$3,099,907	$2,335,536	NA	NA	$764,371	0.8791%	$731,305	NA	$2,368,602
Nevada	12	0.82%	$3,390,523	$2,599,056	NA	NA	$791,467	0.9103%	$757,229	NA	$2,633,294
New Hampshire	7	0.47%	$1,937,442	$1,032,905	NA	NA	$904,537	1.0403%	$865,408	NA	$1,072,034
New Jersey	37	2.61%	$10,849,673	$9,401,542	NA	NA	$1,448,131	1.6655%	$1,385,487	NA	$9,464,186
New Mexico	12	0.86%	$3,584,267	$2,806,231	NA	NA	$778,036	0.8948%	$744,379	NA	$2,839,888
New York	89	6.26%	$25,961,718	$42,559,452	$16,597,734	19.9523%	Need	Need	Need	$16,597,734	$42,559,452
North Carolina	62	4.37%	$18,115,079	$19,117,867	$1,002,788	1.2055%	Need	Need	Need	$1,002,788	$19,117,867
North Dakota	5	0.35%	$1,453,081	$454,747	NA	NA	$998,334	1.1482%	$955,148	NA	$497,933
Ohio	55	3.83%	$15,887,021	$16,134,493	$247,472	0.2975%	Need	Need	Need	$247,472	$16,134,493
Oklahoma	21	1.49%	$6,199,813	$7,258,217	$1,058,404	1.2723%	Need	Need	Need	$1,058,404	$7,258,217
Oregon	20	1.40%	$5,812,325	$8,379,918	$2,567,593	3.0865%	Need	Need	Need	$2,567,593	$8,379,918
Pennsylvania	75	5.23%	$21,699,346	$20,705,321	NA	NA	$994,025	1.1432%	$951,025	NA	$20,748,321
Rhode Island	5	0.33%	$1,356,209	$1,988,852	$632,643	0.7605%	Need	Need	Need	$632,643	$1,988,852
South Carolina	23	1.63%	$6,781,046	$8,703,145	$1,922,099	2.3106%	Need	Need	Need	$1,922,099	$8,703,145
South Dakota	3	0.23%	$968,721	$973,703	$4,982	0.0060%	Need	Need	Need	$4,982	$973,703
Tennessee	40	2.82%	$11,721,522	$415,011	NA	NA	$11,306,511	13.0037%	$10,817,408	NA	$904,114
Texas	110	7.70%	$31,967,787	$21,899,861	NA	NA	$10,067,926	11.5792%	$9,632,402	NA	$22,335,385
Utah	5	0.37%	$1,549,953	$1,310,827	NA	NA	$239,126	0.2750%	$228,782	NA	$1,321,171
Vermont	3	0.23%	$968,721	$3,195,842	$2,227,121	2.6773%	Need	Need	Need	$2,227,121	$3,195,842
Virginia	32	2.24%	$9,299,720	$7,723,994	NA	NA	$1,575,726	1.8123%	$1,507,562	NA	$7,792,158
Washington	30	2.08%	$8,621,615	$5,547,889	NA	NA	$3,073,726	3.5351%	$2,940,761	NA	$5,680,854
West Virginia	17	1.19%	$4,940,476	$4,112,067	NA	NA	$828,409	0.9528%	$792,573	NA	$4,147,903
Wisconsin	27	1.89%	$7,846,639	$1,748,633	NA	NA	$6,098,006	7.0134%	$5,834,215	NA	$2,012,424
Wyoming	3	0.23%	$968,721	$451,943	NA	NA	$516,778	0.5944%	$494,423	NA	$474,298
Total	1,428	100.00%	$415,000,000	$411,238,750	$83,186,881	100.0000%	$86,948,131	100.0000%	$83,186,881	$83,186,881	$415,000,000

Footnotes:

/1 FY 2008 Estimates from July 2008 CMS Survey of States

/2 For Need States, Final FY 2008 QI Allotment is equal to Initial QI Allotment in Column D increased by amount in Column K
For Non-Need States, Final FY 2008 QI Allotment is equal to Initial QI Allotment in Column D reduced by amount in Column J

/3 Three-year average (2005-2007) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of Federal poverty level
Source: Census Bureau Annual Social and Economic Supplement (ASEC) to the Current Population Survey (CPS) for past 3 years through March of 2007

CHART 2 - PRELIMINARY QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009

STATE	Initial QI Allotments for FY 2009			FY 2009 Estimated QI Expenditures /1	Need (Difference)	Pct of Tot. Need States	Reduction Pool for Non-Need States	Pct of Tot. Non-Need States	Reduction Adj. For Non-Need States	Increase Adj. For Need States	Preliminary FY 2009 QI Allotment /2
	Number of Individuals /3 (000s)	Percentage of Total	Initial QI Allotment Col C x						Col. I x	Col. G x	
		Col B/Tot. Col B	$480,000,000		If E>D, E-D	F/(Tot. of F)	If D >= E, D - E	H/(Tot. of H)	$103,798,653	$103,798,653	
A	B	C	D	E	F	G	H	I	J	K	L
Alabama	25	1.67%	$8,021,680	$23,668,618	$15,646,938	15.0743%	Need	Need	Need	$15,646,938	$23,668,618
Alaska	2	0.11%	$542,005	$134,006	NA	NA	$407,999	0.3824%	$396,974	NA	$145,031
Arizona	18	1.20%	$5,745,257	$13,940,113	$8,194,856	7.8950%	Need	Need	Need	$8,194,856	$13,940,113
Arkansas	21	1.42%	$6,829,268	$8,211,563	$1,382,295	1.3317%	Need	Need	Need	$1,382,295	$8,211,563
California	111	7.50%	$35,989,160	$21,425,488	NA	NA	$14,563,672	13.6515%	$14,170,120	NA	$21,819,040
Colorado	16	1.06%	$5,094,851	$3,080,322	NA	NA	$2,014,529	1.8884%	$1,960,091	NA	$3,134,760
Connecticut	18	1.24%	$5,962,060	$10,837,618	$4,875,558	4.6971%	Need	Need	Need	$4,875,558	$10,837,618
Delaware	4	0.27%	$1,300,813	$230,069	NA	NA	$1,070,744	1.0037%	$1,041,809	NA	$259,004
District of Columbia	3	0.20%	$975,610	$0	NA	NA	$975,610	0.9145%	$949,246	NA	$26,364
Florida	113	7.68%	$36,856,369	$35,529,851	NA	NA	$1,326,518	1.2434%	$1,290,671	NA	$35,565,697
Georgia	37	2.48%	$11,924,119	$22,386,690	$10,462,571	10.0797%	Need	Need	Need	$10,462,571	$22,386,690
Hawaii	3	0.23%	$1,084,011	$796,635	NA	NA	$287,376	0.2694%	$279,610	NA	$804,401
Idaho	6	0.41%	$1,951,220	$1,909,430	NA	NA	$41,790	0.0392%	$40,660	NA	$1,910,559
Illinois	68	4.61%	$22,113,821	$19,748,101	NA	NA	$2,365,720	2.2176%	$2,301,792	NA	$19,812,029
Indiana	37	2.51%	$12,032,520	$7,536,462	NA	NA	$4,496,058	4.2145%	$4,374,562	NA	$7,657,958
Iowa	15	1.02%	$4,878,049	$3,281,110	NA	NA	$1,596,939	1.4969%	$1,553,785	NA	$3,324,264
Kansas	13	0.90%	$4,336,043	$2,889,860	NA	NA	$1,446,183	1.3556%	$1,407,103	NA	$2,928,940
Kentucky	21	1.40%	$6,720,867	$11,985,088	$5,264,221	5.0716%	Need	Need	Need	$5,264,221	$11,985,088
Louisiana	16	1.08%	$5,203,252	$15,214,069	$10,010,817	9.6445%	Need	Need	Need	$10,010,817	$15,214,069
Maine	8	0.52%	$2,493,225	$4,593,699	$2,100,474	2.0236%	Need	Need	Need	$2,100,474	$4,593,699
Maryland	17	1.15%	$5,528,455	$4,517,889	NA	NA	$1,010,566	0.9473%	$983,258	NA	$4,545,197
Massachusetts	39	2.62%	$12,574,526	$10,650,719	NA	NA	$1,923,807	1.8033%	$1,871,820	NA	$10,702,706
Michigan	49	3.32%	$15,934,959	$12,306,553	NA	NA	$3,628,406	3.4012%	$3,530,357	NA	$12,404,603
Minnesota	23	1.54%	$7,371,274	$4,379,432	NA	NA	$2,991,842	2.8045%	$2,910,994	NA	$4,460,280
Mississippi	14	0.97%	$4,661,247	$9,913,680	$5,252,433	5.0602%	Need	Need	Need	$5,252,433	$9,913,680
Missouri	44	3.00%	$14,417,344	$4,818,543	NA	NA	$9,598,801	8.9976%	$9,339,414	NA	$5,077,930
Montana	7	0.47%	$2,276,423	$1,007,106	NA	NA	$1,269,317	1.1898%	$1,235,016	NA	$1,041,407
Nebraska	10	0.65%	$3,143,631	$2,434,221	NA	NA	$709,410	0.6650%	$690,240	NA	$2,453,391
Nevada	12	0.84%	$4,010,840	$2,964,786	NA	NA	$1,046,054	0.9805%	$1,017,787	NA	$2,993,053
New Hampshire	8	0.52%	$2,493,225	$1,258,913	NA	NA	$1,234,312	1.1570%	$1,200,957	NA	$1,292,268
New Jersey	31	2.08%	$9,972,900	$10,985,302	$1,012,402	0.9754%	Need	Need	Need	$1,012,402	$10,985,302
New Mexico	11	0.77%	$3,685,637	$3,320,284	NA	NA	$365,353	0.3425%	$355,480	NA	$3,330,157
New York	92	6.23%	$29,918,699	$50,193,753	$20,275,054	19.5331%	Need	Need	Need	$20,275,054	$50,193,753
North Carolina	53	3.59%	$17,235,772	$26,654,593	$9,418,821	9.0741%	Need	Need	Need	$9,418,821	$26,654,593
North Dakota	5	0.34%	$1,626,016	$486,891	NA	NA	$1,139,125	1.0678%	$1,108,343	NA	$517,673
Ohio	60	4.09%	$19,620,596	$18,888,688	NA	NA	$731,908	0.6861%	$712,130	NA	$18,908,466
Oklahoma	22	1.51%	$7,262,873	$7,853,051	$590,178	0.5686%	Need	Need	Need	$590,178	$7,853,051
Oregon	21	1.42%	$6,829,268	$11,398,815	$4,569,547	4.4023%	Need	Need	Need	$4,569,547	$11,398,815
Pennsylvania	82	5.58%	$26,775,068	$21,737,977	NA	NA	$5,037,091	4.7216%	$4,900,974	NA	$21,874,093
Rhode Island	4	0.27%	$1,300,813	$2,183,734	$882,921	0.8506%	Need	Need	Need	$882,921	$2,183,734
South Carolina	25	1.69%	$8,130,081	$9,471,275	$1,341,194	1.2921%	Need	Need	Need	$1,341,194	$9,471,275
South Dakota	3	0.23%	$1,084,011	$1,006,643	NA	NA	$77,368	0.0725%	$75,277	NA	$1,008,734
Tennessee	41	2.80%	$13,441,734	$432,902	NA	NA	$13,008,832	12.1941%	$12,657,297	NA	$784,437
Texas	124	8.42%	$40,433,604	$23,414,499	NA	NA	$17,019,105	15.9532%	$16,559,201	NA	$23,874,403
Utah	10	0.68%	$3,252,033	$1,464,304	NA	NA	$1,787,729	1.6758%	$1,739,419	NA	$1,512,613
Vermont	3	0.20%	$975,610	$3,493,984	$2,518,374	2.4262%	Need	Need	Need	$2,518,374	$3,493,984
Virginia	35	2.35%	$11,273,713	$9,357,205	NA	NA	$1,916,508	1.7965%	$1,864,718	NA	$9,408,994
Washington	27	1.81%	$8,672,087	$5,883,297	NA	NA	$2,788,790	2.6141%	$2,713,429	NA	$5,958,658
West Virginia	15	1.04%	$4,986,450	$4,540,778	NA	NA	$445,672	0.4178%	$433,629	NA	$4,552,821
Wisconsin	31	2.08%	$9,972,900	$2,233,340	NA	NA	$7,739,560	7.2548%	$7,530,415	NA	$2,442,485
Wyoming	3	0.23%	$1,084,011	$465,215	NA	NA	$618,796	0.5800%	$602,074	NA	$481,937
Total	1,476	100.00%	$480,000,000	$477,117,164	$103,798,653	100.0000%	$106,681,489	100.0000%	$103,798,653	$103,798,653	$480,000,000

Footnotes:
/1 FY 2009 Estimates from July 2008 CMS Survey of States
/2 For Need States, Preliminary FY 2009 QI Allotment is equal to Initial QI Allotment in Column D increased by amount in Column K
For Non-Need States, Preliminary FY 2009 QI Allotment is equal to Initial QI Allotment in Column D reduced by amount in Column J
/3 Three-year average (2006-2008) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of Federal poverty level
Source: Census Bureau Annual Social and Economic Supplement (ASEC) to the Current Population Survey (CPS) for past 3 years through March of 2008

III. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Notice With Comment and 30-Day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

In addition, we also normally provide a delay of 30 days in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date.

We are publishing this rule as an interim final rule with comment period because of the need to notify individual States of the limitations on Federal funds for their Medicaid expenditures for payment of Medicare Part B premiums for qualifying individuals. Some States have experienced deficits in their current allotments that have caused them to deny benefits to eligible applicants, while other States project a surplus in their allotments. This rule adjusts the allocation of Federal funds, which will reduce the impact of States denying coverage to eligible QIs when there is sufficient funding to cover all or some of these individuals. Because access to Medicare Part B coverage for QIs, who without this coverage would have difficulty paying for needed health care, is critically important we believe that it is in the public interest to waive the usual notice and comment procedure which we undertake before making a rule final.

In addition, we are not making any fundamental changes to the process we use for redistributing surpluses to States whose estimated QI expenditures exceed their initial allotments. We are simply ensuring that the process currently included in the regulations accounts for partial funding in some fiscal years as well as situations where total deficits may exceed total surpluses. For these reasons, we also believe a notice and comment process would be unnecessary.

Also, for the reasons discussed above, we find that good cause exists to dispense with the normal requirement that a regulation cannot become effective any earlier than 30 days after its publication. States that will have access to additional funds for QIs need to know that these funds are available as soon as possible. While we believe the surplus States that will have diminished amounts available for this fiscal year will have sufficient funds for enrolling all potential QIs in their States, they also need to know as soon as possible that a certain amount of their unused allocation will no longer be available to them for this fiscal year.

With respect to the changes and additions to the regulatory text, we are waiving the delay in effective date because, as noted above, the rule does not make any fundamental changes in

the methodology for allocating funds between States, but accounts for those years in which Congressional allocations may not meet total QI expenditures. The provision sets out a methodology which merely reduces allocations to States by a pro-rata amount. Consequently, because this rule is essentially one of agency procedure, we believe that delaying the effective date of the provision is unnecessary.

We are publishing this interim final rule with a 60-day period for public comment. We will respond to public comments and as a result make necessary changes in the final rule.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity.

This interim final rule codifies our procedures for implementing provisions of the Balanced Budget Act of 1997 to allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for low-income Medicare beneficiaries. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. We have applied the statutory formula for the State allotments. Because the data specified in the law were not initially available, we used comparable data from the U.S. Census Bureau on the number of possible qualifying individuals in the States. This rule also permits, in a specific circumstance, reallocation of funds to enable enrollment of all eligible individuals to the extent of the available funding.

We believe that the statutory provisions implemented in this rule will have a positive effect on States and individuals. Federal funding at the 100 percent matching rate is available for Medicare cost-sharing for Medicare Part B premium payments for qualifying individuals and, with the reallocation of the State allotments, a greater number of low-income Medicare beneficiaries will be eligible to have their Medicare Part B premiums paid under Medicaid. The changes in allotments will not result in fewer individuals receiving the QI benefit in any State. The FY 2008 and FY 2009 costs for this provision have been included in the Mid-session Review of the FY 2009 President's Budget.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. The analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined and certify that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $130 million. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs—health, Medicaid, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV as set forth below:

PART 433—STATE FISCAL ADMINISTRATION

■ 1. The authority citation for part 433 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 433.10 is amended by—
■ A. Revising paragraph (c)(5)(ii).
■ B. Revising paragraph (c)(5)(iii) introductory text.
■ C. Revising paragraph (c)(5)(iii)(D).
■ D. Adding a new paragraph (c)(5)(iii)(E).
■ E. Revising paragraph (c)(5)(v).

The revisions and additions read as follows:

§ 433.10 Rates of FFP for program services.

* * * * *

(c) * * *

(5) * * *

(ii) Under section 1933(c)(2) of the Act and subject to paragraph (c)(5)(iii) of this section, the allocation to each State is equal to the total allocation specified in section 1933(g) of the Act multiplied by the Secretary's estimate of the ratio of the total number of individuals described in section 1902(a)(10)(E)(iv) of the Act in the State to the total number of individuals described in section 1902(a)(10)(E)(iv) of the Act for all eligible States. In estimating that ratio, the Secretary will use data from the U.S. Census Bureau.

(iii) If, based on projected expenditures for a fiscal year, or for a

shorter period for which funding is available under section 1933 of the Act, the Secretary determines that the expenditures described in paragraph (c)(5)(i) of this section for one or more States are projected to exceed the allocation made to the State, the Secretary may adjust each State's fiscal year allocation, as follows:

* * * * *

(D) Each State with a projected deficit will receive an additional allocation equal to the amount of its projected deficit, or a prorated amount of such deficit, if the Total Projected Deficit is greater than the Total Projected Surplus. Except as described in paragraph (c)(5)(iii)(E) of this section, the amount to be reallocated from each State with a projected surplus will be equal to A × B, where A equals the Total Projected Deficit and B equals the amount of the State's projected surplus as a percentage of the Total Projected Surplus.

(E) If the Total Projected Deficit determined under paragraph (c)(5)(iii)(C) of this section is greater than the Total Projected Surplus determined under paragraph (c)(5)(iii)(B) of this section, each State with a projected deficit will receive an additional allocation amount equal to the amount of the Total Projected Surplus multiplied by the amount of the projected deficit for such State as a percentage of the Total Projected Deficit. The amount to be reallocated from each State with a projected surplus will be equal to the amount of the projected surplus.

* * * * *

(v) The provisions in paragraph (c)(5) of this section will be in effect through the end of the period for which funding authority is available under section 1933 of the Act.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: September 19, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: September 19, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E8–27810 Filed 11–21–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 206 and 207

[Docket ID: FEMA–2006–0035]

RIN 1660–AA21

Management Costs

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of meeting and reopening of comment period.

SUMMARY: The Federal Emergency Management Agency (FEMA) is announcing the date, time, and location for a meeting regarding the Management Costs Interim Rule (1660-AA21). This meeting will be open to the public. FEMA also announces the reopening of the comment period for the Management Costs Interim Rule.

DATES: *Meeting Date:* Wednesday, December 10, 2008, from 1 to 4 p.m. e.s.t. *Comment Date:* The comment period for the interim final rule published at 72 FR 57869, October 11, 2008, is reopened. Written comments must be received by December 11, 2008.

ADDRESSES: The meeting will be held at 800 K Street, NW., 1st Floor, North Tower, Washington, DC 20001. Individuals will be required to present photo identification to enter the building in which the meeting will be held. All written submissions must include the Docket ID FEMA–2006–0035 and may be submitted by any one of the following methods:

Federal Rulemaking Portal: http://www.regulations.gov. Follow instructions for submitting comments on the Web site.

E-mail: FEMA-RULES@dhs.gov. Include Docket ID FEMA–2006–0035 in the subject line of the message.

Facsimile: (703) 483–2999.

Mail: Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Hand Delivery/Courier: Office of the Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Jennifer Cramer, Federal Emergency Management Agency, 800 K Street, NW, Washington, DC 20472, telephone 202–786–9841.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121–5207, and its implementing regulations, the Federal Emergency Management Agency (FEMA) has the authority to assist State and local governments in carrying out their responsibilities pursuant to a Presidentially declared major disaster or emergency. Section 324 of the Stafford Act, 42 U.S.C. 5165b, required FEMA to establish management cost rates to be used in determining contributions for management costs. Management costs include any indirect cost, any administrative expense and any other expense not directly chargeable to a specific project under a major disaster, emergency, or disaster preparedness or mitigation activity or measure.

On October 11, 2007, FEMA published an Interim Rule that proposed a methodology for calculating the management cost rates, as well as guidance for the implementation of section 324 of the Stafford Act (72 FR 57869). As established by the Interim Rule, management costs that are reasonably incurred by a grantee or subgrantee in administering and managing the Public Assistance (PA) program and the Hazard Mitigation Grant Program (HMGP) grant award will be reimbursed up to a fixed rate. The flat percentage rate for PA is 3.34 percent for major disaster declarations, and 3.90 percent for emergencies. The HMGP rate is 4.89 percent for major disaster declarations. FEMA determined the rate for management costs using a historical average of the Federal share of actual administrative and management costs paid to grantees and subgrantees. To calculate the figures in the Interim Rule, FEMA used data collected in the National Emergency Management Information System (NEMIS) for declarations from August 1998 to July 2004. FEMA did not establish a percentage of management costs that grantees must pass through to subgrantees.

FEMA initially held a 30-day comment period on the Interim Rule. FEMA received 34 public comments, (all of which are available in the docket for public inspection). On August 29, 2008 (73 FR 50881), seeking specific data on unreimbursed eligible management costs, FEMA reopened the Interim Rule for an additional 30-day comment period and received an additional 37 comments, (which are also available in the docket for public inspection). Some individuals who submitted comments during the second

comment period, including a specific request from the Governors of California, Florida, New York and Texas, asked to meet with FEMA to discuss their concerns about the Interim Rule. In response to those requests, FEMA has agreed to hold this public listening session in which those affected by the rule may present their concerns orally. FEMA has also opened the public comment period to the regulatory docket to allow for the submission of additional written comments or data. FEMA continues to review the written comments received during the first two comment periods and will address those as well as any comments received at the public meeting in the next rulemaking document published for this project.

Additional Information

The data provided below is for informational purposes only. *The management cost rates published in the Interim Rule have not changed.* FEMA continues to evaluate data and the public comments received to date as well as those that it expects to receive during the public meeting. Any change to the management cost rates would occur through a Second Interim Rule or a Final Rule that would be published in the **Federal Register**.

In response to comments received on the Interim Rule, FEMA has been recalculating the management cost rates using NEMIS data for all declarations made before the date the Interim Rule went into effect (November 13, 2007). FEMA chose to include only those declarations for two reasons. First, after that date, grantees only received up to the percentages established in the rule, which FEMA found could artificially deflate the percentage, as they are capped at the 3.34/3.90/4.89 percent rate (as appropriate). Second, under the Interim Rule, final management cost amounts for disasters or emergencies do not ''lock in'' until 12 months after the disaster, so data compiled earlier than 12 months would not represent final management cost amounts. Further, because the first declaration under the Interim Rule was declared November 30, 2007, none of those disasters has received the full amount of management costs; obligations in NEMIS will only reflect the initial 25 percent of eligible management costs provided to grantees. Because management cost rates are calculated by using actual obligations, including declarations affected by the Interim Rule at this time would artificially decrease the average.

The data below represents the recalculated average rates. FEMA is also conducting distributional analyses, however, that data is not yet available for publication. The average rate data provided below includes Hurricane Katrina (DR–1603–LA) data as a separate entry to highlight how the percentage of management costs is affected in extremely large disasters. Contrary to some of the comments received, FEMA found that due to economies of scale or other factors, funds obligated for management costs as a percentage of project dollars may actually decrease for extremely large disasters. The data below excludes the 9/11 World Trade Center attack (DR–1391-NY), because the funds provided by FEMA for that particular disaster were specifically mandated, accounted for separately, and obligated under different eligibility criteria.

Although the Interim Rule did not establish a percentage of management costs that must be passed through to subgrantees, FEMA received several comments requesting that such a rate be set. The rates below break out the average amount of management costs paid to subgrantees. Again, this data is provided for informational purposes only. These figures should not be used as mandatory or even suggested pass through amounts.

Finally, the rate of management costs for HMGP funds associated with Hurricane Katrina (DR–1603–LA) may appear inflated. This is because the calculated rate as shown below is based on management costs as a percentage of project funds obligated to date, not as a percentage of the total amount of HMGP funds available to the State ($1,333,208,000). As of the date of this analysis, only approximately 15 percent of the estimated available project funds have been obligated, while the management costs obligated to date are reflective of the level of effort necessary to manage the entire program. Management costs are often obligated faster than project dollars in the HMGP.

MANAGEMENT AND ADMINISTRATIVE FUNDS PAID AS A PERCENTAGE OF PROJECT FUNDS

	NEMIS project obligations	NEMIS state management obligations (''category Z'')	NEMIS grantee obligations (''sliding scale'')	NEMIS subgrantee obligations (''sliding scale'')	Total MC grantee & subg (Cat Z + sliding scale)
Public Assistance—Major Disasters					
All NEMIS Pre Sec 324 [2] Less 1391 [1]	22,870,296,549 3.15% Total MC. 2.00% Grantee. 1.16% Subgrantee.	328,235,854	129,056,414	264,930,091	720,316,814
DR 1603 LA	6,610,259,454 2.16% Total MC. 1.57% Grantee. 0.59% Subgrantee.	70,390,092	33,283,020	39,144,562	142,817,674
All NEMIS Pre Sec 324 Less 1391, 1603	16,260,037,094 3.55% Total MC. 2.17% Grantee. 1.39% Subgrantee.	257,845,763	95,773,394	225,785,529	577,499,140
Hazard Mitigation—Major Disasters					
	NEMIS project obligations	NEMIS state management obligations (SMC)	NEMIS grantee obligations (''sliding scale'')	NEMIS subgrantee obligations (''sliding scale'')	Total MC grantee & subg (SMC + sliding scale)
All NEMIS Pre Sec 324 Less 1391	2,080,757,726	65,786,946	16,335,829	37,275,104	119,154,832

	NEMIS project obligations	NEMIS state management obligations (SMC)	NEMIS grantee obligations ("sliding scale")	NEMIS subgrantee obligations ("sliding scale")	Total MC grantee & subg (SMC + sliding scale)
DR 1603 LA	5.73% MC. 3.95% Grantee. 1.79% Subgrantee. 200,003,640	10,795,418	1,051,543	3,104,886	14,951,847
All NEMIS Pre Sec 324 Less 1391, 1603	7.48% Total MC. 5.92% Grantee. 1.55% Subgrantee. 1,880,754,086	54,991,528	15,284,286	34,170,218	104,202,985
	5.54% Total MC. 3.74% Grantee. 1.82% Subgrantee.				

Public Assistance—Emergencies

	NEMIS project obligations	NEMIS state management obligations ("category Z")	NEMIS grantee obligations ("sliding scale")	NEMIS subgrantee obligations ("sliding scale")	Total MC grantee & subg (Cat Z + sliding scale)
All NEMIS Pre Sec 324	1,458,597,114 2.88% MC. 1.16% Grantee. 1.72% Subgrantee.	6,187,426	10,690,782	25,095,074	41,973,281

[1] DR–1391–NY (World Trade Center) excluded because eligibility and source and accounting of funds were treated differently than Stafford Act/Disaster Relief Fund declarations.
[2] All declarations declared between 8/26/1998 and 11/12/2007; obligations as of 10/1/2008.

As stated above, NEMIS was used to generate the data in the table which reflects the Federal share of actual administrative and management costs paid to grantees and subgrantees. If grantees or subgrantees have incurred management costs (as defined by section 324 of the Stafford Act (42 U.S.C. 5165b)) that were not reimbursed, please submit those costs to the docket during this open comment period. FEMA needs actual cost data to support a rate, and encourages grantees and subgrantees to submit actual unreimbursed cost data. FEMA requested this data during the second Interim Rule comment period, but in some cases received percentage rates for management costs incurred for disasters rather than actual cost data. FEMA has data showing the amount of management costs that were actually paid to grantees and subgrantees. FEMA requests that grantees and subgrantees submit to the docket any actual costs incurred that were not reimbursed, but would have been eligible; for example, sliding scale limitations in section 406 of the Stafford Act. For example:

Disaster No.	Explanation of cost	Amount
DR–9999–XX	Travel costs incurred for field inspections that exceeded available sliding scale	$5,127.00

Unreimbursed costs might include items eligible for sliding scale funds when such funds were insufficient, or subgrantee costs not eligible for sliding scale funds and therefore not eligible for FEMA reimbursement. Unreimbursed costs must have been incurred in support of the management and administration of PA or HMGP under a specific Presidential declaration (major disaster or emergency for PA or major disaster for HMGP), and not in support of other programs such as community relations or Disaster Recovery Center staff, or staff supporting Individual Assistance programs. Unreimbursed costs do not include State cost shares required for sliding scale, Category Z, or indirect cost funding, nor do they include costs that were not reimbursed because they were inconsistent with applicable Federal rules and cost principles, such as OMB Circular No. A–87.

Public Meeting

The December 10, 2008 meeting is open to the public and will begin at 1 p.m. e.s.t. To enter the 800 K Street, NW., 1st Floor, North Tower, Washington, DC 20001 facility in which the meeting will be held, members of the public will be required to present photo identification. The meeting will be held in the 1st Floor Conference Center. Please note that the meeting may close early if all persons who wish to comment have done so. Persons with disabilities who require special assistance should advise Jennifer Cramer (contact information provided above in the **ADDRESSES** section) of their anticipated special needs as early as possible. Members of the public who wish to make comments must be present and seated by 1 p.m. e.s.t.

Those who are unable to attend or speak at the meeting may submit written comments. Written comments must be received by December 11, 2008. All submissions received must include the Docket ID FEMA–2006–0035 and may be submitted by any one of the methods listed in the **ADDRESSES** section above. A summary of the comments received at the public meeting will be posted to the docket at *www.regulations.gov.*

Instructions for Submitting Information to the Docket

For access to the docket to submit comments, read the Notice of Proposed Rulemaking, Interim Rule, background

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Dated: November 18, 2008.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–27839 Filed 11–21–08; 8:45 am]

BILLING CODE 9111–49–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 00–248; CC Docket No. 95–117; FCC 08–246]

Satellite Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts new procedures for non-routine earth station applications, and adopts a reasonableness standard for contention protocol usage. These actions are necessary to expedite the licensing of earth stations often used to provide satellite-based broadband Internet access services.

DATES: Effective December 24, 2008, except for the amendments to §§ 25.115, 25.134, 25.218, and 25.220, which contain information requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for these rules once OMB approval has been received for the information collection requirements.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, International Bureau, telephone (202) 418–1539 or via the Internet at *steven.spaeth@fcc.gov.*

SUPPLEMENTARY INFORMATION: This summary of the Commission's *Eighth Report and Order*, IB Docket No. 00–248, and *Order on Reconsideration*, CC Docket No. 95–117, FCC 08–246, adopted October 10, 2008, and released October 17, 2008. The complete text of this *Eighth Report and Order* and *Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, SW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Paperwork Reduction Act Analysis: The actions taken in the *Eighth Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501–3520), and found to impose new and modified requirements. Implementation of these new and modified requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the PRA, and will go into effect upon announcement in the **Federal Register** of OMB approval. The Commission will publish a separate notice in the **Federal Register** inviting comment on the new and revised information collection requirements contained in this document. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), we will also seek specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Further Notice of Proposed Rulemaking (Third Further Notice)* in IB Docket No. 00–248, 70 FR 33426 (June 8, 2005). The Commission sought written public comment on the proposals in the *Third Further Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[1]

A. Need for, and Objectives of, the Report and Order

The Telecommunications Act of 1996 requires the Commission in every even-numbered year beginning in 1998 to review all regulations that apply to the operations or activities of any provider of telecommunications service and to determine whether any such regulation is no longer necessary in the public interest due to meaningful economic competition. Our objective is to repeal or modify any rules in part 25 that are no longer necessary in the public interest, as required by section 11 of the Communications Act of 1934, as amended.

We codify streamlined procedures that allow for routine treatment of applications for earth stations that will comply with an off-axis EIRP envelope.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were submitted directly in response to the IRFA in the *Third Further Notice.*

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

1. Cable Services. The SBA has developed a small business size

[1] *See* 5 U.S.C. 604.

[2] 5 U.S.C. 604(a)(3).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[5] 15 U.S.C. 632.

standard for Cable and Other Program Distribution, which consists of all such firms having $12.5 million or less in annual receipts.[6] According to Census Bureau data for 1997, in this category there was a total of 1,311 firms that operated for the entire year.[7] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional fifty-two firms had receipts of $10 million to $24,999,999.[8] Thus, under this size standard, the majority of firms can be considered small.

The Commission has developed its own small business size standard for a small cable operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[9] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995.[10] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small cable companies that may be affected by the proposed rules.

The Communications Act of 1934, as amended, also contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [11] The Commission has determined that there are 67,700,000 subscribers in the United States.[12] Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[13] Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450.[14] We do not request or collect information on whether cable operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[15] and therefore are unable to estimate accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

2. *Satellite Telecommunications.* The rules proposed in the *Third Further Notice* would affect providers of satellite telecommunications services, if adopted. Satellite telecommunications service providers include satellite operators and earth station operators. The Commission has not developed a definition of small entities applicable to satellite operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Satellite Telecommunications.[16] This definition provides that a small entity is expressed as one with $12.5 million or less in annual receipts.[17] 1997 Census Bureau data indicate that, for 1997, 273 satellite communication firms had annual receipts of under $10 million. In addition, 24 firms had receipts for that year of $10 million to $24,999,990.[18]

3. Auxiliary, Special Broadcast and other program distribution services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations,[19] and television broadcasting stations.[20] These definitions provide that a small entity is one with either $6.0 million or less in annual receipts for a radio broadcasting station or $12.0 million in annual receipts for a TV station.[21] There are currently 3,237 FM translators and boosters, 4913 TV translators.[22] The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either $6.0 million for a radio station or $12.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.

4. Microwave Services. Microwave services include common carrier,[23] private-operational fixed,[24] and broadcast auxiliary radio services.[25] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to

[6] 13 CFR 121.201, NAICS code 517510.

[7] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513220 (issued October 2000).

[8] *Id.*

[9] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable company is one with annual revenues of $100 million or less. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation,* MM Doc. Nos. 92–266 and 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408–7409 (paras. 28–30) (1995).

[10] Paul Kagan Assocs., Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[11] 47 U.S.C. 543(m)(2).

[12] *See FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (2001).

[13] 47 CFR 76.1403(b).

[14] *See FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (2001).

[15] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.990(b).

[16] ''This industry comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Small Business Administration, NAICS code 517310.

[17] 13 CFR 120.121, NAICS code 517310.

[18] U.S. Census Bureau, 1997 Economic Census, Subject Service: Information, ''Establishment and Firm Size,'' Table 4, NAICS 513340 (Issued Oct. 2000).

[19] 13 CFR 121.201, NAICS code 515112.

[20] 13 CFR 121.201, NAICS code 515120.

[21] 13 CFR 121.201.

[22] FCC News Release, *Broadcast Station Totals as of September 30, 1999,* No. 71831 (Jan. 21, 1999).

[23] *See* 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[24] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[25] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to cellular and other wireless communications companies—*i.e.*, an entity with no more than 1,500 persons.[26] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The rules adopted in the *Eighth Report and Order* are not intended to increase the reporting, recordkeeping and other compliance requirements of any licensee, and we do not anticipate any differential treatment to be received by larger and smaller entities. The reporting requirements associated with the off-axis EIRP envelope method for reviewing earth station applications are the same as the reporting requirements associated with one of the earth station application procedures adopted in the *Fifth Report and Order* in IB Docket No. 00–248, 70 FR 32249 (June 2, 2005). These requirements will not affect small businesses differently from other non-routine earth station applicants.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[27]

In this *Eighth Report and Order*, the Commission considers and rejects a proposal to require analog video earth station operators to comply with an off-axis EIRP envelope. Commenters persuasively argued that such a requirement would have been burdensome for all analog video earth station operators, including small business analog video earth station operators.

F. Report to Congress

The Commission will send a copy of the *Eighth Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Eighth Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Eighth Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Summary of Report and Order

The *Eighth Report and Order* adopts an off-axis equivalent isotropically radiated power (EIRP) approach for licensing non-routine FSS earth stations, thus giving earth station operators greater flexibility to make technical adjustments and request routine application processing. Part 25 specifies technical requirements for ''routine'' FSS earth station applications. ''Routine'' applications are those that can be granted without a detailed engineering review. There are many non-routine earth stations that can be licensed without increasing the risk of harmful interference, but determining whether a particular non-routine earth station can be licensed requires a detailed engineering review. Licensing non-routine earth stations is important because they are often used to provide broadband Internet access.

The off-axis EIRP approach is based on a limit on the EIRP of side lobes. Decreasing the diameter of an earth station antenna increases the side lobes. Increasing the power into an earth station antenna also increases the side lobes. Thus, an earth station operator could compensate for a high power level by increasing its antenna diameter, or vice versa. An off-axis EIRP rule would make it easier for earth station license applicants to make these trade-offs, and to obtain Commission authorizations on a more expedited basis.

The *Eighth Report and Order* also adopts rules based on a study on contention protocols submitted by a commenter in this proceeding. This contention protocol issue is related to very small aperture terminal (VSAT) networks. VSAT networks are generally comprised of a hub station transmitting to a satellite, which then transmits the signal to multiple remote earth stations, or vice versa. VSAT networks use a number of different techniques, or protocols, to prevent or limit interference among the multiple remote earth stations, and to prevent them from interfering with other adjacent satellite networks. Sometimes, the remotes are assigned different frequencies, or transmit times. This is known as Frequency Division Multiple Access (FDMA), and Time Division Multiple Access (TDMA). Other protocols are referred to as ''contention protocols.'' Under this approach, the VSAT system operator allows simultaneous transmissions to interfere with each other, but uses statistical techniques to keep the intra-VSAT network interference to a minimum.

Simultaneous transmissions in contention protocol usage are called ''collisions.'' Collisions result in power levels in excess of the levels allowed by the Commission's rules, although for no more than tens of milliseconds. Originally, the Commission assumed that the power levels during ''collisions'' could increase the likelihood of harmful interference. Therefore, the Commission has requested comment on a number of proposals over the course of this proceeding to limit various aspects of contention protocol usage to reduce the probability and duration of collisions. However, the record in this proceeding includes a technical study that convincingly shows contention protocol usage decreases the likelihood of harmful interference in most areas of the country, and the increases in other areas are *de minimis*. Based on this study, the *Eighth Report and Order* decides not to adopt any of the contention protocol proposals considered previously in this proceeding. Instead, contention protocol users are required to be ''reasonable,'' which is defined as not increasing the likelihood of harmful interference any more than the sample VSAT networks modeled in the study discussed in the *Eighth Report and Order*.

In addition, the *Eighth Report and Order* considers and rejects a proposal to revise procedures for licensing earth stations in the Quiet Zone. The ''Quiet Zone'' is a 13,000 square mile area in Virginia, West Virginia, and Maryland, created to protect radio astronomy. The current procedure, in place since 1958, requires the Commission to notify the National Radio Astronomy Observatory (NRAO) when it receives an application for an earth station in the Quiet Zone. In an earlier phase of this proceeding, NRAO proposed replacing the traditional notification procedure with a coordination procedure. The *Eighth Report and Order* does not adopt NRAO's proposal, because the current notification requirement has been in place since 1958, and nothing in the

[26] *See* 13 CFR 121.201, NAICS code 517212.

[27] 5 U.S.C. 603(c)(1)–(c)(4).

record suggests that it has not been sufficient.

Finally, the Commission considers several miscellaneous issues raised in petitions for reconsideration of the *Fifth Report and Order* in IB Docket No. 00–248, 70 FR 32249 (June 2, 2005), the *Sixth Report and Order* in IB Docket No. 00–248, 70 FR 33373 (June 8, 2005), and the *1996 Streamlining Order*, 62 FR 5924 (Feb. 10, 1997). Based on those petitions for reconsideration, the Commission clarified, among other things, that non-routine earth stations need not be afforded more protection from interference than a routine earth station would. The Commission also clarified the satellites with whom a target satellite operator must coordinate prior to the time a non-routine earth station operator communicating with that target satellite operator plans to begin operations. All other issues raised in these petitions for reconsideration were dismissed as moot, denied because they were outside the scope of the proceeding, or denied because the Commission had considered and rejected the petitioner's proposal in a previous Order.

Ordering Clauses

Accordingly, *it is ordered,* pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), that this *Eighth Report and Order* in IB Docket No. 00–248 is hereby *adopted.*

It is further ordered that part 25 of the Commission's rules *is amended* as set forth below. An announcement of the effective date of these rule revisions will be published in the **Federal Register**.

It is further ordered that the Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered, pursuant to § 1.106 of the Commission's rules, 47 CFR 1.106, that the Petition for Reconsideration of the *Fifth Report and Order* filed by the Satellite Industry Association (SIA) is *granted in part* and *denied in part.*

It is further ordered, pursuant to § 1.106 of the Commission's rules, 47 CFR 1.106, that the Petition for Reconsideration of the *Sixth Report and Order* filed by SIA is *Granted.*

It is further ordered, pursuant to § 1.106 of the Commission's rules, 47 CFR 1.106, that the Petition for Reconsideration of the *Sixth Report and Order* filed by Boeing is *dismissed as moot.*

It is further ordered, pursuant to § 1.106 of the Commission's rules, 47 CFR 1.106, that the Petitions for Reconsideration of the *1996 Streamlining Order* filed by EDS Corporation (EDS) and GE American Communications, Inc. (GE Americom) are *dismissed as moot.*

It is further ordered, pursuant to § 1.106 of the Commission's rules, 47 CFR 1.106, that the Petition for Reconsideration of the *1996 Streamlining Order* filed by Telquest Ventures, Inc. (Telquest) *is denied.*

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

■ 2. Section 25.115 is amended by adding paragraphs (h) and (i) to read as follows:

§ 25.115 Application for earth station authorizations.

* * * * *

(h) Any earth station applicant filing an application pursuant to § 25.218 of this chapter must file three tables showing the off-axis EIRP level of the proposed earth station antenna of the plane of the geostationary orbit, the elevation plane, and towards the horizon. In each table, the EIRP level must be provided at increments of 0.1° for angles between 0° and 10° off-axis, and at increments of 5° for angles between 10° and 180° off-axis.

(1) For purposes of the off-axis EIRP table in the plane of the geostationary orbit, the off-axis angle is the angle in degrees from the line connecting the focal point of the antenna to the target satellite, within the plane determined by the focal point of the antenna and the line tangent to the arc of the geostationary satellite orbit at the position of the target satellite.

(2) For purposes of the off-axis EIRP table in the elevation plane, the off-axis angle is the angle in degrees from the line connecting the focal point of the antenna to the target satellite, within the plane perpendicular to the plane determined by the focal point of the antenna and the line tangent to the arc of the geostationary satellite orbit at the position of the target satellite.

(3) For purposes of the off-axis EIRP table towards the horizon, the off-axis angle is the angle in degrees from the line determined by the intersection of the horizontal plane and the elevation plane described in paragraph (h)(2) of this section, in the horizontal plane. The horizontal plane is the plane determined by the focal point of the antenna and the horizon.

(4) In addition, in an attachment to its application, the earth station applicant must certify that it will limit its pointing error to 0.5°, or demonstrate that it will comply with the applicable off-axis EIRP envelopes in § 25.218 of this part when the antenna is mispointed at its maximum pointing error.

(i) Any earth station applicant filing an application for a VSAT network made up of FSS earth stations and planning to use a contention protocol must include in its application a certification that it will comply with the requirements of § 25.134(g)(4).

■ 3. Section 25.134 is amended by adding paragraph (g)(4) to read as follows:

§ 25.134 Licensing provisions of Very Small Aperture Terminal (VSAT) and C-band Small Aperture Terminal (CSAT) networks.

* * * * *

(g) * * *

(4) Any earth station applicant filing an application to operate a VSAT network after December 24, 2008 in the Ku-band and planning to use a contention protocol must certify that its contention protocol usage will be reasonable.

* * * * *

■ 4. Section 25.138 is amended by revising paragraph (a)(4) to read as follows:

§ 25.138 Blanket Licensing provisions of GSO FSS Earth Stations in the 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space) bands.

(a) * * *

(4) GSO FSS earth station antenna off-axis EIRP spectral density for cross-polarized signals shall not exceed the following values, in all directions relative to the GSO arc, under clear sky conditions:

8.5–25log(θ)–10log(N)	dBW/40 kHz	For	$2.0° < \theta \leq 7.0°$
−12.63–10log(N)	dBW/40 kHz	For	$7.0° < \theta \leq 9.23°$

where θ is the angle in degrees from the axis of the main lobe. For systems where more than one earth station is expected to transmit simultaneously in the same bandwidth, *e.g.*, CDMA systems, N is the likely maximum number of simultaneously transmitting co-frequency earth stations in the receive beam of the satellite. N=1 for TDMA and FDMA systems.

* * * * *

■ 5. Section 25.209 is amended by revising paragraphs (a), (b), and (c)(1), removing and reserving paragraph (d), revising paragraph (f), and removing and reserving paragraph (g), to read as follows:

§ 25.209 Antenna performance standards.

(a) The gain of any antenna to be employed in transmission from an earth station in the fixed-satellite service shall lie below the envelope defined below:

(1) In the plane of the geostationary satellite orbit as it appears at the particular earth station location, for earth stations not operating in the Ka-band or conventional Ku-band:

$29–25\log_{10}\theta$	dBi	For	$1.5° \leq \theta \leq 7°$
8	dBi	For	$7° < \theta \leq 9.2°$
$32–25\log_{10}\theta$	dBi	For	$9.2° < \theta \leq 48°$
−10	dBi	For	$48° < \theta \leq 180°$

where θ is the angle in degrees from the axis of the main lobe, and dBi refers to dB relative to an isotropic radiator. For the purposes of this section, the peak gain of an individual sidelobe may not exceed the envelope defined above for θ between 1.5 and 7.0 degrees. For θ greater than 7.0 degrees, the envelope may be exceeded by no more than 10% of the sidelobes, provided no individual sidelobe exceeds the gain envelope given above by more than 3 dB.

(2) In the plane of the geostationary satellite orbit as it appears at the particular earth station location, for earth stations operating in the Ka-band or conventional Ku-band:

$29–25\log_{10}\theta$	dBi	For	$1.5° \leq \theta \leq 7°$
8	dBi	For	$7° < \theta \leq 9.2°$
$32–25\log_{10}\theta$	dBi	For	$9.2° < \theta \leq 48°$
−10	dBi	For	$48° < \theta \leq 85°$
0	dBi	For	$85° < \theta \leq 180°$

(3) In all other directions, or in the plane of the horizon including any out-of-plane potential terrestrial interference paths, for all earth stations not operating in the Ka-band or conventional Ku-band:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32–25\log_{10}\theta$	dBi	For	$3° < \theta \leq 48°$
−10	dBi	For	$48° < \theta \leq 180°$

where θ and dBi are defined above. For the purposes of this section, the envelope may be exceeded by no more than 10% of the sidelobes provided no individual sidelobe exceeds the gain envelope given above by more than 6 dB. The region of the main reflector spillover energy is to be interpreted as a single lobe and shall not exceed the envelope by more than 6 dB.

(4) In all other directions, or in the plane of the horizon including any out-of-plane potential terrestrial interference paths, for all earth stations operating in the Ka-band or conventional Ku-band:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32–25\log_{10}\theta$	dBi	For	$3° < \theta \leq 48°$
−10	dBi	For	$48° < \theta \leq 85°$
0	dBi	For	$85° < \theta \leq 180°$

where θ and dBi are defined above. For the purposes of this section, the envelope may be exceeded by no more than 10% of the sidelobes provided no individual sidelobe exceeds the gain envelope given above by more than 6 dB. The region of the main reflector spillover energy is to be interpreted as a single lobe and shall not exceed the envelope by more than 6 dB.

(5) Elliptical earth station antennas may be operated only when the major axis of the antenna is aligned with the plane of the geostationary satellite orbit as it appears at the particular earth station location.

(b) The off-axis cross-polarization gain of any antenna to be employed in transmission from an earth station to a space station in the domestic fixed-satellite service shall be defined as follows:

(1) In the plane of the geostationary satellite orbit as it appears at the particular earth station location:

$19–25\log_{10}\theta$	dBi	For	$1.8° < \theta \leq 7°$
−2	dBi	For	$7° < \theta \leq 9.2°$

where θ is the angle in degrees from the axis of the main lobe, and dBi refers to dB relative to an isotropic radiator.

(2) In all other directions, or in the plane of the horizon including any out-of-plane potential terrestrial interference paths:

$19–25\log_{10}\theta$	dBi	For	$3° < \theta \leq 7°$
−2	dBi	For	$7° < \theta \leq 9.2°$

where θ and dBi are defined above.

(c)(1) Earth station antennas licensed for reception of radio transmissions from a space station in the fixed-satellite service are protected from radio interference caused by other space stations only to the degree to which harmful interference would not be expected to be caused to an earth station employing an antenna conforming to the referenced patterns defined in paragraphs (a) and

(b) of this section, and protected from radio interference caused by terrestrial radio transmitters identified by the frequency coordination process only to the degree to which harmful interference would not be expected to be caused to an earth station conforming to the reference pattern defined in paragraphs (a)(3) and (a)(4) of this section.

* * * * *

(f) An earth station with an antenna not conforming to the standards of paragraphs (a) and (b) of this section will be authorized only if the applicant meets its burden of demonstrating that its antenna will not cause unacceptable interference. For ESVs in the C-band, this demonstration must comply with the procedures set forth in § 25.221. For ESVs in the Ku-band, this demonstration must comply with the procedures set forth in § 25.222. For feeder-link earth stations in the 17/24 GHz BSS, this demonstration must comply with the procedures set forth in § 25.223. For other FSS earth stations, this demonstration must comply with the procedures set forth in §§ 25.218 or 25.220. In any case, the Commission will impose appropriate terms and conditions in its authorization of such facilities and operations.

* * * * *

■ 6. Section 25.212 is amended by revising paragraph (c) to read as follows:

§ 25.212 Narrowband analog transmissions, digital transmissions, and video transmissions in the GSO Fixed-Satellite Service.

* * * * *

(c) In the 14.0 through 14.5 GHz band, an earth station with an antenna equivalent diameter of 1.2 meters or greater may be routinely licensed for transmission of narrowband analog services with bandwidths up to 200 kHz if the maximum input power spectral density into the antenna does not exceed −8 dBW/4 kHz and the maximum transmitted satellite carrier EIRP density does not exceed 17 dBW/4 kHz. Such earth stations may be routinely licensed for transmission of narrowband and/or wideband digital services, including digital video services, if the maximum input spectral power density into the antenna does not exceed −14 dBW/4 kHz, and the maximum transmitted satellite carrier EIRP density does not exceed +10.0 dBW/4 kHz. Antennas transmitting in the 14.0 through 14.5 GHz band with a major and/or minor axis smaller than 1.2 meters are subject to the provisions of § 25.220, which may include power reduction requirements.

* * * * *

■ 7. Section 25.218 is added to read as follows:

§ 25.218 Off-axis EIRP envelopes for FSS earth station operations.

(a) This section applies to all earth station applications, except for:

(1) ESV applications,

(2) Analog video earth station applications,

(3) Applications for feeder-link earth stations in the 17/24 GHz BSS.

(b) Earth station applications subject to this section are eligible for routine processing if they meet the applicable off-axis EIRP envelope set forth in this section below. For purposes of this section, the term ''extended Ku-band'' is the 10.7 through 11.7 GHz, 12.75 through 13.25 GHz, and 13.75 through 14.0 GHz band. The term ''conventional Ku-band'' is defined in § 25.201 of this chapter.

(c) *C-band analog earth station operations.* (1) In the plane of the geostationary satellite orbit as it appears at the particular earth station location:

$29.5–25\log_{10}\theta$	dBW/4 kHz	For	$1.5° \leq \theta \leq 7°$
8.5	dBW/4 kHz	For	$7° < \theta \leq 9.2°$
$32.5–25\log_{10}\theta$	dBW/4 kHz	For	$9.2° < \theta \leq 48°$
−9.5	dBW/4 kHz	For	$48° < \theta \leq 180°$

where θ is the angle in degrees from the line connecting the focal point of the antenna to the target satellite, and the geostationary orbit plane is determined by the focal point of the antenna and the line tangent to the arc of the geostationary satellite orbit at the position of the target satellite. For the purposes of this section, the peak EIRP of an individual sidelobe may not exceed the envelope defined above for θ between 1.5° and 7.0°. For θ greater than 7.0°, the envelope may be exceeded by no more than 10% of the sidelobes, provided no individual sidelobe exceeds the envelope given above by more than 3 dB.

(2) In all other directions, or in the plane of the horizon including any out-of-plane potential terrestrial interference paths:

$32.5–25\log_{10}\theta$	dBW/4 kHz	For	$3° \leq \theta \leq 48°$
−9.5	dBW/4 kHz	For	$48° < \theta \leq 180°$

where θ is the angle in degrees from the line connecting the focal point of the antenna to the target satellite, within any plane that includes that line, with the exception of the plane determined by the focal point of the antenna and the line tangent to the arc of the geostationary satellite orbit at the position of the target satellite. For the purposes of this section, the envelope may be exceeded by no more than 10% of the sidelobes provided no individual sidelobe exceeds the envelope given above by more than 6 dB. The region of the main reflector spillover energy is to be interpreted as a single lobe and shall not exceed the envelope by more than 6 dB.

(d) *C-band digital earth station operations.* (1) In the plane of the

geostationary satellite orbit as it appears at the particular earth station location:

$26.3-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	For	$1.5° \leq \theta \leq 7°$
$5.3-10\log_{10}(N)$	dBW/4 kHz	For	$7° < \theta \leq 9.2°$
$29.3-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	For	$9.2° < \theta \leq 48°$
$-12.7-10\log_{10}(N)$	dBW/4 kHz	For	$48° < \theta \leq 180°$

where θ and the plane of the geostationary satellite orbit are defined in paragraph (c)(1) of this section, and N is defined below. For the purposes of this section, the peak EIRP of an individual sidelobe may not exceed the envelope defined above for θ between 1.5° and 7.0°. For θ greater than 7.0°, the envelope may be exceeded by no more than 10% of the sidelobes, provided no individual sidelobe exceeds the envelope given above by more than 3 dB. For digital SCPC using frequency division multiple access (FDMA) or time division multiple access (TDMA) technique, N is equal to one. For digital SCPC using code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(2) In all other directions, or in the plane of the horizon including any out-of-plane potential terrestrial interference paths:

$29.3-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	For	$3° \leq \theta \leq 48°$
$-12.7-10\log_{10}(N)$	dBW/4 kHz	For	$48° < \theta \leq 180°$

where θ is defined in paragraph (c)(2) of this section, and N is defined in paragraph (d)(1) of this section. For the purposes of this section, the envelope may be exceeded by no more than 10% of the sidelobes provided no individual sidelobe exceeds the envelope given above by more than 6 dB. The region of the main reflector spillover energy is to be interpreted as a single lobe and shall not exceed the envelope by more than 6 dB.

(e) *Conventional Ku-band analog earth station operations.* (1) In the plane of the geostationary satellite orbit as it appears at the particular earth station location:

$21-25\log_{10}\theta$	dBW/4 kHz	For	$1.5° \leq \theta \leq 7°$
0	dBW/4 kHz	For	$7° < \theta \leq 9.2°$
$24-25\log_{10}\theta$	dBW/4 kHz	For	$9.2° < \theta \leq 48°$
−18	dBW/4 kHz	For	$48° < \theta \leq 85°$
−8	dBW/4 kHz	For	$85° < \theta \leq 180°$

where θ and the plane of the geostationary satellite are defined in paragraph (c)(1) of this section. For the purposes of this section, the peak EIRP of an individual sidelobe may not exceed the envelope defined above for θ between 1.5° and 7.0°. For θ greater than 7.0°, the envelope may be exceeded by no more than 10% of the sidelobes, provided no individual sidelobe exceeds the envelope given above by more than 3 dB.

(2) In all other directions, or in the plane of the horizon including any out-of-plane potential terrestrial interference paths:

$24-25\log_{10}\theta$	dBW/4 kHz	For	$3° \leq \theta \leq 48°$
−18	dBW/4 kHz	For	$48° < \theta \leq 85°$
−8	dBW/4 kHz	For	$85° < \theta \leq 180°$

where θ is defined in paragraph (c)(2) of this section. For the purposes of this section, the envelope may be exceeded by no more than 10% of the sidelobes provided no individual sidelobe exceeds the envelope given above by more than 6 dB. The region of the main reflector spillover energy is to be interpreted as a single lobe and shall not exceed the envelope by more than 6 dB.

(f) *Conventional Ku-band digital earth station operations.* (1) In the plane of the geostationary satellite orbit as it appears at the particular earth station location:

$15-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	For	$1.5° \leq \theta \leq 7°$
$-6-10\log_{10}(N)$	dBW/4 kHz	For	$7° < \theta \leq 9.2°$
$18-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	For	$9.2° < \theta \leq 48°$
$-24-10\log_{10}(N)$	dBW/4 kHz	For	$48° < \theta \leq 85°$
$-14-10\log_{10}(N)$	dBW/4 kHz	For	$85° < \theta \leq 180°$

where θ and the plane of the geostationary satellite orbit are defined in paragraph (c)(1) of this section, and N is defined below. For the purposes of this section, the peak EIRP of an individual sidelobe may not exceed the envelope defined above for θ between 1.5° and 7.0°. For θ greater than 7.0°, the envelope may be exceeded by no more than 10% of the sidelobes, provided no individual sidelobe exceeds the envelope given above by more than 3 dB. For digital SCPC using frequency division multiple access (FDMA) or time division multiple access (TDMA) technique, N is equal to one. For digital SCPC using code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(2) In all other directions, or in the plane of the horizon including any out-of-plane potential terrestrial interference paths:

$18-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	For	$3° \leq \theta \leq 48°$
$-24-10\log_{10}(N)$	dBW/4 kHz	For	$48° < \theta \leq 85°$

$-14-10\log_{10}(N)$	dBW/4 kHz	For	$85° < \theta \leq 180°$

where θ is defined in paragraph (c)(2) of this section, and N is defined in paragraph (f)(1) of this section. For the purposes of this section, the envelope may be exceeded by no more than 10% of the sidelobes provided no individual sidelobe exceeds the envelope given above by more than 6 dB. The region of the main reflector spillover energy is to be interpreted as a single lobe and shall not exceed the envelope by more than 6 dB.

(g) *Extended Ku-band analog earth station operations.* (1) In the plane of the geostationary satellite orbit as it appears at the particular earth station location:

$21-25\log_{10}\theta$	dBW/4 kHz	For	$1.5° \leq \theta \leq 7°$
0	dBW/4 kHz	For	$7° < \theta \leq 9.2°$
$24-25\log_{10}\theta$	dBW/4 kHz	For	$9.2° < \theta \leq 48°$
-18	dBW/4 kHz	For	$48° < \theta \leq 180°$

where θ and the plane of the geostationary satellite orbit are defined in paragraph (c)(1) of this section. For the purposes of this section, the peak EIRP of an individual sidelobe may not exceed the envelope defined above for θ between 1.5° and 7.0°. For θ greater than 7.0°, the envelope may be exceeded by no more than 10% of the sidelobes, provided no individual sidelobe exceeds the envelope given above by more than 3 dB.

(2) In all other directions, or in the plane of the horizon including any out-of-plane potential terrestrial interference paths:

$24-25\log_{10}\theta$	dBW/4 kHz	For	$3° \leq \theta \leq 48°$
-18	dBW/4 kHz	For	$48° < \theta \leq 180°$

where θ is defined in paragraph (c)(2) of this section. For the purposes of this section, the envelope may be exceeded by no more than 10% of the sidelobes provided no individual sidelobe exceeds the envelope given above by more than 6 dB. The region of the main reflector spillover energy is to be interpreted as a single lobe and shall not exceed the envelope by more than 6 dB.

(h) *Extended Ku-band digital earth station operations.* (1) In the plane of the geostationary satellite orbit as it appears at the particular earth station location:

$15-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	For	$1.5° \leq \theta \leq 7°$
$-6-10\log_{10}(N)$	dBW/4 kHz	For	$7° < \theta \leq 9.2°$
$18-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	For	$9.2° < \theta \leq 48°$
$-24-10\log_{10}(N)$	dBW/4 kHz	For	$48° < \theta \leq 180°$

where θ and the plane of the geostationary satellite orbit are defined in paragraph (c)(1) of this section, and N is defined below. For the purposes of this section, the peak EIRP of an individual sidelobe may not exceed the envelope defined above for θ between 1.5° and 7.0°. For θ greater than 7.0°, the envelope may be exceeded by no more than 10% of the sidelobes, provided no individual sidelobe exceeds the envelope given above by more than 3 dB. For digital SCPC using frequency division multiple access (FDMA) or time division multiple access (TDMA) technique, N is equal to one. For digital SCPC using code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(2) In all other directions, or in the plane of the horizon including any out-of-plane potential terrestrial interference paths:

$18-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	For	$3° \leq \theta \leq 48°$
$-24-10\log_{10}(N)$	dBW/4 kHz	For	$48° < \theta \leq 85°$

where θ is defined in paragraph (c)(2) of this section and N is defined in paragraph (h)(1) of this section. For the purposes of this section, the envelope may be exceeded by no more than 10% of the sidelobes provided no individual sidelobe exceeds the envelope given above by more than 6 dB. The region of the main reflector spillover energy is to be interpreted as a single lobe and shall not exceed the envelope by more than 6 dB.

■ 8. Section 25.220 is amended by revising paragraphs (a) and (d), and removing and reserving paragraphs (c), (e), and (f), to read as follows:

§ 25.220 Non-conforming transmit/receive earth station operations.

(a)(1) This section applies to earth station applications, other than ESV applications and 17/24 GHz BSS feeder link applications, in which the proposed earth station operations do not fall within the applicable off-axis EIRP envelope specified in Section 25.218 of this chapter.

(2) The requirements for petitions to deny applications filed pursuant to this section are set forth in § 25.154.

* * * * *

(d)(1) The applicant must submit the certifications listed in paragraphs (d)(1)(i) through (d)(1)(iv) of this section. The applicant will be authorized to transmit only to the satellite systems included in the coordination agreements referred to in the certification required by paragraph (d)(1)(ii) of this section. The applicant will be granted protection from receiving interference only with respect to the satellite systems included in the coordination agreements referred to in the certification required by paragraph (d)(1)(ii) of this section, and only to the extent that protection from receiving interference is afforded by those coordination agreements.

(i) A statement from the satellite operator acknowledging that the proposed operation of the subject non-conforming earth station with its satellite(s) has the potential to receive interference from adjacent satellite networks that may be unacceptable.

(ii) A statement from the satellite operator that it has coordinated the operation of the subject non-conforming earth station accessing its satellite(s), including its required downlink power density based on the information contained in the application, with all adjacent satellite networks within 6° of orbital separation from its satellite(s), and the operations will operate in conformance with existing coordination agreement for its satellite(s) with other satellite systems, except as set forth in paragraph (d)(4) of this section.

(iii) A statement from the satellite operator that it will include the subject non-conforming earth station operations in all future satellite network coordinations, and

(iv) A statement from the earth station applicant certifying that it will comply with all coordination agreements reached by the satellite operator(s).

(2) A license granted pursuant to paragraph (d)(1) of this section will include, as a condition on that license, that if a good faith agreement cannot be reached between the satellite operator and the operator of a future 2° compliant satellite, the earth station operator shall accept the power density levels that would accommodate the 2° compliant satellite.

(3) In the event that a coordination agreement discussed in paragraph (d)(1)(ii) of this section is reached, but that coordination agreement does not address protection from interference for the earth station, that earth station will be protected from interference to the same extent that an earth station that meets the requirements of § 25.209 of this title would be protected from interference.

(4) Notwithstanding paragraph (d)(1)(ii) of this section, a party applying for an earth station license pursuant to this section will not be required to certify that its target satellite operator has reached a coordination agreement with another satellite operator whose satellite is within 6° of orbital separation from its satellite in cases where the off-axis EIRP density level of the proposed earth station operations will be less than or equal to the levels specified by the applicable off-axis EIRP envelope set forth in § 25.218 of this chapter in the direction of the part of the geostationary orbit arc within 1° of the nominal orbit location of the adjacent satellite.

* * * * *

[FR Doc. E8–27769 Filed 11–21–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123 and WC Docket No. 05–196; FCC 08–151]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP-Enabled Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, FCC 08–151 (*Report and Order*). This notice is consistent with the *Report and Order*, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the rules.

DATES: 47 CFR 64.605(a) and (b), and 64.611(a), (b), (c) and (f), published at 73 FR 41286, July 18, 2008, are effective November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Heather Hendrickson, Competition Policy Division, Wireline Competition Bureau, at (202) 418–7295.

SUPPLEMENTARY INFORMATION: This document announces that, on November 14, 2008, OMB approved, for a period of three years, the information collection requirements contained in the Commission's *Report and Order*, FCC 08–151, published at 73 FR 41286, July 18, 2008. The OMB Control Number is 3060–1089. The Commission publishes this notice as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1089, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on November 14, 2008, for the information collection requirements contained in the Commission's rules at 47 CFR 64.605(a) and (b), and 47 CFR 64.611(a), (b), (c) and (f). The OMB Control Number is 3060–1089. The total annual reporting burden for respondents for these collections of information, including the time for gathering and maintaining the collection of information, is estimated to be: 11 respondents, 1,680,044 responses, total annual burden hours of 98,616 hours, and $4,224,346 in total annual costs.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act, which does not display a current, valid OMB Control Number.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–27854 Filed 11–21–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 201, 202, 213, and 215

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement

(DFARS) to update references and the list of Army contracting activities.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: This final rule amends DFARS text as follows:

○ *201.201–1*. Updates the reference to the DoD publication addressing the operation of the Defense Acquisition Regulations Council.

○ *202.101*. Updates the list of Army contracting activities.

○ *213.301*. Updates the Web link to the DoD Government charge card guidebook.

○ *215.404–71–4*. Updates cross-references.

List of Subjects in 48 CFR Parts 201, 202, 213, and 215

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 201, 202, 213, and 215 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 201, 202, 213, and 215 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.201–1 [Amended]

■ 2. Section 201.201–1 is amended in paragraph (c) by removing ''DoDI 5000.63'' and adding in its place ''DoD Instruction 5000.35''.

PART 202—DEFINITIONS OF WORDS AND TERMS

■ 3. Section 202.101 is amended in the definition of ''Contracting activity'' by revising the list with the heading ''ARMY'' to read as follows:

202.101 Definitions.

* * * * *

Army

Headquarters, U.S. Army Contracting Command
Joint Contracting Command—Iraq/Afghanistan
National Guard Bureau
Program Executive Office for Simulation, Training, and Instrumentation
U.S. Army Aviation and Missile Life Cycle Management Command
U.S. Army Communications-Electronics Life Cycle Management Command
U.S. Army Corps of Engineers
U.S. Army Expeditionary Contracting Command
U.S. Army Intelligence and Security Command
U.S. Army Joint Munitions and Lethality Life Cycle Management Command
U.S. Army Medical Command
U.S. Army Medical Research and Materiel Command
U.S. Army Mission and Installation Contracting Command
U.S. Army Research, Development, and Engineering Command
U.S. Army Space and Missile Defense Command
U.S. Army Sustainment Command
U.S. Army Tank-Automotive and Armaments Life Cycle Management Command

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.301 [Amended]

■ 4. Section 213.301 is amended in paragraph (4), in the first sentence, by removing *http://www.acq.osd.mil/dpap/pcard/pcardguidebook.htm* and adding in its place *http://www.acq.osd.mil/dpap/pdi/pc/docs/dod_charge_card_guide_20080819.doc*.

PART 215—CONTRACTING BY NEGOTIATION

215.404–71–4 [Amended]

■ 5. Section 215.404–71–4 is amended in paragraph (e)(1) as follows:

■ a. By removing ''paragraph (c)'' and adding in its place ''paragraph (f)''; and

■ b. By removing ''paragraph (d)'' and adding in its place ''paragraph (g)''.

[FR Doc. E8–27789 Filed 11–21–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 245, and 252

RIN 0750–AF24

Defense Federal Acquisition Regulation Supplement; Reports of Government Property (DFARS Case 2005–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update requirements for reporting of Government property in the possession of DoD contractors. The rule replaces DD Form 1662 reporting requirements with requirements for DoD contractors to electronically submit, to the Item Unique Identification (IUID) Registry, the IUID data applicable to the Government property in the contractor's possession.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–1302; facsimile 703–602–7887. Please cite DFARS Case 2005–D015.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 72 FR 52293 on September 13, 2007, to require reporting of DoD property in the possession of contractors through use of the DoD IUID Registry. Three sources submitted comments on the interim rule. A discussion of the comments is provided below.

1. Marking Requirements

a. *Comment:* Concerning the clause at DFARS 252.211–7007 and the requirement to create a unique item identifier (UII) for certain Government property, physically mark it, and load the required data into the IUID Registry when an item is shipped: There needs to be a notification mechanism on shipping paperwork to identify an item in a given shipment that is IUID compliant. Without some type of information on the documentation indicating that a UII is present, the physical mark could be overlooked and the receiver might create a new UII using its data elements and load the item into the Registry, causing multiple entries for a single item. Under the interim rule, the physical mark is the only indicator to a receiver that a UII is present and must be read to obtain the number for look-up in the Registry. This would seem to be inadequate.

DoD Response: To avoid any confusion, the marking requirement has been excluded from the final rule. Therefore, the recommended notification mechanism is unnecessary.

b. *Comment:* The interim rule imposes a requirement on contractors to

arbitrarily mark items furnished by the Government but received by the contractor without a physical marking. Prior to marking an item with a UII, a contractor would need to perform an appropriate analysis to determine the method, content, and location of the mark. In many cases, the contractor that receives Government-furnished items is not the manufacturer of the items and does not have design authority or sufficient technical knowledge to conduct an analysis and determine the appropriate marking. Moreover, many of the items in the aerospace and defense industry are flight safety critical items for which contractors cannot accept the responsibility/liability of altering the items. Specific requirements for marking of ''unmarked'' items should be addressed on a contract-by-contract basis so that the contractor does not void any warranties or adversely affect the form, fit, or function of the item.

DoD Response: The clause at DFARS 252.211–7007 has been amended to address only reporting requirements. The final rule contains no marking requirements.

c. *Comment:* Paragraph (d)(5) of the clause at DFARS 252.211–7007 requires re-marking of previously tagged or bagged embedded items that are subsequently removed from use. This paragraph should be deleted. Once identified, an item is always identified. This information should be provided as a bill of material for all UII items, including embedded UIIs as part of the contract.

DoD Response: Marking requirements have been excluded from the final rule.

2. Items Subject to Reporting Requirements

a. *Comment:* The DFARS rule should clearly exclude reparables, since reparables do not meet the definition of property in the possession of contractors as defined in the Item Unique Identification Property Guidebook; i.e., reparables are not provided to the contractor for performance of a contract but rather for repair. This should be addressed at DFARS 211.274–4(b). In addition, Government-furnished material that is not part of the end item deliverable in a bill of materials should not be subject to reporting under the rule. This should also be addressed at DFARS 211.274–4(b). Express recognition of these exclusions will provide clarification and will enable the Government to obtain the full cost of a deliverable end item that is in keeping with the intent, in part, of the Chief Financial Officer's Act of 1990 (Pub. L. 101–576).

DoD Response: The final rule excludes reparables and Government-furnished material from IUID reporting requirements, in addition to the following: Items with an acquisition value of less than $5,000 that are not serially managed, mission essential, sensitive, or controlled inventory, unless the terms and conditions of the contract state otherwise; contractor-acquired property; property under any statutory leasing authority; property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments; intellectual property or software; and real property.

b. *Comment:* At DFARS 252.211–7007(b)(4), add the words ''for use'' so that the paragraph reads: ''The Contractor shall assign and register a UII and the master item data for any subassembly, component, or part that does not have an existing UII when it is removed *for use* from a parent item and remains with the Contractor as a stand-alone item.'' This will eliminate any requirement to identify items that are removed for disposition.

DoD Response: The referenced paragraph (b)(4) has been excluded from the final rule. The rule has been revised to clarify the types of property that require reporting to the DoD IUID Registry, i.e., equipment, special tooling, special test equipment.

3. Reporting Mechanism

Comment: Although the rules for UII creation and marking are similar for new procurement items and legacy items, the mechanism for loading UII data to the IUID Registry for legacy items (e.g., reparable items not yet registered) differs from the mechanism for loading new procurement items, which is accomplished through Wide Area WorkFlow (WAWF). Specifically, the Material Inspection and Receiving Report required for acceptance of service items (e.g., contract line items for the repair of Government items) is not to be used to submit IUID data for supply items. That is, a contractor may not report via WAWF a new UII for a Government-owned item that the contractor has repaired. Please provide clarification to reflect this difference and provide guidance for the registration of IUID data for legacy items, specifically addressing repaired items.

DoD Response: The rule has been revised to clarify the mechanism for reporting items to the DoD IUID Registry. Specifically, that reporting is via direct input to the DoD IUID Registry, not via WAWF. WAWF was built as the input mechanism for the acquisition of new items (not Government-furnished equipment). Additionally, the final rule excludes reparables from IUID reporting requirements.

4. Data Submission Requirements

a. *Comment:* At 252.211–7007(b)(7), add the phrase ''the version of_____, cited in the Contract Schedule'' to the end of the first sentence, so that the sentence reads: ''The Contractor shall submit the UII and the master item data into the IUID Registry in accordance with the data submission procedures in the Item Unique Identification of Government Property Guidebook at: *http://www.acq.osd.mil/dpap/pdi/UID/guides.html* the version of_____, cited in the Contract Schedule.'' This would be similar to the language used to invoke the applicable version of MIL–STD–130 at DFARS 252.211–7003. Also suggest adding Section IV of the document entitled DD 1662 Transition Instruction (August 23, 2005). This will clarify data to be provided when information is entered into the Registry.

DoD Response: The rule has been revised to more clearly specify data submission requirements, and the reference to the Government Property Guidebook has been excluded from the final rule. Accordingly, there is no need to add Section IV of the document entitled DD 1662 Transition Instruction (August 23, 2005).

b. *Comment:* The first sentence in paragraph (c)(1) of the clause at DFARS 252.211–7007 should be revised to state that updates to the IUID Registry should be accomplished ''in accordance with the recognized data submission methods on the IUID Web site.''

DoD Response: The contract clause in the final rule clearly specifies reporting requirements and also provides a reference to the DoD IUID Registry Web site.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule amends the DFARS to require DoD contractors to electronically submit, to the DoD IUID Registry, the IUID data applicable to the Government property in the contractor's possession. The previous, paper-based DD Form 1662 reporting system did not provide DoD with sufficient information to

validate the existence, completeness, or valuation of Government property in the possession of contractors. The objective of the rule is to improve the accountability and control of DoD assets. DoD considers use of the IUID Registry to be the most practical and beneficial reporting method for both Government and industry. Continued reliance on the prior paper-based reporting method would not permit the level of accountability that DoD needs to comply with statutory and regulatory requirements related to the management of Government property. DoD already has adopted the use of IUID technology as the standard marking approach for all items in DoD's inventory system. Therefore, it logically follows that DoD property in the possession of contractors should also be recorded and reported using IUID technology.

C. Paperwork Reduction Act

The information collection requirements associated with contractor reporting of Government property have been approved by the Office of Management and Budget, under Clearance Number 0704–0246, for use through April 30, 2009. The requirements of this rule are not expected to significantly change the burden hours approved under Clearance Number 0704–0246.

List of Subjects in 48 CFR Parts 211, 245, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 211, 245, and 252, which was published at 72 FR 52293 on September 13, 2007, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR Parts 211, 245, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Section 211.274–4 is revised to read as follows:

211.274–4 Policy for reporting of Government-furnished equipment in the DoD Item Unique Identification (IUID) Registry.

It is DoD policy that Government-furnished equipment be recorded in the DoD IUID Registry, except for—

(a) Items with an acquisition cost of less than $5,000 that are not identified as serially managed, mission essential, sensitive, or controlled inventory, unless the terms and conditions of the contract state otherwise;

(b) Government-furnished material;

(c) Reparables;

(d) Contractor-acquired property as defined in FAR Part 45;

(e) Property under any statutory leasing authority;

(f) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(g) Intellectual property or software; and

(h) Real property.

■ 3. Section 211.274–5 is amended by revising paragraph (b)(1) introductory text to read as follows:

211.274–5 Contract clauses.

* * * * *

(b)(1) Use the clause at 252.211–7007, Reporting of Government-Furnished Equipment in the DoD Item Unique Identification (IUID) Registry, in solicitations and contracts that contain the clause at—

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.211–7007 is revised to read as follows:

252.211–7007 Reporting of Government-Furnished Equipment in the DoD Item Unique Identification (IUID) Registry.

As prescribed in 211.274–5(b), use the following clause:

REPORTING OF GOVERNMENT-FURNISHED EQUIPMENT IN THE DOD ITEM UNIQUE IDENTIFICATION (IUID) REGISTRY (NOV 2008)

(a) *Definitions.* As used in this clause—

2D data matrix symbol means the 2-dimensional Data Matrix ECC 200 as specified by International Standards Organization/International Electrotechnical Commission (ISO/IEC) Standard 16022: Information Technology—International Symbology Specification—Data Matrix.

Acquisition cost, for Government-furnished equipment, means the amount identified in the contract, or in the absence of such identification, the item's fair market value.

Concatenated unique item identifier means—

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; e.g., the enterprise identifier along with the contractor's property internal identification, i.e., tag number is recognized as the serial number; or

(2) For items that are serialized within the original part, lot, or batch number, the linking together of the unique identifier data elements in order of the issuing agency code; enterprise identifier; original part, lot, or batch number; and serial number within the original part, lot, or batch number.

Equipment means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

Government-furnished equipment means an item of special tooling, special test equipment, or equipment, in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor (including subcontractors and alternate locations) for the performance of a contract.

Item means equipment, special tooling, or special test equipment, to include such equipment, special tooling, or special test equipment that is designated as serially managed, mission essential, sensitive, or controlled inventory (if previously identified as such in accordance with the terms and conditions of the contract).

Item unique identification (IUID) means a system of assigning, reporting, and marking DoD property with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items.

IUID Registry means the DoD data repository that receives input from both industry and Government sources and provides storage of, and access to, data that identifies and describes tangible Government personal property.

Material means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, or special test equipment.

Reparable means an item, typically in unserviceable condition, furnished to the Contractor for maintenance, repair, modification, or overhaul.

Sensitive item means an item potentially dangerous to public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

Serially managed item means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number.

Special test equipment means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test

equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, or equipment items used for general testing purposes, or property that with relatively minor expense can be made suitable for general purpose use.

Special tooling means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items, including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

Unique item identifier (UII) means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes, in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD recognized unique identification equivalent.

Virtual UII means the UII data elements assigned to an item that is not marked with a DoD compliant 2D data matrix symbol, e.g., enterprise identifier, part number, and serial number; or the enterprise identifier along with the Contractor's property internal identification, *i.e.*, tag number.

(b) *Requirement for item unique identification of Government-furnished equipment.* Except as provided in paragraph (c) of this clause—

(1) Contractor accountability and management of Government-furnished equipment shall be performed at the item level; and

(2) Unless provided by the Government, the Contractor shall establish a virtual UII or a DoD recognized unique identification for items that are—

(i) Valued at $5,000 or more in unit acquisition cost; or

(ii) Valued at less than $5,000 in unit acquisition cost and are serially managed, mission essential, sensitive, or controlled inventory, as identified in accordance with the terms and conditions of the contract.

(c) *Exceptions.* Paragraph (b) of this clause does not apply to—

(1) Government-furnished material;

(2) Reparables;

(3) Contractor-acquired property;

(4) Property under any statutory leasing authority;

(5) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(6) Intellectual property or software; or

(7) Real property.

(d) *Procedures for establishing UIIs.* To permit reporting of virtual UIIs to the DoD IUID Registry, the Contractor's property management system shall enable the following data elements in addition to those required by paragraph (f)(1)(iii) of the Government Property clause of this contract (FAR 52.245–1):

(1) Parent UII.

(2) Concatenated UII.

(3) Received/Sent (shipped) date.

(4) Status code.

(5) Current part number (if different from the original part number.

(6) Current part number effective date.

(7) Category code (''E'' for equipment).

(8) Contract number.

(9) Commercial and Government Entity (CAGE) code.

(10) Mark record.

(i) Bagged or tagged code (for items too small to individually tag or mark).

(ii) Contents (the type of information recorded on the item, e.g., item internal control number).

(iii) Effective date (date the mark is applied).

(iv) Added or removed code/flag.

(v) Marker code (designates which code is used in the marker identifier, e.g., D=CAGE, UN=DUNS, LD=DODAAC).

(vi) Marker identifier, e.g., Contractor's CAGE code or DUNS number).

(vii) Medium code; how the data is recorded, e.g., barcode, contact memory button.

(viii) Value, e.g., actual text or data string that is recorded in its human readable form.

(ix) Set (used to group marks when multiple sets exist); for the purpose of this clause, this defaults to ''one (1)''.

(e) *Procedures for updating the DoD IUID Registry.* The Contractor shall update the DoD IUID Registry at *https://www.bpn.gov/iuid* for changes in status, mark, custody, or disposition of items—

(1) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor;

(2) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Government property administrator, including reasonable inventory adjustments;

(3) Disposed of; or

(4) Transferred to a follow-on or other contract.

(End of clause)

[FR Doc. E8–27779 Filed 11–21–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 215, 247, and 252

RIN 0750–AF75

Defense Federal Acquisition Regulation Supplement; Carriage Vessel Overhaul, Repair, and Maintenance (DFARS Case 2007–D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1017 of the National Defense Authorization Act for Fiscal Year 2007. Section 1017 requires DoD to establish an evaluation criterion, for use in obtaining carriage of cargo by vessel, that considers the extent to which an offeror has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0302; facsimile 703–602–7887. Please cite DFARS Case 2007–D001.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 72 FR 49204 on August 28, 2007, to implement Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 1017 requires DoD to issue an acquisition policy that establishes, as a criterion required to be considered in obtaining carriage of cargo by vessel for DoD, the extent to which an offeror of such carriage has had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam.

Nine sources submitted comments on the interim rule. A discussion of the comments is provided below.

1. *Comment:* Some respondents took exception to the rule's use of the term ''evaluation factor or subfactor'' with regard to consideration of the amount of work an offeror has performed in U.S. shipyards. The respondents suggested

this evaluation criterion should be established as a significant factor in evaluation of offers.

DoD Response: The text at DFARS 247.573–2(c) has been revised to replace the term ''evaluation factor or subfactor'' with ''evaluation criterion,'' consistent with the language in Section 1017(a) of Public Law 109–364. The decision as to the relative value of the evaluation criterion is appropriately the responsibility of the source selection authority.

2. *Comment:* Some respondents expressed concern that the rule does not specifically state that the term ''covered vessels'' includes all covered vessels in an offeror's fleet. Other respondents suggested a more strict definition of ''covered vessels,'' which would be applicable only to the vessels the offeror is proposing to use in the procurement under evaluation.

DoD Response: The definition of ''covered vessel'' in the provision at 252.247–7026 is consistent with Section 1017(b) of Public Law 109–364. DoD interprets this definition to include all covered vessels in an offeror's fleet, and not just those offered under a specific solicitation. The text at DFARS 247.573–2(c)(3) has been amended to clarify this point.

3. *Comment:* One respondent recommended that the rule clarify that the evaluation preference would apply only in the case where DoD is soliciting offers for vessel carriage of its cargo in the coastwise or noncontiguous trade, not in other trades. Further, the respondent recommended that rule define the term ''coastwise or noncontiguous trade.'' The respondent suggested that this would mean referring to a voyage that meets the tests of: former Section 27 of the Merchant Marine Act, 1920; former 46 U.S.C. 12166; and former Section 2 of the Shipping Act, 1916. Therefore, the preference would not apply to carriage of cargo to a point that can be served by a vessel that has a registry endorsement such as Guam, which is considered part of the non-contiguous trade but is not a Jones Act trade.

DoD Response: The final rule clarifies that the evaluation preference applies only to solicitations requiring a covered vessel. Further, DoD agrees that the preference would not apply to carriage of cargo to a point that can be served by a vessel that has a registry endorsement, such as Guam. Vessels with a registry endorsement provided for under Section 12111 (formerly Section 12105) of Title 46 of the United States Code are not covered vessels. The final rule does not include a definition of ''coastwise or noncontiguous trade,'' as this term is already covered under Section 27 of the Merchant Marine Act, which is referenced in the definition of ''covered vessel'' in the provision at 252.247–7026.

4. *Comment:* One respondent suggested revising the statutory references in the definition of ''covered vessel'' to reflect the recodification of Title 46 of the United States Code on October 6, 2006.

DoD Response: DoD has revised the definition of ''covered vessel'' to reflect the current statutory references.

5. *Comment:* Some respondents stated that the 15-day work period within the definition of ''overhaul, repair, and maintenance work'' at 252.247–7026 was too long, while another respondent opposed any shortening of this time period.

DoD Response: DoD intended the definition to represent meaningful work, such as annual, regulatory, and scheduled overhaul, repair, and maintenance. Based on comments received regarding the length of time required for typical repairs, DoD has revised the time period for work categorized as ''overhaul, repair, and maintenance'' from 15 to 5 calendar days.

6. *Comment:* Some respondents recommended the definition of ''shipyard'' be changed to include ship repair facilities as well as ship building facilities. One respondent stated that the scope and nature of the overhaul, repair, and maintenance work, and not whether the work is performed in a shipyard that is capable of building a ship, should be considered in the evaluation criteria. Another respondent stated that, since the rule defines ''shipyard'' as a facility capable of building a ship, the size of ship a shipyard must be capable of building should be included within the definition.

DoD Response: DoD agrees that ''shipyard,'' as used within this DFARS rule, should be defined as a facility capable of performing overhaul, repair, and maintenance work, and the definition has been revised accordingly. Additionally, the definition of ''overhaul, repair, and maintenance work'' has been revised to remove the word ''pierside'' as a qualifier for the term ''shipyard.''

7. *Comment:* One respondent suggested adding a definition of ''foreign shipyard,'' to be defined as ''any shipyard that is not located in the United States.''

DoD Response: DoD has added definitions of ''U.S. shipyard'' and ''foreign shipyard,'' consistent with the definitions in Section 1017 of Public Law 109–364.

8. *Comment:* One respondent recommended that the rule be clarified such that the overhaul, repair, and maintenance reports required by the rule cover work performed at any shipyard, anywhere in the world.

DoD Response: The reporting requirement at DFARS 252.247–7026(c) has been revised to address work performed both in U.S. and foreign shipyards.

9. *Comment:* Some respondents suggested that the evaluation criterion be qualified such that certain foreign shipyard repairs would not receive adverse consideration under specific situations. One respondent suggested that repairs in foreign shipyards, due to accident, emergency, Act of God, or an infirmity to the vessel, should not receive adverse consideration in the evaluation criterion regarding the amount of work performed in U.S. shipyards, if it is determined that safety considerations warranted taking the vessel to the nearest shipyard. Two respondents suggested that foreign shipyard repairs should not receive adverse consideration due to non-availability of U.S. shipyards if an offeror can demonstrate that it contacted U.S. shipyards seeking a berth for a repair and was told that space was not available on a timely basis. One respondent suggested that the criterion should specifically recognize that U.S. vessels that do not call at a U.S. port for two years or more should not be adversely affected by the failure to have routine shipyard work performed at U.S. shipyards.

DoD Response: DoD recognizes that overhaul, repair, and maintenance work required due to an emergency situation or direction from the U.S. Government should not adversely affect an evaluation. Therefore, the final rule excludes repairs of this type from the evaluation criterion. All other foreign overhaul, repair, and maintenance work will be considered under the evaluation criterion, consistent with the statutory intent of maintaining the national defense industrial base.

10. *Comment:* One respondent suggested that a case could be made that facilities covered by NAFTA are effectively less foreign than facilities not covered by NAFTA.

DoD Response: The statute makes no provisions for evaluation consideration for overhaul, repair, and maintenance work performed at facilities covered by NAFTA.

11. *Comment:* Two respondents opposed the time period for reporting overhaul, repair, and maintenance work (current calendar year and four previous

calendar years), while one respondent stated support for this time period.

DoD Response: The time period in the rule is considered appropriate, as it captures a complete maintenance and repair cycle for Coast Guard inspected ships.

12. *Comment:* Two respondents suggested the evaluation criterion should consider not only overhaul, repair, and maintenance work, but also new construction.

DoD Response: The statute makes no provisions for new construction. The Jones Act provides an incentive for new construction in U.S. shipyards. In addition, the redefinition of ''shipyard'' as ''a facility capable of performing overhaul, repair, and maintenance work on covered vessels'' in the final rule broadens the scope of shipyard repair facilities.

13. *Comment:* One respondent stated that the rule does not extend far enough to offer true support and reward for carriers that have environmentally sound practices and provisions of efficient services.

DoD Response: The scope of this rule is limited to implementation of Section 1017 of Public Law 109–364.

14. *Comment:* One respondent suggested a broader definition of ''ship'' that would include non-self-propelled vessels.

DoD Response: The rule refers to ''covered vessels'' rather than ''ship''. The rule's definition of ''covered vessel'' is consistent with Section 1017(b) of Public Law 109–364.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to maintain a strong national ship repair industrial base. Therefore, the rule provides an evaluation preference for use in DoD solicitations for carriage of cargo by vessel, to apply to those entities that use domestic shipyards for vessel overhaul, repair, and maintenance. The rule is expected to have a positive effect on entities owning domestic shipyards, by encouraging the use of those shipyards. DoD will use the information required by the solicitation provision to evaluate offers and to prepare annual reports to Congress, as required by Section 1017 of Public Law 109–364.

C. Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements of this rule under Control Number 0704–0445.

List of Subjects in 48 CFR Parts 212, 215, 247, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR Parts 212, 215, 247, and 252, which was published at 72 FR 49204 on August 28, 2007, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR Parts 212, 215, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 247—TRANSPORTATION

■ 2. Section 247.570 is amended by revising paragraph (a)(2) to read as follows:

247.570 Scope.

* * * * *

(a) * * *

(2) Section 1017 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), which requires consideration, in solicitations requiring a covered vessel, of the extent to which offerors have had overhaul, repair, and maintenance work performed in shipyards located in the United States or Guam;

* * * * *

■ 3. Section 247.571 is revised to read as follows:

247.571 Definitions.

Covered vessel, foreign shipyard, overhaul, repair, and maintenance work, and *shipyard*, as used in this subpart, have the meaning given in the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.

■ 4. Section 247.572 is amended by revising paragraph (d)(1) to read as follows:

247.572 Policy.

* * * * *

(d) * * *

(1) When obtaining carriage requiring a covered vessel, the contracting officer must consider the extent to which offerors have had overhaul, repair, and maintenance work for covered vessels performed in shipyards located in the United States or Guam; and

* * * * *

■ 5. Section 247.573–2 is amended as follows:

■ a. By revising paragraphs (c)(2) and (3); and

■ b. In paragraph (d)(3)(i) introductory text and paragraph (d)(3)(i)(C), by removing ''247.573–1(d)'' and adding in its place ''247.573–1(c)''. The revised text reads as follows:

247.573–2 Direct purchase of ocean transportation services.

* * * * *

(c) * * *

(2) An evaluation criterion for offeror participation in the Voluntary Intermodal Sealift Agreement; and

(3) An evaluation criterion considering the extent to which offerors have had overhaul, repair, and maintenance work for all covered vessels in an offeror's fleet performed in shipyards located in the United States or Guam. Work performed in foreign shipyards shall not be evaluated under this criterion if—

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

* * * * *

■ 6. Section 247.573–3 is amended by revising paragraphs (a)(1) and (b) to read as follows:

247.573–3 Annual reporting requirement.

(a) * * *

(1) Prepare a report containing all information received from all offerors in response to the provision at 252.247–7026 during the previous calendar year; and

* * * * *

(b) The Director of Acquisition, U.S. Transportation Command, will submit a consolidated annual report to the congressional defense committees, by June 1st of each year, in accordance with Section 1017 of Public Law 109–364.

■ 7. Section 247.574 is amended by revising paragraph (e) to read as follows:

247.574 Solicitation provisions and contract clauses.

* * * * *

(e) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or

Noncontiguous Trade, in solicitations that require a covered vessel for carriage of cargo for DoD. See 247.573–3 for reporting of the information received from offerors in response to the provision. See 247.573–2(c)(3) for the required evaluation criterion.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Section 252.247–7026 is amended by revising the clause date and paragraphs (a) through (c) to read as follows:

252.247–7026 Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.

* * * * *

EVALUATION PREFERENCE FOR USE OF DOMESTIC SHIPYARDS—APPLICABLE TO ACQUISITION OF CARRIAGE BY VESSEL FOR DOD CARGO IN THE COASTWISE OR NONCONTIGUOUS TRADE (NOV 2008)

(a) *Definitions.* As used in this provision—

Covered vessel means a vessel—

(1) Owned, operated, or controlled by the offeror; and

(2) Qualified to engage in the carriage of cargo in the coastwise or noncontiguous trade under Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 12101, 12132, and 55102), commonly referred to as ''Jones Act''; 46 U.S.C. 12102, 12112, and 12119; and Section 2 of the Shipping Act, 1916 (46 U.S.C. 50501).

Foreign shipyard means a shipyard that is not a U.S. shipyard.

Overhaul, repair, and maintenance work means work requiring a shipyard period greater than or equal to 5 calendar days.

Shipyard means a facility capable of performing overhaul, repair, and maintenance work on covered vessels.

U.S. shipyard means a shipyard that is located in any State of the United States or in Guam.

(b) This solicitation includes an evaluation criterion that considers the extent to which the offeror has had overhaul, repair, and maintenance work for covered vessels performed in U.S. shipyards.

(c) The offeror shall provide the following information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years:

(1) Name of vessel.

(2) Description and cost of qualifying shipyard work performed in U.S. shipyards.

(3) Description and cost of qualifying shipyard work performed in foreign shipyards and whether—

(i) Such work was performed as emergency repairs in foreign shipyards due to accident, emergency, Act of God, or an infirmity to the vessel, and safety considerations warranted taking the vessel to a foreign shipyard; or

(ii) Such work was paid for or reimbursed by the U.S. Government.

(4) Names of shipyards that performed the work.

(5) Inclusive dates of work performed.

* * * * *

[FR Doc. E8–27782 Filed 11–21–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 216

RIN 0750–AF90

Defense Federal Acquisition Regulation Supplement; Limitations on DoD Non-Commercial Time-and-Materials Contracts DFARS Case 2007–D021

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address review and documentation requirements pertaining to the use of time-and-materials contracts for the acquisition of non-commercial services. The rule provides for the same level of review for both commercial and non-commercial DoD time-and-materials contracts.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Sawyer, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–8384; facsimile 703–602–7887. Please cite DFARS Case 2007–D021.

SUPPLEMENTARY INFORMATION:

A. Background

Section 16.601(d) of the Federal Acquisition Regulation (FAR) requires that, before using a time-and-materials contract, the contracting officer must prepare a determination and findings that no other contract type is suitable. For time-and-materials contracts for commercial services, FAR 12.207(b)(2) specifies the minimum content for the determination and findings, and FAR 12.207(c) contains additional requirements with regard to the use of indefinite-delivery contracts priced on a time-and-materials basis.

To provide for the same level of oversight in the award of all DoD time-and-materials contracts, this rule amends DFARS 216.601 to establish determination and findings requirements for DoD non-commercial time-and-materials contracts, similar to those required by FAR 12.207 for commercial services contracts.

DoD published a proposed rule at 73 FR 21891 on April 23, 2008. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule relates to internal DoD review and documentation requirements with regard to the selection of contract type.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 216

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Part 216 is amended as follows:

PART 216—TYPES OF CONTRACTS

■ 1. The authority citation for 48 CFR Part 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 216.601 is amended by adding paragraph (d) to read as follows:

216.601 Time-and-materials contracts.

(d) *Limitations.*

(i) The determination and findings shall contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings shall—

(A) Include a description of the market research conducted;

(B) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;

(C) Establish that the requirement has been structured to minimize the use of time-and-materials requirements (e.g., limiting the value or length of the time-and-materials portion of the contract or order; establishing fixed prices for portions of the requirement); and

(D) Describe the actions planned to minimize the use of time-and-materials contracts on future acquisitions for the same requirements.

(ii) For indefinite-delivery contracts, the contracting officer shall—

(A) Structure contracts that authorize time-and-materials orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis, to the maximum extent practicable; and

(B) Execute the determination and findings for—

(1) Each order placed on a time-and-materials basis if the indefinite-delivery contract also authorizes orders on a cost-reimbursement, incentive, or fixed-price basis; or

(2) The basic contract if the indefinite-delivery contract only authorizes time-and-materials orders. The determination and findings shall—

(i) Contain sufficient facts and rationale to justify why orders on a cost-reimbursement, incentive, and fixed-price basis are not practicable; and

(ii) Be approved one level above the contracting officer.

* * * * *

[FR Doc. E8–27780 Filed 11–21–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AG08

Defense Federal Acquisition Regulation Supplement; Least Developed Countries That Are Designated Countries DFARS Case 2008–D019

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update the list of ''least developed'' countries that are designated as eligible countries under the Trade Agreements Act, in accordance with direction from the United States Trade Representative.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2008–D019.

SUPPLEMENTARY INFORMATION:

A. Background

The United States Trade Representative has revised the list of ''least developed'' countries that are designated as eligible countries under the Trade Agreements Act (19 U.S.C. 2501, *et seq.*), to add Liberia and to remove Cape Verde. This final rule makes corresponding changes to the list of designated countries in the clauses at DFARS 252.225–7021, Trade Agreements, and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008–D019.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

252.212–7001 [Amended]

■ 2. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(NOV 2008)''; and

■ b. In paragraph (b)(9) by removing ''(MAR 2007)'' and adding in its place ''(NOV 2008)''.

■ 3. Section 252.225–7021 is amended by revising the clause date and paragraph (a)(3)(iii) to read as follows:

252.225–7021 Trade Agreements.

* * * * *

TRADE AGREEMENTS (NOV 2008)

(a) * * *

(3) * * *

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

* * * * *

■ 4. Section 252.225–7045 is amended as follows:

■ a. By revising the clause date; and

■ b. In paragraph (a), in the definition of ''Designated country'', by revising paragraph (3) to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (NOV 2008)

(a) * * *

Designated country means—

* * * * *

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and

Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

* * * * *

[FR Doc. E8–27781 Filed 11–21–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

[FWS–R9–MB–2008–0113; 91200–1231–9BPP–L2]

RIN 1018–AI07

Migratory Bird Hunting and Permits; Regulations for Managing Harvest of Light Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service, published a final rule in the **Federal Register** on November 5, 2008, that sets forth regulations that authorize measures to increase harvest of certain populations of light geese, revise the regulations for the management of overabundant light goose populations, and modify the conservation order that will increase take of birds from such populations. That final rule contained errors in two amendatory instructions and certain corresponding text of the regulations; one error would incorrectly remove changes made to the regulations at 50 CFR part 20 in a series of final rules we published concerning hunting methods for resident Canada geese and the other mischaracterizes the contents of subpart E of 50 CFR part 21. This document corrects those errors.

DATES: This rule is effective on December 5, 2008.

FOR FURTHER INFORMATION CONTACT: Robert Blohm, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1714.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 2008, we published in the **Federal Register** (73 FR 65926) a final rule to authorize measures to increase harvest of certain populations of light geese, revise the regulations for the management of overabundant light goose populations, and modify the conservation order that will increase take of birds from such populations. That final rule contained errors in two amendatory instructions and certain corresponding text of the regulations, as described below. This document corrects those errors.

The first error, which appears within and as a result of amendatory instruction 2, would incorrectly remove changes made to the regulations at 50 CFR part 20 in a series of final rules concerning hunting methods for resident Canada geese (71 FR 45963, August 10, 2006; 72 FR 46403, August 20, 2007; 73 FR 65274, November 3, 2008). As published on November 5, 2008 (73 FR 65926), amendatory instruction 2 would:

- Revise the introductory texts of 50 CFR 20.21(b) and (g), which we did not intend to revise; and
- Remove 50 CFR 20.21(b)(1) and (b)(2), and 50 CFR 20.21(g)(1) and (g)(2), which we did not intend to remove.

The introductory texts of 50 CFR 20.21(b) and (g) provide the initial, necessary structure for the subparagraphs in those paragraphs. Section 20.21(b)(1) and (g)(1) concern light goose hunting methods and are necessary subparagraphs to maintain a clear and understandable structure for § 20.21(b) and (g). Section 20.21(b)(2) and (g)(2) concern Canada goose hunting methods and were put into place by a series of final rules concerning hunting methods for resident Canada geese (71 FR 45963, August 10, 2006; 72 FR 46403, August 20, 2007; 73 FR 65274, November 3, 2008). As corrected by this document, amendatory instruction 2 and the corresponding text of the regulations now revise only § 20.21(b)(1) and (g)(1). We retain the introductory texts of paragraphs (b) and (g), as well as subparagraphs (b)(2) and (g)(2).

The second error, which appears in amendatory instruction 6, mischaracterizes the contents of subpart E of 50 CFR part 21. As published on November 5, 2008 (73 FR 65926), amendatory instruction 6 states that subpart E of part 21 contains only one section: § 21.60. This statement is incorrect. Subpart E of part 21 actually contains two sections: §§ 21.60 and 21.61. We correct amendatory instruction 6 to reflect this.

All other amendments to the regulations at 50 CFR parts 20 and 21 made in the final rule published in the **Federal Register** on November 5, 2008 (73 FR 65926), stand.

In rule FR Doc. E8–26171, published on November 5, 2008 (73 FR 65926), make the following corrections.

1. On page 65951, in the second column, revise amendatory instruction 2 (and corresponding amendatory language) to read as follows:

Revise paragraphs (b)(1) and (g)(1) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) * * *

(1) A light-goose-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

* * * * *

(g) * * *

(1) A light-goose-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

* * * * *

2. On page 65951, in the third column, revise amendatory instruction 6 to read as follows:

Revise § 21.60 of subpart E to read as follows:

Dated: November 13, 2008.

Sara Prigan,

Fish and Wildlife Service, Federal Register Liaison.

[FR Doc. E8–27700 Filed 11–21–08; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 73, No. 227

Monday, November 24, 2008

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 337

RIN 3206–AL51

Examining System

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed regulation to amend its direct-hire authority regulations. The amendment is necessary to incorporate a statutory extension of direct-hire authority for certain acquisition positions.

DATES: Comments must be received on or before January 23, 2009.

ADDRESSES: Send, deliver or fax comments to Angela Bailey, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail at *employ@opm.gov*; or fax at (202) 606–2329. Comments may be sent through the Federal eRulemaking Portal at: *http://www.regulations.gov*. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Darlene Phelps at (202) 606–0960, by fax at (202) 606–2329, TDD at (202) 418–3134, or by e-mail at *Darlene.Phelps@opm.gov*.

SUPPLEMENTARY INFORMATION: On September 12, 2006, OPM published a final rule at 71 FR 53545 to implement the Service Acquisition Reform Act, section 1413 of Public Law 108–136. This Act allowed department and agency heads (other than the Secretary of Defense) to determine, under regulations prescribed by OPM, when certain Federal acquisition positions are shortage category positions for purposes of direct-hire authority. The Federal acquisition positions covered by section 1413 are listed in section 433(g)(1)(A) of title 41, United States Code. The authority under section 1413 expired on September 30, 2007.

In the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008), Public Law 110–181, Congress extended the direct-hire authority for acquisition positions under section 1413 of Public Law 108–136 through September 30, 2012. NDAA 2008, however, did not extend section 1413's reporting requirements.

OPM is amending its regulations to:

a. Update the legal authority citation for section 337.204(c) with section 1413(a) of Public Law 108–136, as amended by section 853 of Public Law 110–181;

b. Update section 337.206(d) to provide that agencies may not make new appointments under this authority after September 30, 2012; and

c. Remove the reporting requirements for this authority currently contained in 5 CFR 337.206(e).

Agencies must comply with public notice requirements prescribed in 5 U.S.C. 3327 and 3330, and 5 CFR part 330, subpart G, with respect to these positions. To comply with public notice requirements, agencies must post a job announcement on OPM's USAJOBS Web site when filling jobs under direct-hire authority.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

List of Subjects in 5 CFR Part 337

Government employees.

U.S. Office of Personnel Management.

Michael W. Hager,

Acting Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 337 as follows:

PART 337—EXAMINING SYSTEM

1. Revise the authority citation for part 337 to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; 45 FR 18365, Mar. 21, 1980; 116 Stat. 2290, sec. 1413 of Pub. L. 108–136 (117 Stat. 1665), as amended by sec. 853 of Pub. L. 110–181 (122 Stat. 250).

Subpart B—Direct Hire Authority

2. Revise paragraph (c) of § 337.204 to read as follows:

§ 337.204 Severe shortage of candidates.

* * * * *

(c) A department or agency head (other than the Secretary of Defense) may determine, pursuant to section 1413(a) of Public Law 108–136, as amended by section 853 of Public Law 110–181, that a shortage of highly qualified candidates exists for certain Federal acquisition positions (covered under section 433(g)(1)(A) of title 41, United States Code). To make such a determination, the deciding agency official must use the supporting evidence prescribed in 5 CFR 337.204(b)(1)–(8) and must maintain a file of the supporting evidence for documentation and reporting purposes.

3. Revise paragraph (d) of § 337.206 to read as follows:

§ 337.206 Terminations, modification, extensions, and reporting.

* * * * *

(d) No new appointments may be made under the provisions of section 1413 of Public Law 108–136 after September 30, 2012.

4. Remove paragraph (e) of § 337.206.

[FR Doc. E8–27834 Filed 11–21–08; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3022

RIN 0524–AA34

United States Department of Agriculture Research Misconduct Regulations for Extramural Research

AGENCY: Office of the Secretary, United States Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (USDA) proposes to establish regulations to implement the

Federal Policy on Research Misconduct applicable to extramural research. The proposed regulation defines research misconduct and establishes basic USDA requirements for the conduct of fair and timely investigations of alleged or suspected infractions. The proposed regulation also includes instructions on USDA administrative actions when research misconduct is found.

DATES: Those interested are encouraged to provide comments. Comments must be received on or before December 24, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Department of Agriculture—All'' from the agency drop-down menu, and select ''Proposed Rules'' from the document type menu, then click ''Submit.'' In the document title column, select the proposed rule with ''7 CFR 3022, United States Department of Agriculture Research Misconduct Regulations for Extramural Research'' in the title to submit or view public comments and to view supporting and related materials available electronically. 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.
- *E-mail: peter.laub@usda.gov* or Fax: (202) 690–1529. Include Regulatory Information Number (RIN) 0524–AA34 in the subject line of the message.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Peter Laub, OCFO/CTGPD Room 3451–S, Stop 9010, 1400 Independence Avenue, SW., Washington, DC 20250–9010.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Sara Mazie, USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250; Telephone: (202) 720–5923; e-mail: *researchintegrity@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2000, the National Science and Technology Council, Office of Science and Technology Policy of the Executive Office of the President (OSTP), published in the **Federal Register** (65 FR 76260) the Federal Policy on Research Misconduct (OSTP Policy) as a final, government-wide policy addressing research misconduct. The purpose of the policy was to establish: (1) Uniformity among the Federal agencies' definitions of research misconduct, and (2) consistency in Federal agencies' processes for responding to allegations of research misconduct. The OSTP Policy covers both intramural research as well as extramural research.

This proposed rule would establish U.S. Department of Agriculture (USDA or the Department) regulations to permanently implement the provisions of the OSTP Policy applicable to extramural research. An interim USDA Research Misconduct Policy was issued as a Secretary's Memorandum on Research Misconduct Policies and Procedures in July 2006. The Secretary's Memorandum has since expired and been withdrawn. The Secretary's Memorandum was consistent with the OSTP Policy, and the substance of the proposed regulation is the same as the policies and procedures in the former Secretary's Memorandum that relate to extramural research. Accordingly, all USDA agencies that conduct or support extramural research are expected either to: (1) Establish procedures to foster integrity in research activities, respond to allegations of research misconduct, and remedy findings of research misconduct, consistent with applicable laws, regulations, the OSTP Policy, and this proposed regulation; or (2) initiate and sign a standing Memorandum of Understanding (MOU) between the agency and Research, Education and Economics mission area to have another USDA agency act on its behalf in lieu of developing its own research misconduct procedures.

The proposed regulation will be set forth in Title 7 of the Code of Federal Regulations, in a new part 3022 (7 CFR part 3022), referred to below as the regulation.

The proposed rule defines a number of terms that are used in new part 3022. Definitions of the following terms are set forth in § 3022.1: *Adjudication; Agency Research Integrity Officer (ARIO); allegation; applied research; Assistant Inspector General for Investigations; basic research; extramural research; fabrication; falsification; finding of research misconduct; inquiry; intramural research; investigation; OIG; OSTP; plagiarism; preponderance of the evidence; research; research institution; research misconduct; research record; USDA;* and *USDA Research Integrity Officer (RIO).*

Impact Analysis

Executive Order 12866

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant because it will not have an annual effect on the economy of $100 million or more or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Executive Order 12372

This program/activity is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Executive Order 13132

It has been determined that this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rulemaking will not have a substantial direct effect on States or their political subdivisions. They also will not impact the distribution of power and responsibilities among the various levels of government substantially.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires that an analysis be prepared for each rule with a significant economic impact on a substantial number of small entities. The analysis should describe the rule's impact on small entities and identify any significant alternatives to the rule that would minimize the economic impact on such entities. Section 605 of the Regulatory Flexibility Act allows

USDA to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have such an impact.

USDA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The final rule will have a positive impact on small businesses because of the assistance these entities receive from other agencies. It also will ease the administrative requirements for USDA to offer financial assistance.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare several analyses before proposing any rule that may result in annual expenditures of at least $100 million or more in any one year by State, local, and Indian tribal governments, or the private sector. USDA certifies that this proposed rule will not result in expenditures of this magnitude.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for USDA, *oira_submission@omb.eop.gov* or fax it to (202) 395–5806. Please state that your comments refer to RIN 0524–AA34. Please send a copy of your comments to: (1) RIN 0524–AA34, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The primary recordkeeping requirement is creating written policies and procedures for addressing research misconduct. The total annual average burden per response is approximately 16 hours. However, many Federal agencies already implemented the OSTP Policy and so approximately 99 percent of currently funded institutions already have policies and procedures in place and may spend approximately.5 hour updating them. Another recordkeeping requirement occurs when an institution learns of possible research misconduct and begins an inquiry, investigation, or both. For fiscal years 2004 through 2006 the Cooperative State Research, Education, and Extension Service (CSREES) (the USDA agency with the majority of extramural awards and therefore, used for burden estimate purposes) had an average of 548 different institutions funded with only five research misconduct allegations. Of the five allegations, one investigation was conducted, three inquiries conducted, and one allegation is pending.

Comments are being solicited from the public (as well as affected agencies) concerning the proposed information collection and recordkeeping requirements. These comments will help USDA:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agencies' functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated as follows.

Approximately 543 institutions already have these policies and procedures in place in any given year and spend minimal time (.5 hour) updating them.

Number of Respondents—543.

Number of Responses per Respondent—1.

Annual Average Burden per Response—.5 hour.

Total Annual Burden—271.5 hours.

Approximately 5 institutions each year spend an average of two days creating these policies and procedures for the first time.

Number of Respondents—5.

Number of Responses per Respondent—1.

Annual Average Burden per Response—16 hours.

Total Annual Burden—80 hours.

Approximately five institutions each year spend 19.5 hours conducting an institutional inquiry.

Number of Respondents—5.

Number of Responses per Respondent—1.

Annual Average Burden per Response—19.5 hours.

Total Annual Burden—97.5 hours.

Approximately 1 institution each year must perform an institutional investigation.

Number of Respondents—1.

Number of Responses per Respondent—1.

Annual Average Burden per Response—99.5 hours.

Total Annual Burden—99.5 hours.

Copies of this information collection can be obtained from Sara Mazie, USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250; Telephone: (202) 720–5923; e-mail: *researchintegrity@usda.gov.*

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 3022

Intramural research, Research misconduct.

For the reasons set forth in the preamble, it is proposed to amend Title 7 of the Code of Federal Regulations by adding a new part 3022, to read as follows:

PART 3022—RESEARCH INSTITUTIONS CONDUCTING USDA-FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCT

Sec.

3022.1 Definitions.
3022.2 Procedures.
3022.3 Inquiry, investigation, and adjudication.
3022.4 USDA panel to determine appropriateness of research misconduct policy.
3022.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.
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3022.7 Notification of ARIO during an inquiry or investigation.
3022.8 Communication of research misconduct policies and procedures.
3022.9 Documents required.
3022.10 Reporting to USDA.
3022.11 Research records and evidence.
3022.12 Remedies for non-compliance.
3022.13 Appeals.
3022.14 Relationship to other requirements.

Authority: Office of Science and Technology Policy (65 FR 76260) and USDA OIG, 7 CFR 2610.1(c)(4)(ix).

§ 3022.1 Definitions.

Adjudication. The stage in response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined. Corrective actions generally will be administrative in nature, such as termination of an award, debarment, award restrictions, recovery of funds, or correction of the research record. However, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.

Agency Research Integrity Officer (ARIO). The individual appointed by a USDA agency that conducts research and who is responsible for:

(1) Receiving and processing allegations of research misconduct as assigned by the USDA RIO;

(2) Informing OIG and the USDA RIO of allegations of research misconduct in the event it is reported to the USDA agency;

(3) Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;

(4) Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which time the research misconduct is alleged to have occurred, and with the USDA RIO;

(5) Overseeing proceedings to address allegations of extramurally funded research misconduct at intramural research institutions and research institutions where extramural research occurs;

(6) Ensuring that agency action to address allegations of research misconduct at USDA agencies performing extramurally funded research is performed at an organizational level that allows an independent, unbiased, and equitable process;

(7) Immediately notifying OIG and the USDA RIO if:

(i) Public health or safety is at risk;

(ii) USDA's resources, reputation, or other interests need protecting;

(iii) Research activities should be suspended;

(iv) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(v) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(vi) The scientific community or the public should be informed; or

(vii) Behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;

(8) Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings; and

(9) Other duties relating to research misconduct proceedings as assigned.

Allegation. A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement, or by other means of communication to an institutional or USDA official.

Applied Research. Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

Assistant Inspector General for Investigations. The individual in OIG who is responsible for OIG's domestic and foreign investigative operations through a headquarters office and the six regional offices.

Basic Research. Systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.

Extramural research. Research conducted by any research institution other than the Federal agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.

Fabrication. Making up data or results and recording or reporting them.

Falsification. Manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

Finding of research misconduct. The conclusion, proven by a preponderance of the evidence, that research misconduct occurred, that such research misconduct represented a significant departure from accepted practices of the relevant research community, and that such research misconduct was committed intentionally, knowingly, or recklessly.

Inquiry. The stage in the response to an allegation of research misconduct when an assessment is made to determine whether the allegation has substance and whether an investigation is warranted.

Intramural Research. Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.

Investigation. The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend a finding of research misconduct, and/or take other appropriate remedies.

Office of Inspector General (OIG). The Office of Inspector General of the United States Department of Agriculture.

Office of Science and Technology Policy (OSTP). The Office of Science and Technology Policy of the Executive Office of the President.

Plagiarism. The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Research. All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it.

Research Institution. All organizations using Federal funds for research, including, for example, colleges and universities, federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes.

Research Misconduct. Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.

Research Record. The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, research records (including data, notes, journals, laboratory records (both physical and electronic)), progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

United States Department of Agriculture. USDA.

USDA Research Integrity Officer (USDA RIO). The individual designated by the Office of the Under Secretary for Research, Education, and Economics (REE) who is responsible for:

(1) Overseeing USDA agency responses to allegations of research misconduct;

(2) Ensuring that agency research misconduct procedures are consistent with this part;

(3) Receiving and assigning allegations of research misconduct reported by the public;

(4) Developing Memoranda of Understanding with agencies that elect not to develop their own research misconduct procedures;

(5) Monitoring the progress of all research misconduct cases; and

(6) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

§ 3022.2 Procedures.

Research institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

(a) Appropriate separations of responsibility for inquiry, investigation, and adjudication;

(b) Objectivity;

(c) Due process;

(d) Whistleblower protection;

(e) Confidentiality; and

(f) Timely resolution.

§ 3022.3 Inquiry, investigation, and adjudication.

A research institution that conducts extramural research funded by USDA bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. The research institution must perform an inquiry in response to an allegation, and must follow the inquiry with an investigation if the inquiry determines the allegation or apparent instance of research misconduct has substance. The responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

(a) Initiate an inquiry into any suspected or alleged research misconduct;

(b) Conduct a subsequent investigation, if warranted;

(c) Acquire, prepare, and maintain appropriate records of allegations of extramural research misconduct and all related inquiries, investigations, and findings; and

(d) Take action to ensure the following:

(1) The integrity of research;

(2) The rights and interests of the subject of the investigation and the public are protected;

(3) The observance of legal requirements or responsibilities including cooperation with criminal investigations; and

(4) Appropriate safeguards for subjects of allegations, as well as informants.

§ 3022.4 USDA panel to determine appropriateness of research misconduct policy.

Before USDA will rely on a research institution to conduct an inquiry, investigation, and adjudication of an allegation in accordance with this part, the research institution where the research misconduct is alleged must provide the ARIO its policy and procedures related to research misconduct at the institution. The research institution has the option of providing either a written copy of such policies and procedures or a Web site address where such policies and procedures can be accessed. The ARIO to whom the policy and procedures were made available shall convene a panel comprised of the USDA RIO and ARIOs from the Forest Service, the Agricultural Research Service, and the Cooperative State Research, Education, and Extension Service. The Panel will review the research institution's policy and procedures for compliance with the OSTP Policy and render a decision regarding the research institution's ability to adequately resolve research misconduct allegations. The ARIO will inform the research institution of the Panel's determination that its inquiry, investigation, and adjudication procedures are sufficient and that the research institution may proceed with the inquiry, investigation, and adjudication. If the Panel determines that the research institution does not have sufficient policy and procedures in place to conduct inquiry, investigation, and adjudication proceedings, or that the research institution is in any way unfit or unprepared to handle the inquiry, investigation, and adjudication in a prompt, unbiased, fair, and independent manner, the ARIO will inform the research institution in writing of the Panel's decision. An appropriate USDA agency, as determined by the Panel, will then conduct the inquiry, investigation, and adjudication of research misconduct in accordance with this part. If an allegation of research misconduct is made regarding extramural research conducted at a Federal research institution (whether USDA or not), it is presumed that the Federal research institution has research misconduct procedures consistent with the OSTP Policy. USDA reserves the right to convene the Panel to assess the sufficiency of a Federal agency's research misconduct procedures, should there be any question whether the agency's procedures will ensure a fair, unbiased, equitable, and independent inquiry, investigation, and adjudication process.

§ 3022.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.

(a) USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation. This may be necessary if the USDA RIO or ARIO believes, in his or her sound discretion, that despite the Panel's finding that the research institution in question had appropriate and OSTP-compliant research misconduct procedures in place, the research institution conducting the extramural research at issue:

(1) Did not adhere to its own research misconduct procedures;

(2) Did not conduct research misconduct proceedings in a fair, unbiased, or independent manner; or

(3) Has not completed research misconduct inquiry, investigation, or adjudication in a timely manner.

(b) Additionally, USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation for any other reason that the USDA RIO or ARIO considers it appropriate to conduct research misconduct proceedings in lieu of the research institution's conducting the extramural research at issue.

(c) In cases where the USDA RIO or ARIO believes it is necessary for USDA to conduct its own inquiry, investigation, and adjudication subsequent to the proceedings of the research institution related to the same allegation, the USDA RIO or ARIO shall reconvene the Panel, which will determine whether it is appropriate for the relevant USDA agency to conduct the research misconduct proceedings related to the allegation(s) of research misconduct. If the Panel determines that it is appropriate for a USDA agency to conduct the proceedings, the ARIO will immediately notify the research

institution in question. The research institution must then immediately provide the relevant USDA agency with documentation of the research misconduct proceedings the research institution has conducted to that point, and the USDA agency will conduct research misconduct proceedings in accordance with the Agency research misconduct procedures.

§ 3022.6 Notification of USDA of allegations of research misconduct.

Research institutions that conduct USDA-funded extramural research must promptly notify OIG and the USDA RIO of all allegations of research misconduct involving USDA funds. Anyone who suspects that researchers or research institutions performing Federally-funded research may have engaged in research misconduct is encouraged to make a formal allegation of research misconduct to OIG.

(a) OIG may be notified using any of the following methods:

Via the OIG Hotline:

Telephone: (202) 690–1622; (800) 424–9121; (202) 690–1202 (TDD).

E-mail: usda_hotline@oig.usda.gov.

U.S. Mail: United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026–3399.

(b) The USDA RIO may be reached at: USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250, Telephone: 202–720–5923, E-mail: *researchintegrity@usda.gov.*

(c) To the extent known, the following details should be included in any formal allegation:

(1) The name of the research project or research projects involved, the nature of the alleged misconduct, and the names of the individual or individuals alleged to be involved in the misconduct;

(2) The source or sources of funding for the research project or research projects involved in the alleged misconduct;

(3) Important dates;

(4) Any documentation that bears upon the allegation; and

(5) Any other potentially relevant information.

(d) Safeguards for informants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith. The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

§ 3022.7 Notification of ARIO during an inquiry or investigation.

(a) Research institutions that conduct USDA-funded extramural research must promptly notify the ARIO should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) The resources, reputation, or other interests of USDA are in need of protection;

(3) Research activities should be suspended;

(4) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(5) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(6) The scientific community or the public should be informed; or

(7) There is reasonable indication of possible violations of civil or criminal law.

(b) If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the institution must promptly notify the ARIO.

§ 3022.8 Communication of research misconduct policies and procedures.

Institutions that conduct USDA-funded extramural research are to maintain and effectively communicate to their staffs policies and procedures relating to research misconduct, including the guidelines in this part. The institution is to inform their researchers and staff members who conduct USDA-funded extramural research when and under what circumstances USDA is to be notified of allegations of research misconduct, and when and under what circumstances USDA is to be updated on research misconduct proceedings.

§ 3022.9 Documents required.

(a) A research institution that conducts USDA-funded extramural research must maintain the following documents related to an allegation of research misconduct at the research institution:

(1) A written statement describing the original allegation;

(2) A copy of the formal notification presented to the subject of the allegation;

(3) A written report describing the inquiry stage and its outcome including copies of all supporting documentation;

(4) A description of the methods and procedures used to gather and evaluate information pertinent to the alleged misconduct during inquiry and investigation stages;

(5) A written report of the investigation, including the evidentiary record and supporting documentation;

(6) A written statement of the findings; and

(7) If applicable, a statement of recommended corrective actions, and any response to such a statement by the subject of original allegation, and/or other interested parties, including any corrective action plan.

(b) The research institution must retain the documents specified in paragraph (a) of this section for at least three years following the final adjudication of the alleged research misconduct.

§ 3022.10 Reporting to USDA.

Following completion of an investigation into allegations of research misconduct, the institution conducting extramural research must provide to the ARIO a copy of the evidentiary record, the report of the investigation, recommendations made to the institution's adjudicating official, and the written response of the individual who is the subject of the allegation to any recommendations.

§ 3022.11 Research records and evidence.

(a) A research institution that conducts extramural research supported by USDA funds, as the responsible legal entity for the USDA-supported research, has a continuing obligation to create and maintain adequate records (including documents and other evidentiary matter) as may be required by any subsequent inquiry, investigation, finding, adjudication, or other proceeding.

(b) Whenever an investigation is initiated, the research institution must promptly take all reasonable and practical steps to obtain custody of all relevant research records and evidence as may be necessary to conduct the research misconduct proceedings. This must be accomplished before the research institution notifies the researcher/respondent of the allegation, or immediately thereafter.

(c) The original research records and evidence taken into custody by the research institution shall be inventoried and stored in a secure place and

manner. Research records involving raw data shall include the devices or instruments on which they reside. However, if deemed appropriate by the research institution or investigator, research data or records that reside on or in instruments or devices may be copied and removed from those instruments or devices as long as the copies are complete, accurate, and have substantially equivalent evidentiary value as the data or records when the data or records reside on the instruments or devices. Such copies or data or records shall be made by a disinterested, qualified technician and not by the subject of the original allegation or other interested parties. When the relevant data or records have been removed from the devices or instruments, the instruments or devices need not be maintained as evidence.

§ 3022.12 Remedies for non-compliance.

USDA agencies' implementation procedures identify the administrative actions available to remedy a finding of research misconduct. Such actions may include the recovery of funds, correction of the research record, debarment of the researcher(s) who engaged in the research misconduct, proper attribution, or any other action deemed appropriate to remedy the instance(s) of research misconduct. In determining the appropriate administrative action, the appropriate agency must impose a remedy that is commensurate with the infraction as described in the finding of research misconduct.

§ 3022.13 Appeals.

(a) If USDA relied on an institution to conduct an inquiry, investigation, and adjudication, the alleged person(s) should first follow the institution's appeal policy and procedures.

(b) USDA agencies' implementation procedures identify the appeal process when a finding of research misconduct is elevated to the agency.

§ 3022.14 Relationship to other requirements.

Some of the research covered by this part also may be subject to regulations of other governmental agencies (e.g., a university that receives funding from a USDA agency and also under a grant from another Federal agency). Research covered under this part that is also subject to requirements of other agencies or funding sources must be conducted in compliance with all applicable requirements of this part. USDA agencies may include in their implementation procedures a process for deferring to or collaborating with other agencies when a research institution receives funding or support from multiple sources and therefore would be subject to multiple research agencies' research misconduct procedures. For example, when a research institution or the OIG or a Federal agency other than the relevant USDA agency, has previously initiated its own inquiry and investigation, the relevant USDA agency may wish to defer its own inquiry or investigation until it receives the results of that external inquiry and investigation. If the relevant USDA agency does not receive the results of the external inquiry within what it believes to be a reasonable time, the relevant USDA agency should proceed with its own inquiry and, if warranted, its own investigation.

Dated: November 6, 2008.

Issued at Washington, DC.

Approved.

Edward T. Schafer,

Secretary, U.S. Department of Agriculture.

[FR Doc. E8–27607 Filed 11–21–08; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 619, 620, and 621

RIN 3052–AC35

Definitions; Disclosure to Shareholders; Accounting and Reporting Requirements; Disclosure and Accounting Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) is proposing to amend and/or make revisions and technical changes to our regulations. These amendments are proposed to clarify FCA's regulations related to disclosure and reporting practices of Farm Credit System (System) institutions. In addition, they will ensure that FCA regulations are consistent with System structural changes and are updated to include changes to accounting and reporting standards.

DATES: You may send comments on or before January 23, 2009.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: Thomas R. Risdal, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434, or Robert Taylor, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this proposed rule are to:

- Clarify the FCA regulations related to disclosure and reporting practices of System institutions; and
- Ensure that FCA regulations are consistent with System structural changes and updated to include changes to accounting and reporting standards.

II. Background

The Farm Credit Amendments Act of 1985 (1985 Amendments) [1] added provisions to the Farm Credit Act of 1971, as amended (Act),[2] requiring FCA to regulate the disclosure and reporting

[1] Pub. L. 99–205, 99 Stat. 1678, Dec. 23, 1985.

[2] Pub. L. 92–181, 85 Stat. 583, Dec. 10, 1971.

practices of System institutions. The Act, as amended by the 1985 Amendments, requires: (1) Each System institution to prepare and publish annual financial reports as prescribed by the FCA; and (2) that the annual reports contain financial statements prepared in accordance with generally accepted accounting principles (GAAP) and be audited by an independent public accountant. To implement these requirements, we issued regulations at part 620 (Disclosure to Shareholders) and part 621 (Accounting and Reporting Requirements). The regulations established the requirements for the preparation of financial reports by Farm Credit banks and associations, including annual reports to shareholders and reports of condition and performance (Call Reports). The regulations also established requirements for categorizing and maintaining information on high-risk loans and a requirement that each System institution have its financial statements audited by a qualified public accountant. When developing the regulations at parts 620 and 621, we considered the Securities and Exchange Commission's (SEC) disclosure and reporting requirements for public companies in effect at the time, as well as the requirements of other financial institution regulators. We adapted these requirements to the cooperative structure of System institutions.

Since our adoption of the regulations at parts 620 and 621, they have been revised several times to address a variety of issues. Most recently, we revised the regulations to incorporate improvements in governance and financial reporting best practices brought about by the Sarbanes-Oxley Act of 2002 [3] and the SEC's implementing regulations. While there have been a number of amendments to FCA's regulations over the years, the primary disclosure requirements for shareholder reports, Call Reports and nonperforming loans have not changed significantly since they were adopted in the 1980s. However, System structure has changed as have certain accounting and reporting standards. In order to incorporate these changes into FCA's regulations, as applicable, we propose the following amendments to parts 619, 620, and 621.

III. Section-by-Section Analysis

A. Generally Accepted Auditing Standards [§§ 619.9270(e) and 621.2(d)]

The Public Company Accounting Oversight Board (PCAOB) was created by the Sarbanes-Oxley Act of 2002 to oversee the auditors of public companies [4] in the preparation of informative, fair, and independent audit reports. As a result of its creation, public institutions are required to follow the auditing standards that are established by the PCAOB, while nonpublic institutions may continue to follow the standards that are established by the American Institute of Certified Public Accountants (AICPA). We propose to revise the definition of generally accepted auditing standards in § 621.2(d) to include reference to the standards and guidelines that are generally accepted in the United States of America and that are adopted by the authoritative body that governs the overall quality of the audit performance. Specifically, we propose to remove the language referring to the AICPA, and insert in its place a reference solely to generally accepted auditing standards. Additionally, to ensure consistency throughout the regulations, we propose to amend § 619.9270(e) to remove the language referring to the AICPA, and insert in its place a reference to the authoritative body governing overall audit quality.

B. Signatures on Financial Reports [§ 620.3(b)(3)]

Section 620.3(b) and (c) provide the requirements for signing and certifying the financial accuracy of the reports [5] by the institution's chief executive officer (CEO), chief financial officer (CFO), and a designated board member. Existing § 620.3(b)(3) provides that the designated board member that signs and certifies the reports is the board member that certifies reports of condition and performance. The language ''reports of condition and performance'' is a direct reference to the Call Report requirements in part 621, Accounting and Reporting Requirements, which is an incorrect reference. Thus, we propose to amend § 620.3(b)(3) to remove the reference to reports of condition and performance.

C. Contents of the Annual Report to Shareholders; Incorporation by Reference [§ 620.5(a) Through (e)]

Section 620.5(a) through (e) requires that an institution's annual report contain: (1) A description of its business; (2) a description of its property; (3) disclosure of certain legal proceedings and enforcement actions to which the institution is a party; (4) a description of its capital structure, and (5) a description of its liabilities. In addition, § 620.5(g) requires an institution's annual report to contain a management's discussion and analysis (MD&A) section that must include information necessary to an understanding of the institution's financial condition, material changes thereto, and results of operations. In certain circumstances, it may be appropriate for the institution to include the disclosures required by § 620.5(a) through (e) in the MD&A section of the annual report. In order to provide institutions flexibility in meeting the above requirements and to avoid the occurrence of duplicate disclosures, we propose to amend § 620.5(a) through (e) to allow the information required by these provisions to be incorporated by reference to the MD&A section, so long as the descriptions and disclosures are appropriately included in the MD&A as required by § 620.5(g).

D. Description of Business; Significant Developments [§ 620.5(a)(4)]

Section 620.5(a)(4) requires disclosure of any significant developments within the last 5 years that could have a material impact on earnings or the interest rates to borrowers. We are adding patronage and dividends to the list for which disclosure of significant developments that have material impact is required. Since an institution's patronage and patronage policies and practices ultimately affect the patronage or dividend return to a patron/stockholder, we propose to further amend this section to specifically require that changes to an institution's patronage and dividend policies and practices be disclosed if the changes are considered a significant development in accordance with the requirements of this section.

E. Description of Business; the Institution's Interdependent Relationship With Its Funding Bank [§ 620.5(a)(10)]

Section 620.5(a)(10) requires each association to disclose in its annual report the association's financial and supervisory relationship with its funding bank. In order that the section not be interpreted to require only disclosure of the financial and supervisory relationships, but also include all interdependent relationships between banks and associations, we propose to amend this section to remove language, such as ''financial'' or

[3] Pub. L. 107–204, 116 Stat. 745, July 30, 2002.

[4] A public company is a company that is permitted to offer its registered securities (stock, bonds, etc.) for sale to the general public, typically through a stock exchange, but also may include companies whose stock is traded over the counter (OTC).

[5] Section 620.1(o) defines ''report'' as the ''annual report, quarterly report, notice, or information statement, regardless of form, required by this part unless otherwise specified.''

''supervisory,'' that may be interpreted to limit the disclosure of the interdependent relationship. While there is a financial and supervisory relationship between associations and funding banks that must be disclosed, we conclude that the disclosure should further include a discussion of all interdependent relationships so shareholders can understand the full extent of the relationship between an association and its funding bank.

F. Description of Liabilities; Description of Statutory Responsibility for Repayment of Obligations Issued by the Farm Credit System Financial Assistance Corporation [§ 620.5(e)(4)]

Section 620.5(e)(4) requires disclosure of System institutions' responsibility for repayment of obligations issued by the Farm Credit System Financial Assistance Corporation (FAC). Because the FAC has fulfilled its obligations and discharged its responsibilities under the Act and is no longer a chartered entity, we propose to remove § 620.5(e)(4) in its entirety.

G. Selected Financial Data; Associations That Are Not Direct Lender Associations [§ 620.5(f)(2)]

Section 620.5(f)(2) requires disclosure of selected financial data for each of the last 5 fiscal years in the annual reports of associations that are *not* direct lender associations. Due to System structure changes that occurred subsequent to the implementation of this section, all System associations are now direct lenders. Therefore, we propose to remove this section of the regulation in its entirety.

H. Description of Funding Sources [§ 620.5(g)(3)(i)(A)]

Section 620.5(g)(3)(i)(A) requires that an institution describe its outstanding consolidated Systemwide debt obligations and other bond obligations used to fund its lending operations. We propose to clarify that the requirement applies to all debt obligations held by each System institution, not just the consolidated Systemwide debt and bond obligations. For example, this section would require that an association describe the general financing agreement with its affiliated bank.

I. Listing of Directors and Senior Officers and Their Terms of Office [§ 620.5(h)(1)]

Section 620.5(h)(1) requires the disclosure of the names of all directors and senior officers of the institution, their respective position titles and terms of office. Most senior officers, as employees, do not have agreed-upon terms of office with the institution. Therefore, in lieu of disclosing a term of office for a senior officer, we propose to amend this section to require disclosure of the date the senior officer commenced employment in his/her current position. The requirement to disclose the term of office for directors would remain unchanged.

J. Director Compensation [§ 620.5(i)(1)]

Section 620.5(i)(1) requires System institutions to make disclosures concerning the compensation of directors, including the total cash and noncash compensation paid to all directors as a group during the fiscal year. However, the current regulation does not specify whether the disclosures should include only those directors that are serving as of the date of the annual report, or if it should also include directors that received compensation during the fiscal year, whether or not serving as of the date of the annual report. As a result, disclosure practices vary among System institutions. Additionally, disclosure requirements for System institutions' CEOs at § 620.5(i)(2)(i)(A) specifically require disclosure of compensation paid to each individual CEO that served in his/her capacity as CEO during the fiscal year. In order to clarify the requirements for director compensation and to conform these requirements with the disclosures required for the CEO at § 620.5(i)(2)(i)(A), we propose to amend this section to clarify that the disclosures required by § 620.5(i)(1) apply to all directors that served in that capacity during the fiscal year, including those that resigned from the board or whose terms expired during the fiscal year.

K. Fees Paid to the Qualified Public Accountant Engaged To Conduct the Financial Statement Audit [§ 620.5(l)(2)]

Section 620.5(l)(2) requires each institution to disclose in its annual report all fees paid to its qualified public accountant, with the fees segregated into three categories: audit services, non-audit services, and tax services. The types of non-audit services must be individually identified and disclosed, and each institution must state whether the non-audit services were approved by its audit committee. This requirement applies only to the fees paid to the qualified public accountant engaged to conduct the institution's financial statement audit. The requirement is intended to help shareholders assess the independence of the institution's external auditor. It does not apply to fees paid to other qualified public accountants not engaged to conduct the institution's audit. Thus, we propose to amend § 620.5(l)(2) to make this clarification.

L. Preparing and Publishing the Quarterly Report [§ 620.10(a)]

On December 4, 2007, the FCA issued a final rule (72 FR 68060) amending the disclosure and reporting regulations for System institutions. The final rule revised the requirements for submitting part 620 reports to the FCA. Among other things, amended § 620.4 requires that each System institution prepare and send to FCA an electronic copy of its annual report and publish a copy of its annual report on its Web site when it sends FCA the electronic copy. This amendment intended to strike a balance between providing accelerated reporting and improved information flow to shareholders and investors, allowing sufficient time for the issuance of a paper copy of the annual report to shareholders. This amendment, however, did not address publication and filing requirements for quarterly reports to shareholders. To further facilitate timely disclosure of financial information and improved information flow to shareholders and investors, we propose to amend § 620.10(a) to include requirements for filing the quarterly report electronically with the FCA and publishing the report on the institution's Web site when it sends the report electronically to the FCA. The section does not require that the quarterly report be sent to shareholders. However, it must be made available for public inspection at the issuing institution.

Additionally, we propose to amend § 620.10(a) to replace the language ''Farm Credit bank and direct lender association'' with ''institution,'' which is defined for purposes of § 620.1(f) to mean ''any bank or association chartered by the Act.''

M. Interim Financial Statements and Pro Forma Presentations Subsequent to Consummation of a Business Combination [§ 620.11(b)(4) and (b)(5)], and Reporting Accounting Changes and Error Corrections [§ 620.11(b)(6) and (b)(7)]

The Financial Accounting Standards Board (FASB) develops and establishes financial accounting and reporting standards and the hierarchy under which those standards are to be applied (*i.e.*, GAAP). The recent issuance by the FASB of certain standards has necessitated a review of our regulations that are affected by the new standards.

Section 620.11(b)(4) and (b)(5) established the interim financial reporting requirements for System

institutions that consummated a business combination, merger, consolidation, etc. (hereinafter referred to solely as a business combination), using either the pooling or purchase methods of accounting. The interim financial reporting requirements were affected by the FASB's issuance in 2007 of Statement of Financial Accounting Standards (SFAS) 141(R) because:

- FCA regulations require that System institutions prepare financial statements and reports in accordance with GAAP, thus all System institutions are required to adopt SFAS 141(R) and its disclosure requirements;
- SFAS 141(R) requires that the acquisition method of accounting be used to account for all business combinations, including combinations of mutual enterprises, thus the references in § 620.11(b)(4) and (b)(5) to pooling and purchase methods of accounting are no longer relevant; and
- In deliberating the new standard, the FASB agreed that the definition of a mutual enterprise includes cooperative entities, thus the acquisition method of accounting prescribed by SFAS 141(R) is GAAP for System institutions.

SFAS 141(R) is effective for all business combinations that have an acquisition date on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. Therefore, as of the effective date, System institutions will be required to apply SFAS 141(R) to business combinations with an acquisition date of January 1, 2009, or thereafter. Accordingly, since § 620.11(b)(4) and (b)(5) will no longer apply to current GAAP, we propose to remove these sections in their entirety.

FCA reporting requirements for accounting changes are found in § 620.11(b)(6) and (b)(7). The FASB issued SFAS 154, Accounting Changes and Error Corrections, which replaced Accounting Principles Bulletin Opinion No. 20 and SFAS 3 and changed the requirements for the accounting for and reporting of a change in accounting principles. SFAS 154 was effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. Since SFAS 154 addresses the accounting and reporting requirements covered by existing § 620.11(b)(6) and (b)(7), and since System institution financial statements and reports are required to be prepared in accordance with GAAP, we propose to remove § 620.11(b)(6) and (b)(7) in their entirety.

N. Independent Public Accountant [§ 620.11(e) and § 620.21(f)]

Section 619.9270 provides FCA's definition of ''qualified public accountant or external auditor.'' In order to ensure that § 620.11(e) and § 620.21(f) are consistent with the definitions established in § 619.9270, we propose to amend § 620.11(e) to replace the references to ''independent public accountant'' with ''qualified public accountant or external auditor.'' Additionally, we propose to amend § 620.21(f) to replace each reference to ''independent public accountant'' or ''accountant'' with ''qualified public accountant or external auditor.''

O. Accounting for the Allowance for Loan Losses and Chargeoffs [§ 621.5(a)]

Our existing rule at § 621.5(a) on the allowance for loan losses states that System institutions shall maintain, at all times, an allowance for loan losses that is adequate to absorb all probable and estimable losses that may reasonably be expected to exist in the loan portfolio. This requirement was intended to be consistent with GAAP existing at the time. The accounting for the allowance for loan losses continues to evolve as additional pronouncements and other guidance are issued by the FASB and other standard-setting bodies. Therefore, to ensure that the accounting for the allowance for loan losses remains current with industry standards, we propose to amend this section by revising the language to clarify that a System institution's allowance for loan losses should be determined in accordance with GAAP.

P. Reports of Condition and Performance; Applicability and General Instructions; Filing of Reports [§ 621.12(c)]

We propose to revise this provision because all Call Reports are currently submitted electronically, and the instructions for the preparation of the Call Reports are available on the Agency's Web site. Additionally, we propose to amend § 621.12 to require that institutions file their Call Reports in accordance with the instructions prescribed by the FCA.

Q. Technical Corrections [§ 620.5]

In a previous rulemaking, § 620.5 was amended by removing the word ''financial'' and adding in its place the word ''financing.'' The intent of the change, however, was to remove the word ''financial'' and add in its place the word ''financing'' only as it appeared in § 620.5(a)(8), rather than in §§ 620.5(a)(4), 620.5(e)(2), 620.5(f), 620.5(f)(1)(iii), 620.5(g), 620.5(g)(1)(iv), 620.5(g)(2)(ii), 620.5(g)(2)(vi), 620.5(j)(3)(ii), and 620.5(m)(1). Therefore, we propose to amend § 620.5 to correct instances where the word ''financial'' was inadvertently replaced with the word ''financing.''

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Parts 619, 620 and 621

Accounting, Agriculture, Banks, Banking, Reporting and recordkeeping requirements, Rural areas.

For reasons stated in the preamble, parts 619, 620, and 621 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 619—DEFINITIONS

1. The authority citation for part 619 continues to read as follows:

Authority: Secs. 1.4, 1.7, 2.1, 2.4, 2.11, 3.2, 3.21, 4.9, 5.9, 5.12, 5.17, 5.18, 6.22, 7.0, 7.1, 7.6, 7.8, 7.12 of the Farm Credit Act (12 U.S.C. 2011, 2015, 2072, 2075, 2092, 2123, 2142, 2160, 2243, 2244, 2252, 2253, 2254, 2278b–2, 2279a, 2279a–1, 2279b, 2279b–2, 2279f).

2. Section 619.9270 is amended by revising the second sentence of paragraph (e) to read as follows:

§ 619.9270 Qualified Public Accountant or External Auditor.

* * * * *

(e) * * * For the purposes of this definition, the term ''independent'' has the same meaning as under the rules and interpretations of the authoritative body governing overall audit performance. * * *

PART 620—DISCLOSURE TO SHAREHOLDERS

3. The authority citation for part 620 continues to read as follows:

Authority: Secs. 4.19, 5.9, 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2207, 2243, 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 100 Stat. 1568, 1656.

Subpart A—General

4. Section 620.3 is amended by revising paragraph (b)(3) as follows:

§ 620.3 Accuracy of reports and assessment of internal control over financial reporting.

* * * * *

(b) * * *

(3) A board member formally designated by action of the board to certify reports on behalf of individual board members.

* * * * *

Subpart B—Annual Report to Shareholders

5. Amend § 620.5 as follows:

a. Remove the word ''financing'' and add in its place the word ''financial'' each place it appears in paragraphs (e)(2), (f) introductory text, (f)(1)(iii), (g) introductory text, (g)(1)(iv), (g)(2)(ii), (g)(2)(vi), (j)(3)(ii), and (m)(1);

b. Revise the introductory paragraph, paragraphs (a)(4), (a)(10) introductory text, (g)(3)(i)(A), (h)(1), (i), and the first sentence of paragraph (l)(2);

c. Remove paragraphs (a)(10)(v), (e)(4) and (f)(2); and

d. Redesignate existing paragraphs (f)(3) and (f)(4) as newly designated paragraphs (f)(2) and (f)(3).

§ 620.5 Contents of the annual report to shareholders.

The report must contain the following items in substantially the same order, except that information required by paragraphs (a) through (e) of this section may be referenced to information required by paragraph (g) so long as the descriptions and disclosures are appropriately included in paragraph (g) of this section:

(a)* * *

(4) Any significant developments within the last 5 years that had or could have a material impact on earnings, interest rates to borrowers, patronage, or dividends, including, but not limited to, changes in the reporting entity, changes in patronage policies and practices, and financial assistance provided by or to the institution through loss-sharing or capital preservation agreements or from any other source;

* * * * *

(10) For associations, in a separate section of the annual report, discuss the interdependent relationship between the association and its funding bank, including, but not limited to, the financial relationship, a service provider relationship, other material operational relationships, and other specific issues or areas that create a material interdependent relationship between the association and its funding bank. This separate section may reference information from other sections of the annual report. At a minimum, the separate section must include the statement required by § 620.2(h)(2)(i) of this part and the following information required elsewhere in this section, if applicable:

* * * * *

(g) * * *

(3) * * *

(i) * * *

(A) Describe the average and yearend amounts, maturities, and interest rates on outstanding consolidated Systemwide debt obligations, bond obligations, or any other obligations used to fund the institution's lending operations.

* * * * *

(h) * * *

(1) List the names of all directors and senior officers of the institution, indicating the position title and term of office of each director, and the position, title, and date each senior officer commenced employment in his or her current position.

* * * * *

(i) *Compensation of directors and senior officers.* For the purposes of this paragraph, disclosure of compensation paid to and days served by directors applies to any director who served in that capacity at any time during the reporting period.

* * * * *

(l) * * *

(2) Disclose the total fees, by the category of services provided, paid during the reporting period to the qualified public accountant engaged to conduct the institution's financial statement audit. * * *

* * * * *

Subpart C—Quarterly Report

6. Amend § 620.10 by revising paragraph (a) to read as follows:

§ 620.10 Preparing the quarterly report.

(a) Each institution of the Farm Credit System must:

(1) Prepare and send, to the Farm Credit Administration, an electronic copy of its quarterly report within 40 calendar days after the end of each fiscal quarter, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution; and

(2) Publish a copy of its quarterly report on its Web site when it sends the report electronically to the Farm Credit Administration.

* * * * *

§ 620.11 [Amended]

7. Amend § 620.11 as follows:

a. Remove paragraphs (b)(4) through (b)(7);

b. Redesignate existing paragraph (b)(8) as newly designated paragraph (b)(4); and

c. Remove the words ''independent public accountant,'' ''an independent public accountant,'' and ''the independent public accountant'' and add the words ''a qualified public accountant or external auditor'' in each place they appear in paragraph (e) and its heading.

Subpart E—Annual Meeting Information Statement

8. Amend § 620.21 by revising the heading and paragraph (f) to read as follows:

§ 620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting or director elections.

* * * * *

(f) *Relationship with qualified public accountant or external auditor.* If an institution of the Farm Credit System has had a change or changes in its qualified public accountant or external auditor since the last annual report to shareholders, or if a disagreement with a qualified public accountant or external auditor has occurred, the institution shall disclose the information required by § 621.4(c) and (d) of this chapter.

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

9. The authority citation for part 621 continues to read as follows:

Authority: Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11); sec. 514 of Pub. L. 102–552.

Subpart A—Purpose and Definitions

10. Amend § 621.2 by revising paragraph (d) to read as follows:

§ 621.2 Definitions.

* * * * *

(d) *Generally accepted auditing standards* means the standards and guidelines that are generally accepted in the United States of America and that are adopted by the authoritative body that governs the overall quality of audit performance.

* * * * *

Subpart B—General Rules

11. Amend § 621.5 by revising paragraph (a) to read as follows:

§ 621.5 Accounting for the allowance for loan losses and chargeoffs.

* * * * *

(a) Maintain at all times an allowance for loan losses that is determined according to generally accepted accounting principles.

* * * * *

Subpart D—Report of Condition and Performance

12. Amend § 621.12 by revising paragraph (c) as follows:

§ 621.12 Applicability and general instructions.

* * * * *

(c) All reports of condition and performance shall be submitted electronically in accordance with the instructions prescribed by the Farm Credit Administration and located on its Web site.

Dated: November 17, 2008.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E8–27654 Filed 11–21–08; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. NE129; Notice No. 33–08–01–SCI]

Special Conditions: General Electric Company GEnx–2B Model Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for General Electric Company (GE) GEnx–2B67 and GEnx–2B69 model turbofan engines. The fan blades of these engines will have novel or unusual design features when compared to the state of technology envisioned in the part 33 airworthiness standards. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the added safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards of 14 CFR part 33.

DATES: We must receive your comments on or before December 24, 2008.

ADDRESSES: You may mail two copies of your comments to: Federal Aviation Administration, Aircraft Certification Service, Engine and Propeller Directorate, Attn: Robert McCabe, ANE–110 Standards Staff, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, Rules Docket No. NE129. You may deliver two copies to the Engine and Propeller Directorate at the above address. You must mark your comments: Docket No. NE 129. You may send comments via e-mail to *robert.mccabe@faa.gov*. You must use the subject ''Docket No. NE 129''. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Aircraft Certification Service, Engine and Propeller Directorate, Attn: Robert McCabe, ANE–1 10 Standards Staff, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7138; facsimile (781) 238–7199; e-mail *robert.mccabe@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on this proposal, send us a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On February 28, 2006, the General Electric Company (GE) applied to the FAA to amend the GEnx model type certificate to add GEnx–2B engine model series. Currently, the GEnx type certificate consists of the GEnx–1B turbofan engine models GEnx–1B54, GEnx–1B58, GEnx–1B64, GEnx–B67, and GEnx–1B70. GE is requesting to add the GEnx–2B67 and GEnx–2B69 engine model series to the type certificate.

The GEnx–2B engine model series is a close derivative of the GEnx–1B engine models, and will utilize a significant number of common parts and systems. Some GEnx–2B engine model components, which differ from those on the GEnx–1B engine models, include a smaller diameter fan operating at a slightly higher speed, a lower guide vane count, fewer booster stages, lower bypass ratio, fewer low pressure turbine stages, lighter accessories gearbox, and a modified turbine rear frame. Those components do not introduce any unique materials, design concepts, or manufacturing processes.

The GEnx–2B engine models will also incorporate fan blades manufactured using carbon graphite composite material, with a bonded metal tip cap, and metal leading and trailing edge laminates. The design and manufacture of these fan blades are similar to those used on the GE90–76B, –77B, –85B, –90B, –94B baseline engines, the GE90–110B1, –113B, and –115B derivative engine model series, and the GEnx–1B engine model series. This novel and unusual design feature results in the fan blades having significant differences in material property characteristics when compared to conventionally designed fan blades using only metallic materials.

GE submitted data and analysis during the GE90 baseline and GE90–115B derivative engine model certification programs, and again during the recent GEnx–JB certification program. GE was able to show that the likelihood of these carbon graphite composite fan blades failing below the inner annulus flow path line is highly improbable. GE questioned the appropriateness of the requirement contained in § 33.94(a)(1) to show containment after a failure of the fan blade at the outermost retention feature.

The FAA responded during the GE90 baseline by reviewing the historical basis for the § 33.94(a)(1) test requirements, and determined that they are based on metallic blade characteristics and service history, and therefore were not appropriate for the unusual design features of the composite fan blade design planned for

that engine model. The FAA determined that a more realistic blade retention test for the novel and unusual design characteristics of these carbon fiber composite fan blades would be achieved with a blade failure at the inner annulus flow path line (the complete airfoil only), instead of at the outermost blade retention feature as currently required by § 33.94(a)(1).

The FAA also determined that the composite fan blade design and construction characteristics present factors, other than the expected location of a blade failure, which must be considered. Consequently, the FAA required that tests and analyses must account for the anticipated effects of in-service deterioration and handling damage, manufacturing and materials variations in, and environmental effects on, the composite material. The FAA also required that tests and analyses must show that a lightning strike on a composite fan blade would not result in a hazardous condition to the aircraft, and that the engine would continue to meet the requirements of 33.75.

Therefore, the FAA issued special conditions SC–33–ANIE–08 on February 1, 1995, for the GE90–75B, 76B, and –85B baseline engine models. These special conditions defined additional safety standards for the carbon graphite composite fan blades that were appropriate for the unusual design features of those fan blades, and that were determined to be necessary to establish a level of safety equivalent to that established by the airworthiness standards of § 33.94(a)(1).

The FAA determined that these special conditions were also appropriate for the derivative GE90 77B and –90B engine models, the GE90–94B engine model, and the GE90 –110B1, –113B, and –115B engine models, which were added to the TCDS in July 1996, June 2000, and July 2003, respectively. Engine model series GE90–75B was deleted from the GE90 TCDS in February 1995.

The FAA later determined that, due to the similarity of the carbon fiber composite fan blade design and construction methods to the GE90 blades, these same special conditions continued to be appropriate for the recent GEnx–1B model series certification program. The FAA issued special conditions 33–006–SC on January 12, 2007, for the GEnx–1B engine model series, which retained the essential requirements of the previous GE90 engine model series special conditions. These special conditions were successfully applied during the GEnx–1B certification program.

Due to that success, GE now proposes to use a similar approach to demonstrate a level of safety equivalent to that established by the airworthiness standards of § 33.94(a)(1) for the GEnx 2B certification program. In lieu of direct compliance to § 33.94(a)(1) using an engine test, GE notified the FAA that it plans to utilize an analytical method that will be validated by data from the GEnx–1B § 33.94(a)(1) engine test, GEnx–lB fan blade rig tests, GEnx–2B fan blade rig tests, and other engine and component tests as needed.

Due to the similarity of the GEnx–2B model series fan blade design and manufacturing methods to the previously certified GE90 and GEnx–1B engine model series fan blades, the FAA is proposing to issue similar special conditions as part of the type certification basis for the GEnx–2B engine models in lieu of requiring direct compliance to § 33.94(a)(1) using an engine test. These special conditions define the additional requirements the Administrator considers necessary to establish a level of safety equivalent to direct compliance to the airworthiness standards of § 33.94(a)(1).

Type Certification Basis

14 CFR 21.17 requires GE to show the derivative GEnx–2B series turbofan engine models meet the requirements of the applicable provisions of 21.21 and part 33. The FAA has determined that the applicable airworthiness regulations in part 33 do not contain adequate or appropriate safety standards for the GEnx–2B series turbofan engine models because of its novel and unusual fan blade design features. Therefore, these special conditions are prescribed under the provisions of 14 CFR 11.19 and 14 CFR 21.16, and will become part of the type certification basis of the GEnx–2B engine in accordance with § 21.17(a)(2).

These special conditions apply only to the GEnx–2B series turbofan engine models. If the type certificate for those models is amended later to include any other models that incorporate the same novel or unusual design features, these special conditions also apply to the other models under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The GEnx–2B engine models will incorporate carbon graphite composite fan blades that will contain a bonded metal tip cap, and metal leading and trailing edge laminates. These design features are considered to be novel and unusual relative to the part 33 airworthiness standards.

Applicability

These special conditions will apply only to the GEnx–2B series turbofan engine models. If GE applies later for a change to the type certificate to include another model incorporating the same novel or unusual fan blade design features, these special conditions may also become part of the type certification basis of that engine model series as well.

Conclusion

This action affects only the carbon fiber composite fan blade design features on the GEnx–2B series turbofan engine models. It is not a rule of general applicability, and it affects only the General Electric Company which has applied to the FAA for certification of these fan blade design features.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Proposed Special Conditions

Accordingly, the FAA proposes the following special conditions as part of the type certification basis for the derivative GEnx–2B series turbofan engines.

1. In lieu of the fan blade containment test with the fan blade failing at the outermost retention groove as specified in § 33.94(a)(1), complete the following requirements:

(a) Conduct a fan blade containment test that is acceptable to the Administrator, with the fan blade failing at the inner annulus flow path line.

(b) Substantiate by test and analyses, or other methods acceptable to the Administrator, that the engine is capable of containing damage without catching fire and without failure of its mounting attachments when operated for at least 15 seconds, unless the resulting engine damage induces a self shutdown that initiates within 15 seconds of the fan blade failure.

(c) Substantiate by test and analyses, or other methods acceptable to the Administrator, that a minimum material properties fan disk and fan blade retention system can withstand without failure a centrifugal load equal to two times the maximum load which the retention system could experience within approved engine operating limitations.

(d) Using a procedure approved by the Administrator, establish an operating

limitation that specifies the maximum allowable number of start-stop stress cycles for the fan blade retention system. The life evaluation shall include the combined effects of high cycle and low cycle fatigue. If the operating limitation is less than 100,000 cycles, that limitation must be specified in Chapter 05 of the Engine Manual Airworthiness Limitation Section. The fan blade retention system includes the portion of the fan blade from the inner annulus flow path line inward to the blade dovetail, the blade retention components, and the fan disk and fan blade attachment features.

(e) Substantiate that, during the service life of the engine, the total probability of the occurrence of a hazardous engine effect defined in § 33.75 due to an individual blade retention system failure resulting from all possible causes will be extremely improbable, with a cumulative calculated probability of failure of less than 10 per engine flight hour.

(f) Substantiate by test or analysis acceptable to the Administrator that not only will the engine continue to meet the requirements of 33.75 following a lightning strike on the composite fan blade structure, but the lightning strike will also not cause damage to the fan blades that would prevent continued safe operation of the affected engine.

(g) Account for the effects of in-service deterioration, manufacturing variations, minimum material properties, and environmental effects during the tests and analyses required by paragraphs (a), (b), (c), (d), (e), and (f) of these special conditions.

(h) Propose fleet leader monitoring and field sampling programs for the GEnx–2B engine fan blades that will monitor the effects of usage on fan blade and retention system integrity. The sampling program should use the experience gained on current GE90 and GEnx–1B engine model series monitoring programs, and must be approved by the FAA prior to certification of the GEnx–2B engine models.

Issued in Burlington, Massachusetts on November 12, 2008.

Peter A. White,

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

[FR Doc. E8–27540 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 901, 902, and 907

[Docket No. FR–5094–N–02]

RIN 2577–AC68

Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default: Reopening of Public Comment Period

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule; reopening of Public comments period.

SUMMARY: On August 21, 2008, the Department published a proposed rule entitled, ''Public Housing Evaluation and Oversight: Changes to the Public Housing Assessment System (PHAS) and Determining and Remedying Substantial Default.'' The comment period for this proposed rule ended on October 20, 2008. This notice reopens the comment period for the proposed rule to allow for additional public comment.

DATES: *Comment Due Date:* January 8, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll-free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Wanda Funk, Senior Advisor, Department of Housing and Urban Development, Office of Public and Indian Housing, Real Estate Assessment Center (REAC), 550 12th Street, SW., Suite 100, Washington, DC 20410; or the REAC Technical Assistance Center at 888–245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/.*

SUPPLEMENTARY INFORMATION:

1. Proposed Rule

HUD published a proposed rule on August 21, 2008 (73 FR 49544) that submitted, for a 60-day public comment period, a comprehensive revision to the PHAS regulations. This proposed rule, entitled ''Changes to the Public Housing Assessment System and Determining and Remedying Substantial Default'' also proposed, among other things, revisions to the PHAS scoring system. The comment period for the proposed rule closed on October 20, by which time approximately 55 comments had been submitted by members of the public.

As part of reopening the public comment period, HUD will be making available a scoring template that will enable PHAs and other interested members of the public to enter information to generate estimated scores under the proposed rule. The purpose of the scoring template is to facilitate understanding of the PHAS scoring system that HUD proposed in its August 21, 2008, proposed rule. The scoring template reflects how scoring would work if the proposed system were adopted at the final rule stage. The template allows the public to enter information to generate estimated scores under the proposed rule. The scoring template is posted on the Office of Public and Indian Housing's Web site at *http://www.hud.gov/offices/ph/am/index.cfm.*

This tool was not available during the initial public comment period. Given the public interest in this rule, and the availability of this new information, HUD is reopening the public comment period. HUD hopes that this template helps clarify the proposed scoring system, and welcomes additional comments on the scoring system during the reopened public comment period. Accordingly, this notice reopens the public comment period for the PHAS proposed rule, published on August 21, 2008, for an additional 45-day period.

Dated: November 17, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E8–27807 Filed 11–21–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106251–08]

RIN 1545–BH68

Employee Stock Purchase Plans Under Internal Revenue Code Section 423; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to options granted under an employee stock purchase plan as defined in section 423 of the Internal Revenue Code. These proposed regulations affect certain taxpayers who participate in the transfer of stock pursuant to the exercise of options granted under an employee stock purchase plan.

DATES: The public hearing is being held on Thursday, January 15, 2009, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Thursday, December 18, 2008.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

Send Submissions to CC:PA:LPD:PR (REG–106251–08), Room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–106251–08), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically via the Federal erulemaking Portal at *http://www.regulations.gov* (IRS–REG–106251–08).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Thomas Scholz (202) 622–6030; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–106251–08) that was published in the **Federal Register** on Tuesday, July 29, 2008 (73 FR 43875).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by October 27, 2008, must submit an outline of the topics to be addressed and the amount of time to be denoted to each topic. (Signed original and eight copies.)

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW., entrance, 1111 constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

LaNita VanDyke,

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

[FR Doc. E8–27862 Filed 11–21–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2008–0052–200803(b); FRL–8743–7]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Approval of Revisions to the Knox County Portion of the Tennessee State Implementation Plan—''Permit by Rule'' Provision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the State Implementation Plan (SIP) submitted by the State of Tennessee on October 12, 2007. The revision pertains to the Knox County portion of the Tennessee SIP and includes changes to Knox County Air Quality Management Regulation (Knox County Regulation) Section 25.10—Permit by Rule. Specifically, Section 25.10 was changed so that it clearly states that turbines and other internal combustion engines are excluded from the ''Permit by Rule'' provision. This revision is considered by the Tennessee Department of Environment and Conservation (TDEC), to be as or more stringent than the State of Tennessee's SIP requirements. This action is being taken pursuant to section 110 of the Clean Air Act (CAA).

In the Final Rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule

based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 24, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2008–0052, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: bradley.twunjala@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2008–0052,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9352. Ms. Bradley can also be reached via electronic mail at *bradley.twunjala@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: November 10, 2008.

Russell L. Wright,

Acting Regional Administrator, Region 4.

[FR Doc. E8–27740 Filed 11–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2008–0590; FRL–8732–5]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Mojave Desert Air Quality Management District, South Coast Air Quality Management District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD), Mojave Desert Air Quality Management District (MDAQMD), South Coast Air Quality Management District (SCAQMD), and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound emissions from storage of reactive organic compound liquids, polyester resin operations, coatings of metal parts and products, and adhesives and sealants. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by December 24, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0590, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail.

www.regulations.gov is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: For questions regarding ICAPCD Rule 414, contact Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.* For questions regarding MDAQMD Rule 1162, contact Jerald Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov.* For questions regarding SCAQMD Rule 1107 or VCAPCD Rule 74.20, contact Francisco Dóñez, EPA Region IX, (213) 244–1834, *Donez.Francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules:

Agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	414	Storage of Reactive Organic Compound Liquids	05/18/04	07/19/04
MDAQMD	1162	Polyester Resin Operations	08/27/07	03/07/08
SCAQMD	1107	Coating of Metal Parts and Products	01/06/06	05/08/07
VCAPCD	74.20	Adhesives and Sealants	01/11/05	07/15/05

In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: October 2, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8–27737 Filed 11–21–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R05–RCRA–2008–0711; FRL–8744–3]

Wisconsin: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Wisconsin has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Wisconsin's application and has preliminarily determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes. We are proposing to authorize the renumbering and revision of Wisconsin's previously authorized regulations.

DATES: Comments on this proposed rule must be received on or before December 24, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–RCRA–2008–0711 by one of the following methods:

http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: gromnicki.jean@epa.gov.

Mail: Jean Gromnicki, Wisconsin Regulatory Specialist, LR–8J, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Instructions: Direct your comments to Docket ID Number EPA–R05–RCRA–2008–0711. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or 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.epagov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some of the information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy. You may view and copy Wisconsin's application from 9 a.m. to 4 p.m. at the following addresses: U.S. EPA, Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois, contact: Jean Gromnicki (312) 886–6162; or Wisconsin Department of Natural Resources, 101 S. Webster Street, Madison, Wisconsin, contact: Patricia Chabot (608) 264–6015.

FOR FURTHER INFORMATION CONTACT: Jean Gromnicki, Wisconsin Regulatory Specialist, U.S. EPA, Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6162, e-mail *gromnicki.jean@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Wisconsin's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Wisconsin final authorization to operate its hazardous waste program with the changes described in the authorization application. Wisconsin has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Wisconsin, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Wisconsin subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Wisconsin has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

1. Do inspections, and require monitoring, tests, analyses or reports
2. Enforce RCRA requirements and suspend or revoke permits
3. Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Wisconsin is being authorized by today's action are already effective, and are not changed by today's action.

D. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Wisconsin Previously Been Authorized for?

Wisconsin initially received final authorization on January 30, 1986, effective January 31, 1986 (51 FR 3783) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on May 23, 1989, effective June 6, 1989 (54 FR 15029), on November 22, 1989, effective January 22, 1990 (54 FR 48243), on April 24, 1992, effective April 24, 1992 (57 FR 15029), on June 2, 1993, effective August 2, 1993 (58 FR 31344), on August 4, 1994, effective October 4, 1994 (59 FR 39971), on August 5, 1999, effective October 4, 1999 (64 FR 42630), and on June 26, 2002, effective June 26, 2002 (67 FR 43002).

F. What Changes Are We Authorizing With Today's Action?

On April 29, 2008, Wisconsin submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that Wisconsin's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. These rules were effective on August 1, 2006. Therefore, we propose to grant Wisconsin final authorization for the following program changes:

Federal provision	Former NR provision	Recodified NR provision
40 CFR 260.1	NR 600.01	NR 660.01
40 CFR 260.2	NR 600.06	NR 660.02
40 CFR 260.3	§§ 227.27(1) & 990.001(1) & (2), Stats	§§ 227.27(1) & 990.001(1) & (2), Stats.
40 CFR 260.10	NR 600.03	NR 660.10
40 CFR 260.11	NR 600.10	NR 660.11
40 CFR 260.20	NR 605.10(6)	NR 660.20
40 CFR 260.21	None	NR 660.21
40 CFR 260.22	NR 605.10(1), (2) & (4)	NR 660.22
40 CFR 260.23	NR 605.10(7)	NR 660.23
40 CFR 260.30	None	NR 660.30
40 CFR 260.31	None	NR 660.31
40 CFR 260.32	None	NR 660.32
40 CFR 260.33	None	NR 660.33
40 CFR 260.40	NR 625.10	NR 660.40
40 CFR 260.41	None	NR 660.41
40 CFR 261.1	NR 600.03 & 605.01–605.03	NR 661.01
40 CFR 261.2	NR 605.05(1)(m), (2)(a) & (f)–(i), (3) & (4)	NR 661.02
40 CFR 261.3	NR 605.04	NR 661.03
40 CFR 261.4	NR 600.03(107) & 605.05 & § 289.01(33), Stats	NR 661.04
40 CFR 261.5	NR 610.06, 610.07(1)–(4) & 610.09	NR 662.220
40 CFR 261.6	NR 605.05(1)(q) & (2)(a)–(d), 625.01–625.09 & 625.11	NR 661.06
40 CFR 261.7	NR 605.06 & 610.04(4)	NR 661.07
40 CFR 261.8	NR 605.13	NR 661.08
40 CFR 261.9	NR 605.05(12)	NR 661.09
40 CFR 261.10	NR 605.07(1)	NR 661.10
40 CFR 261.11	NR 605.07(2)	NR 661.11
40 CFR 261.20	NR 605.08(1)	NR 661.20
40 CFR 261.21	NR 605.08(2)	NR 661.21
40 CFR 261.22	NR 605.08(3)	NR 661.22
40 CFR 261.23	NR 605.08(4)	NR 661.23
40 CFR 261.24	NR 605.08(5)	NR 661.24
40 CFR 261.30	NR 605.09(1)	NR 661.30
40 CFR 261.31	NR 605.09(2)(a) & 605.14	NR 661.31
40 CFR 261.32	NR 605.09(2)(b)	NR 661.32
40 CFR 261.33	NR 605.09(3)	NR 661.33
40 CFR 261.35	NR 605.05(6)	NR 661.35
40 CFR 261.38	None	NR 661.38
40 CFR 261 Appendix I	NR 605 Appendix I	NR 661 Appendix I
40 CFR 261 Appendix II	None	NR 661 Appendix II
40 CFR 261 Appendix III	NR 605 Appendix II	NR 661 Appendix III
40 CFR 261 Appendix VII	NR 605 Appendix III	NR 661 Appendix VII
40 CFR 261 Appendix VIII	NR 605 Appendix IV	NR 661 Appendix VIII
40 CFR 262.10	NR 610.01, 610.02, 610.04(2) & (3), 615.01, 615.02, 615.04(2) & 615.05(1)(c).	NR 662.010 & 662.190(2)

Federal provision	Former NR provision	Recodified NR provision
40 CFR 262.11	NR 610.05(1)–(5) & 615.06(1)–(4) & (6)	NR 662.011 & 662.190(2)
40 CFR 262.12	NR 610.08(1)(b) & (c) & 615.07	NR 662.012 & 662.190(2)
40 CFR 262.20	NR 610.08(1)(d) & (e), 615.08(1), (3)–(5), (8) & (9) & 15.09(1)	NR 662.020 & 662.191
40 CFR 262.21	NR 610.08(1)(d) & 615.08(2)	NR 662.021 & 662.190(2)(a)
40 CFR 262.22	NR 610.08(1)(d) & 615.08(6)	NR 662.022 & 662.190(2)(a)
40 CFR 262.23	NR 610.08(1)(d) & 615.08(6), (11), (12) & (15)	NR 662.023 & 662.190(2)(a)
40 CFR 262.30	NR 610.08(1)(j), 615.05(4)(a)2.a. & 615.10(1)	NR 662.030 & 662.190(2)
40 CFR 262.31	NR 610.08(1)(k)(intro.), 615.05(4)(a)2.a. & 615.10(2)(intro.)	NR 662.031 & 662.190(2)
40 CFR 262.32	NR 610.08(1)(k)(intro.) & 2., 615.05(4)(a)2.a. & 615.10(2)(intro.) & (b).	NR 662.032 & 662.190(2)
40 CFR 262.33	NR 610.08(1)(L), 615.05(4)(a)2.a. & 615.10(3)	NR 662.033 & 662.190(2)
40 CFR 262.34	NR 615.05(4)(a)2.–6. & 10., (b) & (c) & 610.08(intro.), (1)(k)1., (n)–(q), (u), (w) & (x), (2) & (5)(a) & (c).	NR 662.034 & 662.192
40 CFR 262.40	NR 615.06(5), 615.08(7) & 615.11(1)(c) & (2)(c)	NR 662.040
40 CFR 262.41	NR 615.11(1)	NR 662.041
40 CFR 262.42	NR 615.11(2)	NR 662.042
40 CFR 262.43	NR 615.11(3)	NR 662.043
40 CFR 262.44	NR 610.05(6), 610.08(1)(d), (h)1. & (i) & 615.08(7)	NR 662.193
40 CFR 262.50	NR 610.08(1)(m) & 615.12(intro.)	NR 662.050 & 662.190(2)
40 CFR 262.51	NR 600.03(41), (70), (180), (184) & (234)	NR 662.051 & 662.190(2)
40 CFR 262.52	NR 610.08(1)(m) & 615.12(1i)–(1m)	NR 662.052 & 662.190(2)
40 CFR 262.53	NR 610.08(1)(m) & 615.12(1)	NR 662.053 & 662.190(2)
40 CFR 262.54	NR 610.08(1)(m) & 615.12(1c)–(1g), (1k), (1p) & (1r)	NR 662.054 & 662.190(2)
40 CFR 262.55	NR 610.08(1)(m) & 615.12(2)	NR 662.055 & 662.190(2)
40 CFR 262.56	NR 610.08(1)(m) & 615.12(1t)	NR 662.056 & 662.190(2)
40 CFR 262.57	NR 610.08(1)(m) & 615.12(1u)–(1z)	NR 662.057 & 662.190(2)
40 CFR 262.58	NR 615.14	NR 662.058 & 662.190(2)
40 CFR 262.60	NR 615.13	NR 662.060 & 662.190(2)
40 CFR 262.70	NR 610.04(2) & (3) & 615.04(2)	NR 662.070 & 662.190(2)
40 CFR 262.80	None	NR 662.080 & 662.190(2)
40 CFR 262.81	None	NR 662.081 & 662.190(2)
40 CFR 262.82	None	NR 662.082 & 662.190(2)
40 CFR 262.83	None	NR 662.083 & 662.190(2)
40 CFR 262.84	None	NR 662.084 & 662.190(2)
40 CFR 262.85	None	NR 662.085 & 662.190(2)
40 CFR 262.86	None	NR 662.086 & 662.190(2)
40 CFR 262.87	None	NR 662.087 & 662.190(2)
40 CFR 262.89	None	NR 662.089 & 662.190(2)
40 CFR 262 Appendix	NR 610.08(1)(d) & 615.08(8)(intro.) & (9)(intro.)	NR 662.020(1) & 662.190(2)(a)
40 CFR 263.10	NR 620.01, 620.04(1) & 620.05(2) & (5)	NR 663.10
40 CFR 263.11	NR 620.05(4) & 620.06	NR 663.11
40 CFR 263.12	NR 620.14(intro.), (3), (5)(a) & (14)	NR 663.12
40 CFR 263.20	NR 620.07	NR 663.20
40 CFR 263.21	NR 620.08	NR 663.21
40 CFR 263.22	NR 620.09	NR 663.22
40 CFR 263.30	NR 620.10	NR 663.30
40 CFR 263.31	NR 620.10	NR 663.31
40 CFR 264.1	NR 630.01, 630.02, 630.04(1), (2), (4)–(7), (9), (11)–(14), (16) & (17), 635.04(1), 636.04(1), 640.04(1)–(5) & (9)–(11), 645.04(1)–(5), 656.04(2), 660.04(2) & 665.05(2).	NR 664.0001
40 CFR 264.3	NR 630.04(8), 640.04(7) & 660.04(4)	NR 664.0003
40 CFR 264.4	§ 291.85, Stats	NR 664.0004
40 CFR 264.10	NR 630.02	NR 664.0010
40 CFR 264.11	NR 630.11	NR 664.0011
40 CFR 264.12	NR 630.10	NR 664.0012
40 CFR 264.13	NR 630.12 & 630.13(1)	NR 664.0013
40 CFR 264.14	NR 630.14	NR 664.0014
40 CFR 264.15	NR 630.15	NR 664.0015
40 CFR 264.16	NR 630.16	NR 664.0016
40 CFR 264.17	NR 630.17(1) & (2)	NR 664.0017
40 CFR 264.18	NR 600.04(5) & 630.18(2) & (3)	NR 664.0018
40 CFR 264.19	NR 655.07(7) & 660.13(6)–(9) & 660.16	NR 664.0019
40 CFR 264.30	NR 630.02	NR 664.0030
40 CFR 264.31	NR 630.21(1)	NR 664.0031
40 CFR 264.32	NR 630.21(2)	NR 664.0032
40 CFR 264.33	NR 630.21(4)	NR 664.0033
40 CFR 264.34	NR 630.21(3)	NR 664.0034
40 CFR 264.35	NR 630.21(5)	NR 664.0035
40 CFR 264.37	NR 630.21(6)	NR 664.0037
40 CFR 264.50	NR 630.02	NR 664.0050
40 CFR 264.51	NR 630.22(1)(a)	NR 664.0051
40 CFR 264.52	NR 630.22(1)(e) & (g)	NR 664.0052
40 CFR 264.53	NR 630.22(1)(b)	NR 664.0053
40 CFR 264.54	NR 630.22(1)(c)	NR 664.0054

Federal provision	Former NR provision	Recodified NR provision
40 CFR 264.55	NR 630.22(1)(d)	NR 664.0055
40 CFR 264.56	NR 630.22(2)	NR 664.0056
40 CFR 264.70	NR 630.02	NR 664.0070
40 CFR 264.71	NR 630.30(4)–(5m) & (7)	NR 664.0071
40 CFR 264.72	NR 600.03(147) & (203) & 630.30(6)	NR 664.0072
40 CFR 264.73	NR 630.31(1)	NR 664.0073
40 CFR 264.74	NR 630.31(2)–(4)	NR 664.0074
40 CFR 264.75	NR 630.40(1)	NR 664.0075
40 CFR 264.76	NR 630.40(2)	NR 664.0076
40 CFR 264.77	NR 630.40(3)	NR 664.0077
40 CFR 264.90	NR 635.02, 635.04(1)(a) & 635.05(1)(intro.), (a), (b) & (d) & (2) & 680.04.	NR 664.0090
40 CFR 264.91	NR 635.06	NR 664.0091
40 CFR 264.92	NR 635.07	NR 664.0092
40 CFR 264.93	NR 635.08	NR 664.0093
40 CFR 264.94	NR 635.09	NR 664.0094
40 CFR 264.95	NR 635.10	NR 664.0095
40 CFR 264.96	NR 635.11(1) & (2)	NR 664.0096
40 CFR 264.97	NR 635.12	NR 664.0097
40 CFR 264.98	NR 635.13	NR 664.0098
40 CFR 264.99	NR 635.14	NR 664.0099
40 CFR 264.100	NR 635.15	NR 664.0100
40 CFR 264.101	NR 635.17	NR 664.0101
40 CFR 264.110	NR 680.04, 685.02 & 685.06(1)	NR 664.0110
40 CFR 264.111	NR 685.05(1)(a)–(c)	NR 664.0111
40 CFR 264.112	NR 685.05(2)–(5)	NR 664.0112
40 CFR 264.113	NR 685.05(6) & (7)	NR 664.0113
40 CFR 264.114	NR 685.05(8)	NR 664.0114
40 CFR 264.115	NR 685.05(10)(a) & (b)	NR 664.0115
40 CFR 264.116	NR 685.05(10)(c)	NR 664.0116
40 CFR 264.117	NR 685.06(2)–(4)	NR 664.0117
40 CFR 264.118	NR 685.06(5) & (6)	NR 664.0118
40 CFR 264.119	NR 660.17, 660.24(10) & 685.06(8)	NR 664.0119
40 CFR 264.120	NR 685.06(9)	NR 664.0120
40 CFR 264.140	NR 680.04 & 685.07(1)(a) & (b)	NR 664.0140
40 CFR 264.141	NR 600.03(3), (15), (23m), (33), (35), (52), (53), (116), (137), (139), (144), (154), (155), (162), (168), (218), (219) & (224) & 685.03.	NR 664.0141
40 CFR 264.142	NR 685.07(3)(a), (b)1. & 4. & (c)	NR 664.0142
40 CFR 264.143	NR 685.07(5)(a)–(i) & (9)(a)	NR 664.0143
40 CFR 264.144	NR 685.07(4)(a), (b)1. & 4. & (c)	NR 664.0144
40 CFR 264.145	NR 685.07(5)(a)–(i) & (9)(b)	NR 664.0145
40 CFR 264.146	NR 680.04	NR 664.0146
40 CFR 264.147	NR 680.04 & 685.08(1)–(3), (4)(c), (6), (8), (9)(a) & (b), (10)(a)–(c), (11)(a)–(d) & (12)(a)–(d).	NR 664.0147
40 CFR 264.148	NR 685.07(10) & 685.08(13)	NR 664.0148
40 CFR 264.151	NR 685.08(7)(a) & (b), (8)(d)1., (9)(c), (10)(f), (11)(e) & (12)(e) & DNR Forms 4430–022—4430–026.	NR 664.0151
40 CFR 264.170	NR 640.02	NR 664.0170
40 CFR 264.171	NR 640.09	NR 664.0171
40 CFR 264.172	NR 640.10	NR 664.0172
40 CFR 264.173	NR 640.11(2) & (3)	NR 664.0173
40 CFR 264.174	NR 640.12(1)	NR 664.0174
40 CFR 264.175	NR 640.13(1)	NR 664.0175
40 CFR 264.176	NR 640.14	NR 664.0176
40 CFR 264.177	NR 640.15	NR 664.0177
40 CFR 264.178	NR 640.16(1)	NR 664.0178
40 CFR 264.179	NR 640.13(4)	NR 664.0179
40 CFR 264.190	NR 645.02 & 645.09(1) & (2)	NR 664.0190
40 CFR 264.191	NR 645.07(1)–(4)	NR 664.0191
40 CFR 264.192	NR 645.08	NR 664.0192
40 CFR 264.193	NR 645.09(3)–(11)	NR 664.0193
40 CFR 264.194	NR 645.10(1)–(3)	NR 664.0194
40 CFR 264.195	NR 645.11	NR 664.0195
40 CFR 264.196	NR 645.12	NR 664.0196
40 CFR 264.197	NR 645.17(1)(a)	NR 664.0197
40 CFR 264.198	NR 645.13	NR 664.0198
40 CFR 264.199	NR 645.14	NR 664.0199
40 CFR 264.200	NR 645.10(6)	NR 664.0200
40 CFR 264.220	NR 660.02	NR 664.0220
40 CFR 264.221	NR 660.18(11)(a)–(d), (38) & (39), 660.24(11)(b)1.–5. & 680.04	NR 664.0221
40 CFR 264.222	NR 660.18(11)(f)	NR 664.0222
40 CFR 264.223	NR 660.18(11)(g)–(i)	NR 664.0223
40 CFR 264.226	NR 660.18(13), (31)(b) & (c) & (32)	NR 664.0226

Federal provision	Former NR provision	Recodified NR provision
40 CFR 264.227	NR 660.18(33)–(37)	NR 664.0227
40 CFR 264.228	NR 660.20(1)(a)1. & (d), 660.21(1)(a) & (4), 660.22 & 660.24(14) & (15).	NR 664.0228
40 CFR 264.229	NR 660.18(3) & 660.24(11)(a)	NR 664.0229
40 CFR 264.230	NR 660.18(4)	NR 664.0230
40 CFR 264.231	NR 660.25	NR 664.0231
40 CFR 264.232	NR 660.18(40)	NR 664.0232
40 CFR 264.250	NR 655.02 & 655.05(2)(intro.) & (a)–(e)	NR 664.0250
40 CFR 264.251	NR 655.07(2), (3) & (5) & 680.04	NR 664.0251
40 CFR 264.252	NR 655.07(2) & 660.18(11)(f)	NR 664.0252
40 CFR 254.253	NR 655.07(2) & 660.18(11)(g)–(i)	NR 664.0253
40 CFR 264.254	NR 655.08	NR 664.0254
40 CFR 264.256	NR 655.09	NR 664.0256
40 CFR 264.257	NR 655.10(1)	NR 664.0257
40 CFR 264.258	NR 655.11(2)(a), (b) & (d)	NR 664.0258
40 CFR 264.259	NR 655.12	NR 664.0259
40 CFR 264.270	NR 600.04(3)	NR 664.0270
40 CFR 264.271	None	None.
40 CFR 264.272	None	None.
40 CFR 264.273	None	None.
40 CFR 264.276	None	None.
40 CFR 264.278	None	None.
40 CFR 264.279	None	None.
40 CFR 264.280	None	None.
40 CFR 264.281	None	None.
40 CFR 264.282	None	None.
40 CFR 264.283	None	None.
40 CFR 264.300	NR 660.02	NR 664.0300
40 CFR 264.301	NR 660.18(11)(a)–(d), (12), (16) & (29) & 680.04	NR 664.0301
40 CFR 264.302	NR 660.18(11)(f)	NR 664.0302
40 CFR 264.303	NR 660.18(13) & (31)(a) & (c)	NR 664.0303
40 CFR 264.304	NR 660.18(11)(g)–(i)	NR 664.0304
40 CFR 264.309	NR 660.18(14)	NR 664.0309
40 CFR 264.310	NR 660.20(1)(a)1., 660.21(1)(a) & 660.22(2)	NR 664.0310
40 CFR 264.312	NR 660.18(3)	NR 664.0312
40 CFR 264.313	NR 660.18(4)	NR 664.0313
40 CFR 264.314	NR 660.18(6)–(8) & (9)(b) & (d)	NR 664.0314
40 CFR 264.315	NR 660.18(9)(a)	NR 664.0315
40 CFR 264.316	NR 660.18(9)(c)	NR 664.0316
40 CFR 264.317	NR 660.25	NR 664.0317
40 CFR 264.340	NR 665.02	NR 664.0340
40 CFR 264.341	NR 665.09(14)	NR 664.0341
40 CFR 264.342	NR 665.08	NR 664.0342
40 CFR 264.343	NR 665.09(13)	NR 664.0343
40 CFR 264.344	NR 665.05(3)	NR 664.0344
40 CFR 264.345	NR 665.09(12), (14), (15) & (17)–(19)	NR 664.0345
40 CFR 264.347	NR 665.09(11)(a)–(f)	NR 664.0347
40 CFR 264.351	NR 665.10(1)	NR 664.0351
40 CFR 264.550	None	NR 664.0550
40 CFR 264.551	NR 600.03(49) & 636.40	NR 664.0551
40 CFR 264.552	None	NR 664.0552
40 CFR 264.553	NR 636.41	NR 664.0553
40 CFR 264.554	None	NR 664.0554
40 CFR 264.555	None	NR 664.0555
40 CFR 264.570	NR 656.02, 656.03, 656.04(3) & 656.07(1)	NR 664.0570
40 CFR 264.571	NR 656.07(2)	NR 664.0571
40 CFR 264.572	NR 656.07(3)	NR 664.0572
40 CFR 264.573	NR 656.07(4)	NR 664.0573
40 CFR 264.574	NR 656.07(5)	NR 664.0574
40 CFR 264.575	NR 656.08(1)(a), (b) & (c)1.–3.	NR 664.0575
40 CFR 264.600	NR 670.02	NR 664.0600
40 CFR 264.601	NR 670.08	NR 664.0601
40 CFR 264.602	NR 670.09	NR 664.0602
40 CFR 264.603	NR 670.10(2)	NR 664.0603
40 CFR 264.1030	NR 631.02	NR 664.1030
40 CFR 264.1031	NR 600.03(9), (30), (47), (63), (66), (84), (86), (90), (112), (113), (179), (209), (214), (222) & (230) & 631.03(1)–(15) & (18)–(25).	NR 664.1031
40 CFR 264.1032	NR 631.06(1)	NR 664.1032
40 CFR 264.1033	NR 631.06(2)	NR 664.1033
40 CFR 264.1034	NR 631.03(26) & 631.07	NR 664.1034
40 CFR 264.1035	NR 631.08	NR 664.1035
40 CFR 264.1036	NR 631.09	NR 664.1036
40 CFR 264.1050	NR 632.02	NR 664.1050
40 CFR 264.1051	NR 632.03	NR 664.1051

Federal provision	Former NR provision	Recodified NR provision
40 CFR 264.1052	NR 632.06(1)	NR 664.1052
40 CFR 264.1053	NR 632.06(2)	NR 664.1053
40 CFR 264.1054	NR 632.06(3)	NR 664.1054
40 CFR 264.1055	NR 632.06(4)	NR 664.1055
40 CFR 264.1056	NR 632.06(5)	NR 664.1056
40 CFR 264.1057	NR 632.06(6)	NR 664.1057
40 CFR 264.1058	NR 632.06(7)	NR 664.1058
40 CFR 264.1059	NR 632.06(8)	NR 664.1059
40 CFR 264.1060	NR 632.06(9)	NR 664.1060
40 CFR 264.1061	NR 632.07(1)	NR 664.1061
40 CFR 264.1062	NR 632.07(2)	NR 664.1062
40 CFR 264.1063	NR 631.03(26) & 632.08	NR 664.1063
40 CFR 264.1064	NR 632.09	NR 664.1064
40 CFR 264.1065	NR 632.10	NR 664.1065
40 CFR 264.1080	NR 633.02	NR 664.1080
40 CFR 264.1081	NR 631.03(14) & 633.03	NR 664.1081
40 CFR 264.1082	NR 633.05	NR 664.1082
40 CFR 264.1083	NR 633.06	NR 664.1083
40 CFR 264.1084	NR 633.07	NR 664.1084
40 CFR 264.1085	NR 633.08	NR 664.1085
40 CFR 264.1086	NR 633.09	NR 664.1086
40 CFR 264.1087	NR 633.10	NR 664.1087
40 CFR 264.1088	NR 633.11	NR 664.1088
40 CFR 264.1089	NR 633.12	NR 664.1089
40 CFR 264.1090	NR 633.13	NR 664.1090
40 CFR 264.1100	NR 655.02 & 655.05(2) (intro.), (a), (g)(intro.) & 1, (k) & (L)	NR 664.1100
40 CFR 264.1101	NR 655.05(2)(j) & (L) & 655.07(5) & (6)	NR 664.1101
40 CFR 264.1102	NR 655.11(2)(a)–(c)	NR 664.1102
40 CFR 264.1200	None	NR 664.1200
40 CFR 264.1201	None	NR 664.1201
40 CFR 264.1202	None	NR 664.1202
40 CFR 264 Appendix I	None	NR 664 Appendix I
40 CFR 264 Appendix IV	None	NR 664 Appendix IV
40 CFR 264 Appendix V	None	NR 664 Appendix V
40 CFR 264 Appendix VI	None	None. See NR 664.0018, 1st Note.
40 CFR 264 Appendix IX	NR 635 Appendix I	NR 664 Appendix IX
40 CFR 265.1	NR 635.04(1), 645.04(1)–(5), 656.04(2) & 680.22	NR 665.0001
40 CFR 265.4	§ 291.85, Stats.	NR 665.0004
40 CFR 265.10	None	NR 665.0010
40 CFR 265.11	NR 630.11 & 680.22(3)	NR 665.0011
40 CFR 265.12	NR 630.10(1) & (2) & 680.22(4)	NR 665.0012
40 CFR 265.13	NR 630.12, 630.13(1) & 680.22(5) & (6)	NR 665.0013
40 CFR 265.14	NR 630.14 & 680.22(12)	NR 665.0014
40 CFR 265.15	NR 630.15 & 680.22(16)	NR 665.0015
40 CFR 265.16	NR 630.16 & 680.22(14)	NR 665.0016
40 CFR 265.17	NR 630.17(1) & (2) & 680.22(10)	NR 665.0017
40 CFR 265.18	NR 600.04(5), 630.18(2) & (3) & 680.22(2) & (11)	NR 665.0018
40 CFR 265.19	NR 655.07(7), 660.13(6)–(9), 660.16 & 680.22(24), (25) & (26)	NR 665.0019
40 CFR 265.30	None	NR 665.0030
40 CFR 265.31	NR 630.21(1) & 680.22(13)	NR 665.0031
40 CFR 265.32	NR 630.21(2) & 680.22(13)	NR 665.0032
40 CFR 265.33	NR 630.21(4) & 680.22(13)	NR 665.0033
40 CFR 265.34	NR 630.21(3) & 680.22(13)	NR 665.0034
40 CFR 265.35	NR 630.21(5) & 680.22(13)	NR 665.0035
40 CFR 265.37	NR 630.21(6) & 680.22(13)	NR 665.0037
40 CFR 265.50	None	NR 665.0050
40 CFR 265.51	NR 630.22(1)(a) & 680.22(13)	NR 665.0051
40 CFR 265.52	NR 630.22(1)(e) & (g) & 680.22(13)	NR 665.0052
40 CFR 265.53	NR 630.22(1)(b) & 680.22(13)	NR 665.0053
40 CFR 265.54	NR 630.22(1)(c) & 680.22(13)	NR 665.0054
40 CFR 265.55	NR 630.22(1)(d) & 680.22(13)	NR 665.0055
40 CFR 265.56	NR 630.22(2) & 680.22(13)	NR 665.0056
40 CFR 265.70	None	NR 665.0070
40 CFR 265.71	NR 630.30(4)–(5m) & (7) & 680.22(15)	NR 665.0071
40 CFR 265.72	NR 630.030(6) & 680.22(15)	NR 665.0072
40 CFR 265.73	NR 630.31(1)(a)–(i) & (k)–(o) & 680.22(15)	NR 665.0073
40 CFR 265.74	NR 630.31(2)–(4) & 680.22(15)	NR 665.0074
40 CFR 265.75	NR 630.40(1) & 680.22(15)	NR 665.0075
40 CFR 265.76	NR 630.40(2) & 680.22(15)	NR 665.0076
40 CFR 265.77	NR 630.40(3) & 680.22(15)	NR 665.0077
40 CFR 265.90	NR 635.02, 635.04(1)(a) & 635.05(1)(intro.), (a), (b) & (d) & (2) & 680.22(28).	NR 665.0090
40 CFR 265.91	NR 635.12(1), (3) & (8)(e)–(g) & 680.22(28)	NR 665.0091
40 CFR 265.92	NR 635.12(9) & (12)(intro.) & (a)–(c), 635.16(1)–(4) & 680.22(28)	NR 665.0092

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40 CFR 265.93	NR 635.16(5) & (7)–(16) & 680.22(28)	NR 665.0093
40 CFR 265.94	NR 635.16(6) & (17) & 680.22(28)	NR 665.0094
40 CFR 265.110	NR 680.22(18) & 685.06(1)	NR 665.0110
40 CFR 265.111	NR 680.22(17) & 685.05(1)(a)–(c)	NR 665.0111
40 CFR 265.112	NR 680.22(17) & 685.05(2)(intro.), (a)–(f) & (k) & (3)–(5)	NR 665.0112
40 CFR 265.113	NR 680.22(17) & 685.05(6) & (7)	NR 665.0113
40 CFR 265.114	NR 680.22(17) & 685.05(8)	NR 665.0114
40 CFR 265.115	NR 680.22(17) & 685.05(10)(a) & (b)	NR 665.0115
40 CFR 265.116	NR 680.22(17) & 685.05(10)(c)	NR 665.0116
40 CFR 265.117	NR 680.22(18) & 685.06(2)–(4)	NR 665.0117
40 CFR 265.118	NR 680.22(18) & 685.06(5)–(7)	NR 665.0118
40 CFR 265.119	NR 660.17, 680.22(18) & (27) & 685.06(8)	NR 665.0119
40 CFR 265.120	NR 680.22(18) & 685.06(9)	NR 665.0120
40 CFR 265.121	None	NR 665.0121
40 CFR 265.140	NR 680.22(19) & 685.07(1)(a) & (b)	NR 665.0140
40 CFR 265.141	None	NR 665.0141
40 CFR 265.142	NR 680.22(19) & 685.07(3)(a), (b)1. & 4. & (c)	NR 665.0142
40 CFR 265.143	NR 680.22(19) & 685.07(5)(a)–(d) & (f)–(i) & (9)(a)	NR 665.0143
40 CFR 265.144	NR 680.22(19) & 685.07(4)(a), (b)1. & 4. & (c)	NR 665.0144
40 CFR 265.145	NR 680.22(19) & 685.07(5)(b)–(i) & (9)(b)	NR 665.0145
40 CFR 265.146	None	NR 665.0146
40 CFR 265.147	NR 680.22(20) & 685.08(1)–(3), (4)(c), (6), (8), (9)(a) & (b), (10)(a)–(c), (11)(a)–(d) & (12)(a)–(d).	NR 665.0147
40 CFR 265.148	NR 680.22(19) & (20) & 685.07(10) & 685.08(13)	NR 665.0148
40 CFR 265.170	None	NR 665.0170
40 CFR 265.171	NR 640.09 & 680.22(23)	NR 665.0171
40 CFR 265.172	NR 640.10 & 680.22(23)	NR 665.0172
40 CFR 265.173	NR 640.11(2) & (3) & 680.22(23)	NR 665.0173
40 CFR 265.174	NR 640.12(1) & 680.22(21)	NR 665.0174
40 CFR 265.176	NR 640.14 & 680.22(23)	NR 665.0176
40 CFR 265.177	NR 640.15 & 680.22(21) & (23)	NR 665.0177
40 CFR 265.178	None	NR 665.0178
40 CFR 265.190	NR 645.02 & 645.09(1) & (2) & 680.22(22)	NR 665.0190
40 CFR 265.191	NR 645.07(1)–(4) & 680.22(22)	NR 665.0191
40 CFR 265.192	NR 645.08 & 680.22(22)	NR 665.0192
40 CFR 265.193	NR 645.09(3)–(10) & (11)(a), (b), (d) & (e), 680.22(22) & 680.24(6)	NR 665.0193
40 CFR 265.194	NR 645.10(1)–(3) & 680.22(30)	NR 665.0194
40 CFR 265.195	NR 645.11 & 680.22(22)	NR 665.0195
40 CFR 265.196	NR 645.12 & 680.22(22)	NR 665.0196
40 CFR 265.197	NR 645.17(1)(a) & 680.22(17)	NR 665.0197
40 CFR 265.198	NR 645.13 & 680.22(22)	NR 665.0198
40 CFR 265.199	NR 645.14 & 680.22(22)	NR 665.0199
40 CFR 265.200	NR 645.15 & 680.22(22)	NR 665.0200
40 CFR 265.201	NR 610.08(1)(p)	NR 662.194
40 CFR 265.202	NR 645.10(6) & 680.22(30)	NR 665.0202
40 CFR 265.220	None	NR 665.0220
40 CFR 265.221	NR 660.18(2)(b),(11)(a)–(d),(16) & (38) & 680.22(25) & (31)	NR 665.0221
40 CFR 265.222	NR 660.18(11)(f) & 680.22(25) & (31)	NR 665.0222
40 CFR 265.223	NR 660.18(22) & 680.22(25) & (31)	NR 665.0223
40 CFR 265.224	NR 660.18(11)(g)–(i) & 680.22(25) & (31)	NR 665.0224
40 CFR 265.225	NR 660.18(10) & 680.22(25) & (31)	NR 665.0225
40 CFR 265.226	NR 660.18(31)(c) & 680.22(25) & (31)	NR 665.0226
40 CFR 265.228	NR 660.20(1)(a)1. & (d), 660.21(1)(a) & (4), 660.22 & 660.24(14) & (15) & 680.22 (17), (18), (26), (27), & (31).	NR 665.0228
40 CFR 265.229	NR 660.18(3), 660.24(11)(a) & 680.22(25) & (31)	NR 665.0229
40 CFR 265.230	NR 660.18(4) & 680.22(25) & (31)	NR 665.0230
40 CFR 265.231	NR 660.18(40) & 680.22(25) & (31)	NR 665.0231
40 CFR 265.250	NR 655.02 & 680.22(24)	NR 665.0250
40 CFR 265.251	NR 655.07(5) & 680.22(24)	NR 665.0251
40 CFR 265.252	NR 655.10(2) & 680.22(24)	NR 665.0252
40 CFR 265.253	NR 655.07(4) & 680.22(24)	NR 665.0253
40 CFR 265.254	NR 655.07(2), 660.18(2)(b) & 680.22(24)	NR 665.0254
40 CFR 265.255	NR 655.07(2), 660.18(11)(f) & 680.22(24), (25) & (31)	NR 665.0255
40 CFR 265.256	NR 655.09 & 680.22(24)	NR 665.0256
40 CFR 265.257	NR 655.10(1) & 680.22(24)	NR 665.0257
40 CFR 265.258	NR 655.11(2)(a) & (b) & 680.22(24)	NR 665.0258
40 CFR 265.259	NR 655.07(2) & 660.18(11)(g)–(i) & 680.22(24), (25) & (31)	NR 665.0259
40 CFR 265.260	NR 655.08(3) & 680.22(24)	NR 665.0260
40 CFR 265.270	NR 600.04(3) & 680.22(2)	NR 665.0270
40 CFR 265.272	None	None.
40 CFR 265.273	None	None.
40 CFR 265.276	None	None.
40 CFR 265.278	None	None.
40 CFR 265.279	None	None.

Federal provision	Former NR provision	Recodified NR provision
40 CFR 265.280	None	None.
40 CFR 265.281	None	None.
40 CFR 265.282	None	None.
40 CFR 265.300	None	NR 665.0300
40 CFR 265.301	NR 660.18(2)(b), (11)(a)–(d), (12), (16) & (29) & 680.22(25) & (31)	NR 665.0301
40 CFR 265.302	NR 660.18(11)(f) & 680.22(25) & (31)	NR 665.0302
40 CFR 265.303	NR 660.18(11)(g)–(i) & 680.22(25) & (31)	NR 665.0303
40 CFR 265.304	NR 660.18(31)(c) & 680.22(25) & (31)	NR 665.0304
40 CFR 265.309	NR 660.18(14) & 680.22(25) & (31)	NR 665.0309
40 CFR 265.310	NR 660.20(1)(a)1., 660.21(1)(a) & 660.22(2)(a), (b) & (d)–(f) & 680.22(17), (18), (26) & (27).	NR 665.0310
40 CFR 265.312	NR 660.18(3) & 680.22(25) & (31)	NR 665.0312
40 CFR 265.313	NR 660.18(4) & 680.22(25) & (31)	NR 665.0313
40 CFR 265.314	NR 660.18(6)–(8) & (9)(b) & (d) & 680.22(25) & (31)	NR 665.0314
40 CFR 265.315	NR 660.18(9)(a) & 680.22(25) & (31)	NR 665.0315
40 CFR 265.316	NR 660.18(9)(c) & 680.22(25) & (31)	NR 665.0316
40 CFR 265.340	None	NR 665.0340
40 CFR 265.341	NR 665.09(16)(a)1., 3. & 4. & 680.22(29)	NR 665.0341
40 CFR 265.345	NR 665.09(5) & 680.22(29)	NR 665.0345
40 CFR 265.347	NR 665.09(11)(d) & 680.22(29)	NR 665.0347
40 CFR 265.351	NR 665.10(1) & 680.22(17)	NR 665.0351
40 CFR 265.352	NR 665.09(13)(b) & (16) & 680.22(29)	NR 665.0352
40 CFR 265.370	None	NR 665.0370
40 CFR 265.373	None	NR 665.0373
40 CFR 265.375	None	NR 665.0375
40 CFR 265.377	None	NR 665.0377
40 CFR 265.381	None	NR 665.0381
40 CFR 265.382	NR 630.20(1) & 680.22(7)	NR 665.0382
40 CFR 265.383	None	NR 665.0383
40 CFR 265.400	None	NR 665.0400
40 CFR 265.401	None	NR 665.0401
40 CFR 265.402	None	NR 665.0402
40 CFR 265.403	None	NR 665.0403
40 CFR 265.404	None	NR 665.0404
40 CFR 265.405	None	NR 665.0405
40 CFR 265.406	None	NR 665.0406
40 CFR 265.430	NR 600.04(1) & (2) & 680.22(2)	NR 665.0430
40 CFR 265.440	NR 656.02, 656.03, 656.04(3) & 656.07(1) & 680.22(33)	NR 665.0440
40 CFR 265.441	NR 656.07(2) & 680.22(33)	NR 665.0441
40 CFR 265.442	NR 656.07(3) & 680.22(33)	NR 665.0442
40 CFR 265.443	NR 656.07(4)(a)–(m) & (o) & 680.22(33)	NR 665.0443
40 CFR 265.444	NR 656.07(5) & 680.22(33)	NR 665.0444
40 CFR 265.445	NR 656.08(1)(a), (b) & (c)1.–3. & 680.22(33)	NR 665.0445
40 CFR 265.1030	NR 631.02(1) & (2) & 680.22(34)	NR 665.1030
40 CFR 265.1031	NR 631.03(1)–(15) & (18)–(25) & 680.22(34)	NR 665.1031
40 CFR 265.1032	NR 631.06(1) & 680.22(34)	NR 665.1032
40 CFR 265.1033	NR 631.06(2)(a)–(h) & (j)–(o) & 680.22(34)	NR 665.1033
40 CFR 265.1034	NR 631.03(26), 631.07 & 680.22(34)	NR 665.1034
40 CFR 265.1035	NR 631.08 & 680.22(34)	NR 665.1035
40 CFR 265.1050	NR 632.02(1), (2), (4) & (5) & 680.22(35)	NR 665.1050
40 CFR 265.1051	NR 632.03 & 680.22(35)	NR 665.1051
40 CFR 265.1052	NR 632.06(1) & 680.22(35)	NR 665.1052
40 CFR 265.1053	NR 632.06(2) & 680.22(35)	NR 665.1053
40 CFR 265.1054	NR 632.06(3) & 680.22(35)	NR 665.1054
40 CFR 265.1055	NR 632.06(4) & 680.22(35)	NR 665.1055
40 CFR 265.1056	NR 632.06(5) & 680.22(35)	NR 665.1056
40 CFR 265.1057	NR 632.06(6) & 680.22(35)	NR 665.1057
40 CFR 265.1058	NR 632.06(7) & 680.22(35)	NR 665.1058
40 CFR 265.1059	NR 632.06(8) & 680.22(35)	NR 665.1059
40 CFR 265.1060	NR 632.06(9) & 680.22(35)	NR 665.1060
40 CFR 265.1061	NR 632.07(1) & 680.22(35)	NR 665.1061
40 CFR 265.1062	NR 632.07(2) & 680.22(35)	NR 665.1062
40 CFR 265.1063	NR 631.03(26), 632.08 & 680.22(35)	NR 665.1063
40 CFR 265.1064	NR 632.09 & 680.22(35)	NR 665.1064
40 CFR 265.1080	NR 633.02 & 680.22(36)	NR 665.1080
40 CFR 265.1081	NR 631.03(14), 633.03 & 680.22(36)	NR 665.1081
40 CFR 265.1082	NR 633.04 & 680.22(36)	NR 665.1082
40 CFR 265.1083	NR 633.05 & 680.22(36)	NR 665.1083
40 CFR 265.1084	NR 633.06 & 680.22(36)	NR 665.1084
40 CFR 265.1085	NR 633.07 & 680.22(36)	NR 665.1085
40 CFR 265.1086	NR 633.08 & 680.22(36)	NR 665.1086
40 CFR 265.1087	NR 633.09 & 680.22(36)	NR 665.1087
40 CFR 265.1088	NR 633.10 & 680.22(36)	NR 665.1088
40 CFR 265.1089	NR 633.11 & 680.22(36)	NR 665.1089

Federal provision	Former NR provision	Recodified NR provision
40 CFR 265.1090	NR 633.12 & 680.22(36)	NR 665.1090
40 CFR 265.1100	NR 655.02 & 680.22(24)	NR 665.1100
40 CFR 265.1101	NR 655.07(5) & (6) & 680.22(24)	NR 665.1101
40 CFR 265.1102	NR 655.11(2)(a)–(c) & 680.22(17)	NR 665.1102
40 CFR 265.1200	None	NR 665.1200
40 CFR 265.1201	None	NR 665.1201
40 CFR 265.1202	None	NR 665.1202
40 CFR 265 Appendix I	None	NR 665 Appendix I
40 CFR 265 Appendix III	None	NR 665 Appendix III
40 CFR 265 Appendix IV	None	NR 665 Appendix IV
40 CFR 265 Appendix V	None	NR 665 Appendix V
40 CFR 265 Appendix VI	NR 633 Appendix I	NR 665 Appendix VI
40 CFR 266.20	None	NR 666.020
40 CFR 266.21	None	NR 666.021
40 CFR 266.22	None	NR 666.022
40 CFR 266.23	NR 600.04(4)	NR 666.023
40 CFR 266.70	None	NR 666.070
40 CFR 266.80	NR 610.04(1), 615.04(3), 620.04(2) & 625.12	NR 666.080
40 CFR 266.100	None	NR 666.100
40 CFR 266.101	None	NR 666.101
40 CFR 266.102	None	NR 666.102
40 CFR 266.103	None	NR 666.103
40 CFR 266.104	None	NR 666.104
40 CFR 266.105	None	NR 666.105
40 CFR 266.106	None	NR 666.106
40 CFR 266.107	None	NR 666.107
40 CFR 266.108	None	NR 666.108
40 CFR 266.109	None	NR 666.109
40 CFR 266.110	None	NR 666.110
40 CFR 266.111	None	NR 666.111
40 CFR 266.112	None	NR 666.112
40 CFR 266.200	None	NR 666.200
40 CFR 266.201	None	NR 666.201
40 CFR 266.202	None	NR 666.202
40 CFR 266.203	None	NR 666.203
40 CFR 266.204	None	NR 666.204
40 CFR 266.205	None	NR 666.205
40 CFR 266.206	None	NR 666.206
40 CFR 266.210	None	NR 666.210
40 CFR 266.220	None	NR 666.220
40 CFR 266.225	None	NR 666.225
40 CFR 266.230	None	NR 666.230
40 CFR 266.235	None	NR 666.235
40 CFR 266.240	None	NR 666.240
40 CFR 266.245	None	NR 666.245
40 CFR 266.250	None	NR 666.250
40 CFR 266.255	None	NR 666.255
40 CFR 266.260	None	NR 666.260
40 CFR 266.305	None	NR 666.305
40 CFR 266.310	None	NR 666.310
40 CFR 266.315	None	NR 666.315
40 CFR 266.320	None	NR 666.320
40 CFR 266.325	None	NR 666.325
40 CFR 266.330	None	NR 666.330
40 CFR 266.335	None	NR 666.335
40 CFR 266.340	None	NR 666.340
40 CFR 266.345	None	NR 666.345
40 CFR 266.350	None	NR 666.350
40 CFR 266.355	None	NR 666.355
40 CFR 266.360	None	NR 666.360
40 CFR 266 Appendix I	None	NR 666 Appendix I
40 CFR 266 Appendix II	None	NR 666 Appendix II
40 CFR 266 Appendix III	None	NR 666 Appendix III
40 CFR 266 Appendix IV	None	NR 666 Appendix IV
40 CFR 266 Appendix V	None	NR 666 Appendix V
40 CFR 266 Appendix VI	None	NR 666 Appendix VI
40 CFR 266 Appendix VII	None	NR 666 Appendix VII
40 CFR 266 Appendix VIII	None	NR 666 Appendix VIII
40 CFR 266 Appendix IX	None	NR 666 Appendix IX
40 CFR 266 Appendix XI	None	NR 666 Appendix XI
40 CFR 266 Appendix XII	None	NR 666 Appendix XII
40 CFR 266 Appendix XIII	NR 605 Appendix V	NR 666 Appendix XIII
40 CFR 268.1	NR 675.01, 675.02, 675.03(1m), 675.04(3) & (4) & 675.05(3)	NR 668.01
40 CFR 268.2	NR 600.03(177) & 675.03	NR 668.02

Federal provision	Former NR provision	Recodified NR provision
40 CFR 268.3	NR 675.06	NR 668.03
40 CFR 268.4	NR 675.04(1) & (5)	NR 668.04
40 CFR 268.5	NR 675.05(1)	NR 668.05
40 CFR 268.6	NR 675.05(2)	NR 668.06
40 CFR 268.7	NR 675.07	NR 668.07
40 CFR 268.9	NR 675.09	NR 668.09
40 CFR 268.14	None	NR 668.14
40 CFR 268.30	None	NR 668.30
40 CFR 268.31	NR 675.12	NR 668.31
40 CFR 268.32	None	NR 668.32
40 CFR 268.33	None	NR 668.33
40 CFR 268.34	None	NR 668.34
40 CFR 268.35	None	NR 668.35
40 CFR 268.36	None	NR 668.36
40 CFR 268.37	NR 675.18	NR 668.37
40 CFR 268.38	NR 675.19(1)	NR 668.38
40 CFR 268.39	NR 675.19(2)	NR 668.39
40 CFR 268.40	NR 675.20	NR 668.40
40 CFR 268.41	NR 675.21	NR 668.41
40 CFR 268.42	NR 675.22	NR 668.42
40 CFR 268.43	NR 675.23	NR 668.43
40 CFR 268.44	NR 675.24	NR 668.44
40 CFR 268.45	NR 675.25	NR 668.45
40 CFR 268.46	NR 675.26	NR 668.46
40 CFR 268.48	NR 675.28	NR 668.48
40 CFR 268.49	None	NR 668.49
40 CFR 268.50	NR 675.30	NR 668.50
40 CFR 268 Appendix III	NR 675 Appendix II	NR 668 Appendix III
40 CFR 268 Appendix IV	NR 675 Appendix III	NR 668 Appendix IV
40 CFR 268 Appendix VI	NR 675 Appendix V	NR 668 Appendix VI
40 CFR 268 Appendix VII	NR 675 Appendix VI	NR 668 Appendix VII
40 CFR 268 Appendix VIII	NR 675 Appendix VII	NR 668 Appendix VIII
40 CFR 268 Appendix IX	None	NR 668 Appendix IX
40 CFR 268 Appendix XI	NR 675 Appendix IX	NR 668 Appendix XI
40 CFR 270.1	NR 610.07(5), 610.08(5)(a) & (d), 615.05(6)(a) & (c), 620.14(intro.), 640.05, 640.06(1)(intro.), 645.05(1), 645.06(1)(intro.), 655.05(1), 655.06(intro.), 656.05, 656.06(intro.), 660.09(intro.), 660.12, 660.24(7) & (8)(intro.), 665.06(1)(intro.), 670.06(intro.), 680.01, 680.02, 680.24(2) & (4), 680.30, 680.31(1) & 680.43(6).	NR 670.001
40 CFR 270.2	NR 600.03(14), (32), (49), (54), (61), (62), (68), (69), (71), (76), (78), (81), (94), (95), (98), (103), (111), (120), (146), (164), (166), (167), (170), (182), (195), (200), (215), (233), (238), (240), (244), (261), (263) & (266) & 680.03(3m).	NR 660.10 & 670.002
40 CFR 270.4	NR 680.40	NR 670.004
40 CFR 270.5	None	NR 670.005
40 CFR 270.6	NR 600.10	NR 660.11
40 CFR 270.10	NR 680.06(3)(a), (4) & (5), 680.10, 680.21(3), 680.31(1) & (2) & 680.45(6)(intro.) & (b).	NR 670.010
40 CFR 270.11	NR 680.05(2) & 680.41	NR 670.011
40 CFR 270.12	NR 600.06	NR 670.012
40 CFR 270.13	None	NR 670.013
40 CFR 270.14	NR 632.11(1)(b)3., 640.06(1)(e), (2)(e)2. & (f) & (3)(d)4., 640.07(3)(a)10., 12. & 13., 645.06(1)(e), (2)(e)2. & (f) & (3)(e), 645.16(3)(a)11., 13. & 14., 660.09(9)–(12), 660.13(3)(a) & (b) & (4), 680.05(1)(c)1., 680.06(3)(a)–(L) & (n), (4) & (5)(a), 685.07(2)(b) & 685.08(5)(a) & (b).	NR 670.014
40 CFR 270.15	NR 640.06(2)(a)–(c) & (h) & 640.07(3)(a)7., 8. & 11	NR 670.015
40 CFR 270.16	NR 645.06(1)(i) & 645.16(3)(a)8.c.–e., 9. & 12	NR 670.016
40 CFR 270.17	NR 660.09(5), (7), (8) & (14), 660.13(1), (2) & (7) & 660.24(8) & (9).	NR 670.017
40 CFR 270.18	NR 655.06	NR 670.018
40 CFR 270.19	NR 665.06(1)(d)–(f)	NR 670.019
40 CFR 270.20	NR 600.04(3) & 680.22(2)	NR 664.0270 & 665.0270
40 CFR 270.21	NR 660.09(5), (7), (8) & (14) & 660.13(1), (2) & (7)	NR 670.021
40 CFR 270.22	None	NR 670.022
40 CFR 270.23	NR 670.06 & 670.07	NR 670.023
40 CFR 270.24	NR 632.11(2)	NR 670.024
40 CFR 270.25	NR 632.11(3)	NR 670.025
40 CFR 270.26	NR 656.06	NR 670.026
40 CFR 270.27	NR 632.11(4)	NR 670.027
40 CFR 270.28	None	NR 670.028
40 CFR 270.29	None	NR 670.029
40 CFR 270.30	NR 680.42(1)–(8), (10), (11)(a) & (c)–(f), (12)–(15) & (17)–(18m)	NR 670.030

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40 CFR 270.31	NR 680.42(11)(b)	NR 670.031
40 CFR 270.32	NR 680.42(19)	NR 670.032
40 CFR 270.33	None	NR 670.033
40 CFR 270.40	NR 680.44	NR 670.040
40 CFR 270.41	NR 680.07(2)(b), (d), (e) & (g) & (3)(a)	NR 670.041
40 CFR 270.42	NR 680.07(1), (2)(intro.), (3)(intro.), (5), (6)(d) & (e) & (7) & 680 Appendix I.	NR 670.042 & 670 Appendix I
40 CFR 270.43	NR 680.43(1) & (2)	NR 670.043
40 CFR 270.50	NR 680.45(6) & (8)	NR 670.050
40 CFR 270.51	NR 680.45(7)	NR 670.051
40 CFR 270.60	None	NR 670.001(3)(b)9
40 CFR 270.61	NR 600.09	NR 670.061
40 CFR 270.62	NR 665.06(1)(d) & (2)–(4) & 665.07(1)–(3)	NR 670.062
40 CFR 270.63	NR 600.04(3) & 680.22(2)	NR 664.0270 & 665.0270
40 CFR 270.64	NR 600.04(1) & (2) & 680.22(2)	NR 665.0430
40 CFR 270.65	NR 680.51	NR 670.065
40 CFR 270.66	None	NR 670.066
40 CFR 270.68	None	NR 670.068
40 CFR 270.70	NR 680.20(1) & (3), 680.21(1)(a), 680.22(3) & 680.24(1) & (2)	NR 670.070
40 CFR 270.71	NR 680.23	NR 670.071
40 CFR 270.72	NR 680.03(4) & 680.07(3)(e) & (4)	NR 670.072
40 CFR 270.73	NR 680.43(3) & (4)	NR 670.073
40 CFR 270.79	None	None.
40 CFR 270.80	NR 680.50(intro.)	NR 670.079(1)
40 CFR 270.85	None	None.
40 CFR 270.90	None	None.
40 CFR 270.95	None	None.
40 CFR 270.100	None	None.
40 CFR 270.105	None	None.
40 CFR 270.110	NR 680.50(2)	NR 670.079(3)
40 CFR 270.115	None	None.
40 CFR 270.120	NR 680.50(2)(intro.)	NR 670.079(1)
40 CFR 270.125	None	None.
40 CFR 270.130	NR 680.50(3)	NR 670.079(4)
40 CFR 270.135	NR 680.50(1)(e)	NR 670.079(2)(e)
40 CFR 270.140	None	None.
40 CFR 270.145	None	NR 670.079(3)
40 CFR 270.150	NR 680.50(4)	NR 670.079(4)
40 CFR 270.155	None	None.
40 CFR 270.160	None	None.
40 CFR 270.165	None	None.
40 CFR 270.170	NR 680.50(1)(c)	NR 670.079(2)(c)
40 CFR 270.175	None	None.
40 CFR 270.180	NR 680.50(1)(d)	NR 670.079(2)(d)
40 CFR 270.185	None	None.
40 CFR 270.190	None	None.
40 CFR 270.195	NR 680.50(1)(b)	NR 670.079(2)(b)
40 CFR 270.200	NR 680.50(1)(c)	NR 670.079(2)(c)
40 CFR 270.205	None	None.
40 CFR 270.210	None	None.
40 CFR 270.215	None	None.
40 CFR 270.220	None	None.
40 CFR 270.225	None	None.
40 CFR 270.230	None	None.
40 CFR 270.235	None	NR 670.235
40 CFR 124.1	None	NR 670.401
40 CFR 124.3	NR 640.06(4)(a), 640.07(3)(b), 645.06(4)(a), 645.16(3)(b), 660.10, 660.14, 660.15, 665.06(5) & 680.06(9)(a).	NR 670.403
40 CFR 124.4	None	NR 670.404
40 CFR 124.5	NR 680.07(6)(a) & (f)	NR 670.405
40 CFR 124.6	None	NR 670.406
40 CFR 124.8	NR 680.06(10)(b), (11)(b) & (12)(b) & 680.07(6)(c)	NR 670.408
40 CFR 124.9	NR 680.06(10)(e), (11)(i) & (12)(e) & 680.07(6)(f)	NR 670.409
40 CFR 124.10	NR 680.06(10)(a), (11)(a) & (12)(a) & 680.07(6)(b)	NR 670.410
40 CFR 124.11	NR 680.06(10)(c)3., (11)(c) & (12)(c)3. & 680.07(6)(d)3	NR 670.411
40 CFR 124.12	NR 680.06(10)(c), (11)(f) & (12)(c) & 680.07(6)(d)	NR 670.412
40 CFR 124.15	NR 640.06(4)(b), 645.06(4)(b), 660.11 & 665.06(6)	NR 670.415
40 CFR 124.17	NR 680.06(10)(d), (11)(h) & (12)(d) & 680.07(6)(e)	NR 670.417
40 CFR 124.31	NR 680.06(1m)	NR 670.431
40 CFR 124.32	NR 680.06(8m)	NR 670.432
40 CFR 124.33	NR 680.06(15)	NR 670.433
40 CFR 273.1	NR 690.04	NR 673.01
40 CFR 273.2	NR 690.05	NR 673.02
40 CFR 273.3	NR 690.06	NR 673.03

Federal provision	Former NR provision	Recodified NR provision
40 CFR 273.4	NR 690.07	NR 673.04
40 CFR 273.5	None	NR 673.05
40 CFR 273.8	NR 690.08	NR 673.08
40 CFR 273.9	NR 690.03	NR 673.09
40 CFR 273.10	NR 690.10	NR 673.10
40 CFR 273.11	NR 690.11	NR 673.11
40 CFR 273.12	NR 690.12(2)	NR 673.12
40 CFR 273.13	NR 690.13	NR 673.13
40 CFR 273.14	NR 690.14	NR 673.14
40 CFR 273.15	NR 690.15	NR 673.15
40 CFR 273.16	NR 690.16	NR 673.16
40 CFR 273.17	NR 690.17	NR 673.17
40 CFR 273.18	NR 690.18	NR 673.18
40 CFR 273.19	NR 690.19	NR 673.19
40 CFR 273.20	NR 690.20	NR 673.20
40 CFR 273.30	NR 690.30	NR 673.30
40 CFR 273.31	NR 690.31	NR 673.31
40 CFR 273.32	NR 690.12(1) & 690.32	NR 673.32
40 CFR 273.33	NR 690.33	NR 673.33
40 CFR 273.34	NR 690.34	NR 673.34
40 CFR 273.35	NR 690.35	NR 673.35
40 CFR 273.36	NR 690.36	NR 673.36
40 CFR 273.37	NR 690.37	NR 673.37
40 CFR 273.38	NR 690.38	NR 673.38
40 CFR 273.39	NR 690.39	NR 673.39
40 CFR 273.40	NR 690.40	NR 673.40
40 CFR 273.50	NR 690.50	NR 673.50
40 CFR 273.51	NR 690.51	NR 673.51
40 CFR 273.52	NR 690.52	NR 673.52
40 CFR 273.53	NR 690.53	NR 673.53
40 CFR 273.54	NR 690.54	NR 673.54
40 CFR 273.55	NR 690.55	NR 673.55
40 CFR 273.56	NR 690.56	NR 673.56
40 CFR 273.60	NR 690.60	NR 673.60
40 CFR 273.61	NR 690.61	NR 673.61
40 CFR 273.62	NR 690.62	NR 673.62
40 CFR 273.70	NR 690.70	NR 673.70
40 CFR 273.80	NR 690.80	NR 673.80
40 CFR 273.81	NR 690.81	NR 673.81
40 CFR 279.1	NR 590.03	NR 679.01
40 CFR 279.10	NR 590.02(1), (4) & (5), 590.04(1)(a)–(d) & (2)(b)–(e), 590.05(2)(c), 590.10(2)–(4) & 590.11(1).	NR 679.10
40 CFR 279.11	NR 590.09(1)	NR 679.11
40 CFR 279.12	NR 590.05(1), (4) & (7)	NR 679.12
40 CFR 279.20	NR 590.02(7), 590.04(1)(a) & (d)–(f) & 590.12	NR 679.20
40 CFR 279.21	NR 590.04(2)(f)	NR 679.21
40 CFR 279.22	NR 590.13	NR 679.22
40 CFR 279.23	NR 590.14(1)	NR 679.23
40 CFR 279.24	NR 590.15	NR 679.24
40 CFR 279.30	NR 590.20(1)	NR 679.30
40 CFR 279.31	NR 590.20(1)	NR 679.31
40 CFR 279.32	NR 590.20(1)	NR 679.32
40 CFR 279.40	NR 590.30–590.33	NR 679.40
40 CFR 279.41	NR 590.34 & 590.50(4)	NR 679.41
40 CFR 279.42	NR 590.07	NR 679.42
40 CFR 279.43	NR 590.35	NR 679.43
40 CFR 279.44	NR 590.11	NR 679.44
40 CFR 279.45	NR 590.36	NR 679.45
40 CFR 279.46	NR 590.37	NR 679.46
40 CFR 279.47	NR 590.38	NR 679.47
40 CFR 279.50	NR 590.50(1) & (2) & 590.51	NR 679.50
40 CFR 279.51	NR 590.07	NR 679.51
40 CFR 279.52	NR 590.52	NR 679.52
40 CFR 279.53	NR 590.11(1)–(3)	NR 679.53
40 CFR 279.54	NR 590.53	NR 679.54
40 CFR 279.55	NR 590.54	NR 679.55
40 CFR 279.56	NR 590.55	NR 679.56
40 CFR 279.57	NR 590.56	NR 679.57
40 CFR 279.58	NR 590.57	NR 679.58
40 CFR 279.59	NR 590.58	NR 679.59
40 CFR 279.60	NR 590.70 & 590.71	NR 679.60
40 CFR 279.61	NR 590.72	NR 679.61
40 CFR 279.62	NR 590.07	NR 679.62
40 CFR 279.63	NR 590.11	NR 679.63

Federal provision	Former NR provision	Recodified NR provision
40 CFR 279.64	NR 590.73	NR 679.64
40 CFR 279.65	NR 590.74	NR 679.65
40 CFR 279.66	NR 590.75	NR 679.66
40 CFR 279.67	NR 590.76	NR 679.67
40 CFR 279.70	NR 590.80, 590.82 & 590.83	NR 679.70
40 CFR 279.71	NR 590.81	NR 679.71
40 CFR 279.72	NR 590.84	NR 679.72
40 CFR 279.73	NR 590.07	NR 679.73
40 CFR 279.74	NR 590.85	NR 679.74
40 CFR 279.75	NR 590.86	NR 679.75
40 CFR 279.80	None	NR 679.80
40 CFR 279.81	NR 590.04(2)(c) & 590.05(2)(a) & (b)	NR 679.81
40 CFR 279.82	NR 590.05(4)	NR 679.82

G. Where Are the Revised State Rules Different From the Federal Rules?

These practices are prohibited in Wisconsin: Underground Injection (40 CFR Part 144), and Land Treatment (40 CFR 270.20). Wisconsin also does not provide for Permit by Rule (40 CFR 270.60). Wisconsin does not allow automatic authorization under the permit modification regulations found in 40 CFR 270.42 (b)(6). The 10 year Remedial Action Plan, or RAP (40 CFR 270.79 *et seq.*) is replaced by a 5 year Remediation Variance (NR670.079).

These Wisconsin regulations are more stringent: 662.220(5)(c,d), 662.220(6)(c,d,f), and 670.030 (annual report required instead of a biennial report).

Wisconsin maintains different financial regulations that allow for additional equivalent financial mechanisms (664.0143), do not allow the net worth test for closure under Part 665, and maintain some more stringent insurance requirements under 664.0143(5)(h), 664.0147(1)(a)(3), and 665.0147(1)(a)(3).

The following Wisconsin regulations have no Federal counterpart: 666.081, 666.900 through 666.910, and 673.11. There are no Wisconsin provisions for 40 CFR 268.5, 268.44 (other than 268.44(h)), and 270.3 as these are Federal non-delegable provisions.

H. Who Handles Permits After the Authorization Takes Effect?

Wisconsin will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Wisconsin is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Wisconsin?

Wisconsin is not authorized to carry out its hazardous waste program in ''Indian Country,'' as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Wisconsin;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, this action has no effect on Indian Country. EPA will continue to implement and administer the RCRA program in Indian Country.

J. What Is Codification and Is EPA Codifying Wisconsin's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Wisconsin's rules, up to and including those revised June 7, 1991, as corrected August 19, 1991, have previously been codified through the incorporation-by-reference effective February 4, 1992 (57 FR 4162) . We reserve the amendment of 40 CFR part 272, subpart KK for the codification of Wisconsin's program changes until a later date.

K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (see Supplementary Information, Section A. Why Are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. Paperwork Reduction Act

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

3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

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

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.,* 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).

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

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to

this rule because it will not have tribal implications (*i.e.,* substantial direct effects on one or more Indian tribes, or 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.)

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

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

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

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 23, 2008.

Walter W. Kovalick,

Acting Regional Administrator, Region 5.

[FR Doc. E8–27855 Filed 11–21–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–1021]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before February 23, 2009.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1021, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a

rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Garland County, Arkansas, and Incorporated Areas				
Molly Creek	Weston Road	+410	+409	City of Hot Springs.
	Approximately 450 feet upstream of Albert Pike Road/US 270.	+541	+544	
Molly Creek Tributary 1	Stover Road (Formerly Marie St.)	+486	+484	City of Hot Springs.
	Molly Springs Road	+508	+506	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Hot Springs

Maps are available for inspection at Garland County Library, 1427 Malvern Ave., Hot Springs, AR 71901.

White County, Arkansas, and Incorporated Areas				
Deener Creek	Ella Street	None	+237	Unincorporated Areas of White County.
	Approximately 1994 feet upstream from Ella Street.	None	+240	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of White County

Maps are available for inspection at 119 West Arch Avenue, Searcy, AR 72143.

Barrow County, Georgia, and Incorporated Areas				
Apalachee River	Approximately 5,345 feet upstream of Loganville Highway.	None	+820	Unincorporated Areas of Barrow County, City of Auburn.
	Approximately 1,140 feet upstream of CSX Railroad	None	+905	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Cedar Creek	Approximately 1,220 feet downstream of Miles Patrick Road.	None	+820	Unincorporated Areas of Barrow County, City of Winder.
	Approximately 470 feet downstream of Miles Patrick Road.	None	+822	
Tributary No. 1	At the confluence with Cedar Creek	None	+822	Unincorporated Areas of Barrow County, City of Winder.
	Approximately 50 feet downstream of Sims Road	None	+840	
Winder Reservoir	Entire Shoreline	None	+850	Unincorporated Areas of Barrow County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Auburn

Maps are available for inspection at City Hall, 1369 Fourth Avenue, Auburn, GA 30011.

City of Winder

Maps are available for inspection at Inspections Department, 23 North Jackson Street, Winder, GA 30680.

Unincorporated Areas of Barrow County

Maps are available for inspection at Annex Building, 223 East Broad Street, Winder, GA 30680.

Franklin County, Illinois, and Incorporated Areas

Big Ditch Tributary	From approximately 2,630 feet upstream of the confluence with Middle Fork Big Muddy River.	None	+382	Unincorporated Areas of Franklin County, City of West Frankfort.
	To approximately 790 feet downstream of County Highway 37/Logan Street.	None	+388	
Ewing Creek	From approximately 5,000 feet upstream of the confluence with Middle Fork Big Muddy River.	None	+385	Unincorporated Areas of Franklin County, City of West Frankfort.
	To approximately 2,500 feet upstream of County Highway 5/Deering Road.	None	+393	
Pond Creek	From Interstate 57	None	+394	Unincorporated Areas of Franklin County, City of West Frankfort.
	To approximately 2,250 feet upstream of Old Johnston City Road.	None	+398	
Rend Lake	From the Rend Lake Dam	None	+415	Unincorporated Areas of Franklin County.
	To approximately 5,650 feet west of the intersection of North County Line Road and Conservation Lane.	None	+415	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of West Frankfort

Maps are available for inspection at West Frankfort City Hall, 110 N. Jefferson Street, West Frankfort, IL 62896.

Unincorporated Areas of Franklin County

Maps are available for inspection at Franklin County Highway Department, 13034 Oddfellow Lane, Benton, IL 62812.

Lyon County, Kentucky, and Incorporated Areas

Cumberland River (Lake Barkley).	At Barkley Dam	None	+375	Unincorporated Areas of Lyon County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tennessee River (Kentucky Lake).	At confluence with Hurricane Creek (Southern county boundary).	None	+375	Unincorporated Areas of Lyon County.
	Approximately 500 feet downstream Barkley Canal	None	+375	
	Approximately 3200 feet upstream Duncan Creek	None	+375	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Lyon County
Maps are available for inspection at 500A W. Dale Ave., Eddyville, KY 42038.

Menifee County, Kentucky, and Incorporated Areas

Licking River (Cave Run Lake).	At confluence with Buck Creek	None	+765	City of Frenchburg.
	At confluence with North Fork Licking River	None	+765	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Frenchburg
Maps are available for inspection at 157 Old Campus Road, Frenchburg, KY 40322.

Curry County, New Mexico, and Incorporated Areas

Northeast Drain	Approximately 645 feet upstream from Schepps Blvd	+4222	+4225	City of Clovis.
	Approximately from the intersection of Merlene Blvd ..	+4234	+4236	
Northeast Drain	Approximately 5,276 feet downstream from Humphry Road.	None	+4216	Unincorporated Areas of Curry County.
	At the confluence of West Second Street Drain	None	+4217	
Thomas Ditch 1	At the intersection of Brady Avenue	None	+4262	Unincorporated Areas of Curry County.
	At the intersection of the Burlington Northern Santa Fe Railroad.	None	+4280	
West Second Street Drain	At the confluence of Northeast Drain	None	+4217	Unincorporated Areas of Curry County.
	Approximately 268 feet upstream from Norris Road ...	None	+4232	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Clovis
Maps are available for inspection at 321 Connelly, Clovis, NM 88101.

Unincorporated Areas of Curry County
Maps are available for inspection at 321 Connelly, Clovis, NM 88102.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Dona Ana County, New Mexico, and Incorporated Areas				
Baylor Canyon Arroyo	At the upstream face of U.S. Highway 70 Bridge	None	+4604	Unincorporated Areas of Dona Ana County.
	Approximately 3,375 feet upstream of confluence with Baylor Canyon Arroyo Tributary 1.	None	+4797	
Baylor Canyon Arroyo Tributary 1.	At confluence with Baylor Canyon Arroyo	None	+4713	Unincorporated Areas of Dona Ana County.
	Approximately 3,800 feet above confluence with Baylor Canyon Arroyo.	None	+4823	
Baylor Canyon Arroyo Tributary 2.	At confluence with Baylor Canyon Arroyo	None	+4668	Unincorporated Areas of Dona Ana County.
	Approximately 6,850 feet upstream of confluence with Baylor Canyon Arroyo.	None	+4806	
Flow Path 1	At upstream face of Sand Hill Dam (Chandler Tank)	None	+4317	City of Las Cruces.
	At intersection of Main St. and Sand Hill Arroyo (Flowpath 1).	None	+4462	
Flow Path 12	At Interstate 10 Southbound frontage road (Las Alturas).	+3965	+3966	Unincorporated Areas of Dona Ana County, City of Las Cruces.
	Approximately 7,470 feet upstream of Tellbrook Road	None	+4189	
Flow Path 3	Approximately 4932 feet downstream from the confluence of North Tributary 2 and Flow Path 3.	+4186	+4188	City of Las Cruces.
	Approximately 200 feet downstream from the Alameda Dam.	None	+4252	
North Branch Gardner Arroyo	Approximately 675 feet upstream of intersection of McNutt Road and Alvarez Road.	None	+3781	Unincorporated Areas of Dona Ana County.
	Approximately 3,875 feet upstream of intersection of McNutt Road and Alvarez Road.	None	+3835	
North Vado Arroyo	At confluence with Unnamed Drainage	None	+3826	Unincorporated Areas of Dona Ana County.
	At downstream face of Interstate 10 Bridge	None	+3900	
South Branch of Gardner Arroyo.	Approximately 580 feet upstream of McNutt Road and Alvarez Road.	None	+3784	Unincorporated Areas of Dona Ana County.
	Approximately 5,190 feet upstream of intersection of McNutt Road and Alvarez Road.	None	+3831	
South Vado Arroyo	At confluence with Unnamed Drainage	None	+3822	Unincorporated Areas of Dona Ana County.
	At downstream face of Interstate 10 Bridge	None	+3871	
Stream Bilbo	At Bilbo Pond Spillway at Mesilla Hills Road	None	+3895	Unincorporated Areas of Dona Ana County, Town of Mesilla.
	At Lake Maureen Spillway	None	+4144	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Las Cruces

Maps are available for inspection at 200 North Church St., Las Cruces, NM 88001.

Town of Mesilla

Maps are available for inspection at Calle de Parian, P.O. Box 10, Mesilla, NM 88046.

Unincorporated Areas of Dona Ana County

Maps are available for inspection at 251 West Amador, Room 100B, Las Cruces, NM 88001.

Carter County, Oklahoma, and Incorporated Areas				
Hickory Creek	Approximately 3528 feet downstream of the confluence of Hickory Creek Tributary A and Hickory Creek.	None	+792	Unincorporated Areas of Carter County.
	Approximately at the crosspoint of Breezewood Road and Hickory Creek.	None	+795	
Sand Creek Tributary B	Approximately 3045 feet downstream from the Carter 1 Dam.	None	+791	Unincorporated Areas of Carter County.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Wolf Creek	Approximately at the intersection of Sand Creek Tributary B and Refinery Road. Approximately 3410 feet upstream from the Carter 1 Dam.	None	+826	Unincorporated Areas of Carter County.
	Approximately 3315 feet upstream from the confluence of Wolf Creek and Cottonwood Creek.	None	+830	
	Approximately 1045 feet from the confluence of Wolf Creek Tributary 2 and Wolf Creek.	None	+852	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Carter County

Maps are available for inspection at 20 B Street, SW., #102, Ardmore, OK 73401.

Muskogee County, Oklahoma, and Incorporated Areas

Arkansas River	Approximately 1371 feet downstream of State Highway 104.	None	+553	Muskogee County.
	Approximately 1625 feet upstream of State Highway 104.	None	+554	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Muskogee County

Maps are available for inspection at Muskogee County Courthouse, 4517 Dennison Street, Muskogee, OK 74402.

Waupaca County, Wisconsin, and Incorporated Areas

Little Wolf River/Big Falls Pond.	0.33 mile downstream of bridge at County Highway G	+880	+879	Village of Big Falls, Unincorporated Areas of Waupaca County.
	1.1 miles upstream of bridge at County Highway G	+909	+910	
Waupaca River/Weyauwega Lake	2.65 miles upstream of confluence with Wolf River	+757	+756	City of Waupaca, City of Weyauwega, Unincorporated Areas of Waupaca County
	390 feet upstream of bridge at Anderson Road	None	+893	
Wolf River	Southern Waupaca County boundary	None	+753	Village of Fremont, Unincorporated Areas of Waupaca County.
	3.58 miles downstream of bridge at County Highway X.	+757	+756	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Waupaca

Maps are available for inspection at 111 South Main Street, Waupaca, WI 54981.

City of Weyauwega

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Maps are available for inspection at 109 East Main Street, Weyauwega, WI 54983.				
Unincorporated Areas of Waupaca County				
Maps are available for inspection at 811 Harding Street, Waupaca, WI 54981.				
Village of Big Falls				
Maps are available for inspection at 220 Main Street, Big Falls, WI 54926.				
Village of Fremont				
Maps are available for inspection at 317 Wolf River Drive, Fremont, WI 54940.				

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 14, 2008.

Michael K. Buckley,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–27811 Filed 11–21–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–2008–0057]

RIN 2132–AA99

Buy America Requirements; Bi-Metallic Composite Conducting Rail

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Following the two recent Buy America rulemakings pursuant to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), the Federal Transit Administration (FTA) received a petition for reconsideration of the treatment of bi-metallic composite conducting rail as a steel product that must be manufactured in the United States.

At present, FTA's Buy America regulation treats both running rail and contact rail as a steel or iron product which must be manufactured entirely in the United States. During the recent rulemakings, several commenters proposed that bi-metallic rail be instead categorized as ''traction power equipment.'' If adopted, the proposal would have changed the regulatory treatment of contact rail based on the rail's composition. As traction power equipment, bi-metallic rail would have been subject to a lower 60 percent domestic content requirement, in contrast to running rail made of steel and iron, which must contain 100 percent domestic content. In addition, as traction power equipment, bi-metallic rail would be subject only to ''final assembly'' in the United States, which may be a less rigorous process than the manufacturing process required for other forms of power rail, including steel and iron.

Because FTA believed adopting the proposal in the Final Rule would have altered the regulatory environment for affected parties who may have been unaware of the proposal, including manufacturers of steel and iron contact rail, without subjecting the issue to full notice-and-comment from all affected parties, FTA declined to adopt the proposal, instead deferring action to this separate rulemaking.

Through this Notice of Proposed Rulemaking (NRPM), FTA proposes to amend its Buy America regulations to re-categorize bi-metallic composite conducting rail as ''traction power equipment'' which need only consist of 60 percent domestic content, with final assembly taking place in the United States.

DATES: Comments must be submitted on or before January 23, 2009. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FTA–2008–0057] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and 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.
- *Fax:* 202–493–2251.

See **SUPPLEMENTARY INFORMATION** section for more information on submitting comments.

FOR FURTHER INFORMATION CONTACT: Richard Wong, Office of the Chief Counsel, Federal Transit Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–4011 or *Richard.Wong@dot.gov.*

SUPPLEMENTARY INFORMATION:

Instructions for submitting comments: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2008–0057) or the Regulatory Identification Number (RIN) for this rulemaking at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to *http://www.regulations.gov* including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://DocketsInfo.dot.gov.*

I. Background

On November 28, 2005, the Federal Transit Administration (FTA) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (70 FR 71246) that discussed several proposals mandated by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, August 10, 2005), and proposed to provide further clarification of existing FTA decisions on Buy America.

During the open comment period, several commenters recommended that aluminum composite conducting rail, otherwise known as Bimetallic Power Transmission (BPTS) equipment, which

is a combination of an aluminum conductor and a stainless steel abrasion-resistant cap, be added to the list of traction power equipment in 49 CFR 661.11(v) because of its power-delivery function as part of the traction power system. However, FTA's current regulation at 49 CFR 661.11(w) states that ''[t]he power or third rail is not considered traction power equipment and is thus subject to the requirements of 49 U.S.C. 5323(j) and the requirements of 49 CFR 661.5.'' In other words, any rail used to provide power must be produced in the United States, which includes all manufacturing processes except for metallurgical processes involving refinement of steel additives.

According to commenters supporting the proposal, BPTS is a ''new power transmission product developed to address the needs of modern traction power systems'' that offers a higher conductivity (2.5 times greater) combined with a lighter weight (three times lighter) when compared with steel. They stated that BPTS is part of an ''integrated electrical transmission system or an integrated equipment configuration rather than a third rail'' and that FTA needed to update its regulations to reflect changes in new technology.

In its September 20, 2007 Final Rule (72 FR 53688), FTA stated that it believed that the commenters' recommendations went beyond the scope of the rulemaking. The NPRM narrowly asked whether specific items should be added to the list of traction power equipment in section 661.11(v). The commenters' recommendation, if adopted, not only would have amended section 661.11(v) to include an item not proposed in the initial NPRM but also would have required a modification to the regulatory classification of rail in section 661.5 of the existing rule. Adopting these changes which were not proposed in the NPRM would not have provided other parties, specifically, firms manufacturing other types of power-conducting rail, to comment on the treatment of BPTS. Therefore, in the interest of fairness, FTA declined to make such a change in the 2007 Final Rule and instead is publishing this NPRM seeking public comment whether BPTS should continue to be covered as a manufactured product under section 661.5 or whether it should now be treated as traction power equipment under section 661.11(v).

Currently, all power or third rails, regardless of whether made primarily from aluminum, steel, iron, or some other material, are excluded from the definition of ''traction power equipment'' and instead are subject to 49 CFR 661.5 as a steel or iron product. If the rail is made of any percentage of steel or iron, the product must comply with 49 CFR 661.5(c); thus, it must be *manufactured* in the United States. Under this NPRM, FTA is proposing to adopt the petitioner's proposal that BPTS be treated as traction power equipment which need only consist of 60 percent domestic content, with *final assembly* taking place in the United States.

FTA seeks comments regarding this proposal—should BPTS be held to a lighter ''final assembly'' standard rather than the ''manufacturing'' standard? Should FTA maintain domestic origin requirements for both the steel and aluminum components of BPTS? How would the treatment of BPTS as traction power equipment affect domestic manufacturers of steel or iron conducting rail? Should all conducting rail be categorized as traction power equipment, without regard to composition? FTA asks that commenters offer any pertinent data or information in support of their views as to whether it is appropriate that BPTS be treated as traction power equipment rather than a manufactured rail product.

Regulatory Analyses and Notices

A. Statutory/Legal Authority

Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This NPRM is also nonsignificant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, Feb. 26, 1979). This NPRM imposes no new compliance costs on the regulated industry.

B. Executive Order 13132

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This NPRM does not include any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

C. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this NPRM does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and proposals to assess their impact on small businesses and other small entities to determine whether the rule or proposal will have a significant economic impact on a substantial number of small entities. This NPRM imposes no new costs. Therefore, FTA certifies that this proposal does not require further analysis under the Regulatory Flexibility Act. FTA requests public comment on whether the proposals contained in this NPRM have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act of 1995

This NPRM does not propose unfunded mandates under the Unfunded Mandates Reform Act of 1995. If the proposals are adopted into a final rule, it will not result in costs of $100 million or more (adjusted annually for inflation), in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

F. Paperwork Reduction Act

This NPRM proposes no new information collection requirements.

G. Regulation Identifier Number (RIN)

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

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this NPRM.

I. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

List of Subjects in 49 CFR Part 661

Grant programs—transportation, Public transportation, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, 49 CFR part 661 of the Code of Federal Regulations is proposed to be amended as follows:

PART 661—BUY AMERICA REQUIREMENTS

1. The authority citation for part 661 continues to read as follows:

Authority: 49 U.S.C. 5323(j) (formerly sec. 165, Pub. L. 97–424; as amended by sec.337, Pub. L. 100–17; sec.1048, Pub. L. 102–240; sec. 3020(b), Pub. L. 105–178; and sec. 3023(i) and (k), Pub. L. 109–59); 49 CFR 1.51.

2. Revise Appendix A to § 661.3 to read as follows:

§ 661.3 Definitions.

* * * * *

Appendix A to § 661.3—End Products

The following is a list of representative end products that are subject to the requirements of Buy America. This list is representative, not exhaustive.

(1) Rolling stock end products: All individual items identified as rolling stock in § 661.3 (*e.g.*, buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, as well as vehicles used for support services); train control, communication, and traction power equipment that meets the definition of end product at § 661.3 (*e.g.*, a communication or traction power system, including manufactured bimetallic power rail).

(2) Steel and iron end products: Items made primarily of steel or iron such as structures, bridges, and track work, including running rail, contact rail, and turnouts.

(3) Manufactured end products: Infrastructure projects not made primarily of steel or iron, including structures (terminals, depots, garages, and bus shelters), ties and ballast; contact rail not made primarily of steel or iron; fare collection equipment; computers; information, security, and data processing equipment; mobile lifts, hoists, and elevators.

3. Revise § 661.5, paragraph (c), to read as follows:

§ 661.5 General requirements.

* * * * *

(c) The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.

* * * * *

4. Amend § 661.11 by adding paragraph (v)(31) to read as follows:

§ 661.11 Rolling stock procurements.

* * * * *

(v) * * *

(31) Bimetallic power rail.

* * * * *

Issued in Washington, DC this 14th day of November 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–27820 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–57–P

Notices

Federal Register

Vol. 73, No. 227

Monday, November 24, 2008

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 18, 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.

Forest Service

Title: Qualified Products List for Foam Fire Suppressants.

OMB Control Number: 0596–0183.

Summary of Collection: The Forest Service (FS) objective is, ''To have available and utilize adequate types and quantities of qualified fire chemical products to accomplish fire management activities safely, efficiently, and effectively.'' To accomplish their objective, FS evaluates chemical products that may be used in direct wild land fire suppression operations prior to their use on lands managed by the FS. Safe products do not include ingredients that create an enhanced risk, in typical use, to either the firefighters involved or the public in general.

Need and Use of the Information: FS will collect the listing of individual ingredients and quantity of these ingredients in the formulation of a product being submitted for evaluation in order to test the products on the Formulation Disclosure Sheet FS–5100–35. The entity submitting the information provides the FS with the specific ingredients used in its product and identifies the specific source of supply for each ingredient. For Class A foam products the FS requires that a Technical Data Sheet FS–5100–36 be completed. The information collected here is specific mixing requirements. The information provided will allow the FS to search the List of Known and Suspected Carcinogens, as well as the Environment Protection Agency's List of Highly Hazardous Materials, to determine if any of the ingredients appear on any of these lists. Without the information FS would not be able to assess the safety of the wildland fire chemicals utilized on FS managed land, since the specific ingredients and the quantity of each ingredients used in a formulation would not be known.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 12.

Forest Service

Title: Qualified Products List for Long-Term Retardant Fire Suppressants.

OMB Control Number: 0596–0184.

Summary of Collection: The Forest Service (FS) objective is, ''To have available and utilize adequate types and quantities of qualified fire chemical products to accomplish fire management activities safely, efficiently, and effectively.'' To accomplish their objective, FS evaluates chemical products that may be used in direct wildland fire suppression operations prior to their use on lands managed by the FS. Safe products do not include ingredients that create an enhanced risk, in typical use, to either the firefighters involved or the public in general.

Need and Use of the Information: Using form FS–5100–37, FS will collect the listing of individual ingredients and quantity of these ingredients in the formulation of a product being submitted for evaluation in order to test the products. The entity submitting the information provides the FS with the specific ingredients used in its product and identifies the specific source of supply for each ingredient. For Long-term retardant products the FS requires that a Technical Data Sheet, FS–5100–38 and FS–5100–39 be completed. The information collected here is specific mixing requirements and hydration requirements of gum-thickened retardants. The information provided will allow the FS to search the List of Known and Suspected Carcinogens, as well as the Environment Protection Agency's List of Highly Hazardous Materials, to determine if any of the ingredients appear on any of these lists. Without the information FS would not be able to assess the safety of the wildland fire chemicals utilized on FS managed land, since the specific ingredients and the quantity of each ingredients used in a formulation would not be known.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2.

Frequency of Responses: Reporting: Other (once).

Total Burden Hours: 45.

Forest Service

Title: Extension of Timber Sales.

OMB Control Number: 0596–0212.

Summary of Collection: The Food Conservation, and Energy Act of 2008 (Pub. L. 110–246, 122 Stat. 1651) Section 8401, provides several different relief options for timber sale purchasers

holding contracts with rates significantly higher than current timber market rates due to a drastic reduction in forest products markets. The relief options include: (a) Contract cancellation or rate determination, (b) substitution of the Bureau of Labor statistics producer price index specified in the contract, (c) rate redetermination following substitution of index, (d) extension of contracts using the hardwood lumber index, and (e) extension of Market-Related Contract term Addition time limit for certain contracts.

Need and Use of the Information: To obtain the benefits of these options, National Forest System timber sale purchasers are required to provide information of the timber sale name, contract number, purchasers name, rationale for request (selection from list of established options), witness signatures, certification, signature and corporate seal. Forest Service will use forms including but not limited to FS–2400–70 and FS–2400–71 to collect the information.

Description of Respondents: Individuals or households.

Number of Respondents: 347.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 83.

Forest Service

Title: Subsistence Harvest Patterns in Prince William Sound.

OMB Control Number: 0596—New.

Summary of Collection: In 1989, Prince William Sound (PWS), the heart of the Chugach National Forest was severely impacted by the Exxon Valdez Oil Spill (EVOS). In the aftermath of the spill, federal and state trustees were awarded criminal and civil restitution funds to help with the recovery and the evaluation of the recovery that includes traditional practices of subsistence harvest, which is still listed as ''recovering.'' Subsistence harvest is an important part of the rural Alaskan lifestyle. The Alaska National Interest Lands Conservation Act requires that federal land managers consider the effects of management on subsistence activities. Recreation use is increasing in the Sound raising concern that increased competition and rapid growth in commercial and independent recreation may be negatively impacting subsistence activities through direct competition for resources from sport fishers and hunters, but also indirectly by displacing subsistence harvesters from traditional harvest areas. Residents from the four communities of PWS (Chenega, Cordova, Tatitlek and Whittier) who are subsistence eligible will be consulted through individual household interviews.

Need and Use of the Information: Respondents will describe harvest practices and any recent changes in such activities due to other users or changes in species availability. The results of this survey (funded by EVOS criminal restitution dollars) will provide information on recovery and restoration activities undertaken by both the EVOS trustees and local resource managers relative to current and projected levels of human use. The study provides an opportunity to assess the recovery of the subsistence human service injured and redistributed by the EVOS, as well as how the Chugach National Forest managers can further enhance recovery.

Description of Respondents: Individuals or households.

Number of Respondents: 530.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 196.

Forest Service

Title: Southern Appalachian Forest Management Survey.

OMB Control Number: 0596—New.

Summary of Collection: The Healthy Forest Restoration Act (Pub. L. 108–148) enabling legislation, Title IV (Insect Infestations and Related Diseases) authorizes the Secretary of Agriculture to perform accelerated information gathering regarding the development of treatment strategies to protect forests from damaging insects and diseases. This study will provide credible, science-based information to forest-health protection managers regarding the public acceptability of alternative treatments strategies for protecting hemlock forests on public forestland in the eastern United States from the exotic insect hemlock woolly adelgid (HWA). Using random digit dialing the Forest Service (FS) will collect the information from individuals (heads of households). Individuals agreeing to participate will receive a questionnaire in the mail along with additional information about the purpose of the study. The organization ''Friends of Great Smoky Mountain National Park'' has expressed an interest in the program and researchers will use identical phone-mail-phone protocols to obtain information from members.

Need and Use of the Information: The FS is seeking to determine the appropriate level of effort to take to protect hemlock forests on public land in the eastern United States from the HWA. The FS and university researchers will collect and analyze information regarding the value of the hemlock forests located on public land in the Southern Appalachian Mountains from residents living within 500 miles of Ashville, North Carolina. The data and analyses will provide guidance to public forest managers regarding the value of ecosystem services supplied by hemlock forests on the land that they manage and the level of public support for alternative hemlock forest-protection programs.

Description of Respondents: Individuals or households.

Number of Respondents: 1,200.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 541.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–27805 Filed 11–21–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0128]

Notice of Request for Extension of Approval of an Information Collection; Importation of Swine and Swine Products From the European Union

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of swine and swine products from the European Union.

DATES: We will consider all comments that we receive on or before January 23, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0128* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0128, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0128.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of swine and swine products from the European Union, contact Dr. James Davis, Senior Staff Veterinarian, National Center for Import and Export (Animals), VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737; (301) 734–0694; or Dr. Lynette McDuffie, Staff Veterinarian, National Center for Import and Export (Products), VS, APHIS, 4700 River Road, Unit 40, Riverdale, MD 20737; (301) 734–0689. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Swine and Swine Products From the European Union.

OMB Number: 0579–0265.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of animal diseases and pests. Regulations governing the importation of animals and animal products into the United States are contained in 9 CFR parts 92 through 98.

Regulations in parts 94 and 98 prohibit or restrict the importation of specified animals and animal products, including live swine, pork and pork products, and swine semen, into the United States to prevent the introduction into the U.S. livestock population of certain animal diseases, including classical swine fever (CSF).

Sections 94.24 and 98.38 contain regulations necessary to mitigate the risk of introducing CSF into the United States from a defined region of the European Union (''the APHIS-defined EU CSF region'') and require the use of information collection activities, including certificates issued by animal health authorities of the Member States of the APHIS-defined EU-CSF region stating that applicable provisions of the regulations to prevent the introduction of CSF into the United States via live swine, pork and pork products, and swine semen have been met.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. These comments will help us:

(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 our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Animal health authorities of the APHIS-defined EU CSF region.

Estimated annual number of respondents: 86.

Estimated annual number of responses per respondent: 9.5.

Estimated annual number of responses: 816.

Estimated total annual burden on respondents: 816 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 18th day of November 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–27850 Filed 11–21–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0115]

Notice of Request for Extension of Approval of an Information Collection; National Veterinary Accreditation Program; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; correction.

SUMMARY: We are correcting errors in our notice to request an extension of approval of an information collection for the national veterinary accreditation program. The notice was published in the **Federal Register** on November 5, 2008 (73 FR 65820–65821, Docket No. APHIS–2008–0115).

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Thomas, Management Analyst, Surveillance and Identification Programs, NCAHP, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737; (301) 734–5777.

SUPPLEMENTARY INFORMATION:

On November 5, 2008, we published in the **Federal Register** (73 FR 65820–65821, Docket No. APHIS–2008–0115) a notice announcing the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection for the national veterinary accreditation program. In the notice on page 65820, under the **ADDRESSES** section, the Web site to submit comments and the APHIS docket number were incorrect. This document corrects those errors.

Correction

In FR Doc. E8–26385, published on November 5, 2008, on page 65820, first column, in the **ADDRESSES** section, make the following corrections:

1. Under Federal eRulemaking Portal, correct ''*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0115*'' to read ''*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0115*''.

2. Under Postal Mail/Commercial Delivery, correct ''APHIS–2007–0115''

to read ''APHIS–2008–0115'' both times it occurs.

Done in Washington, DC, this 18th day of November 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–27849 Filed 11–21–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Forest Plan Amendment for the Palomar Gasline Transmission Project; Mt. Hood National Forest; OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a forest plan amendment.

SUMMARY: The USDA Forest Service, Mt. Hood National Forest is proposing to prepare a forest plan amendment for the proposed Palomar Gasline Transmission Project (PGT). The Federal Energy Regulatory Commission (FERC) is the lead agency for this proposed natural gas pipeline (Docket No. PFO7–13–000). The FERC is preparing an environmental impact statement (EIS) that will discuss the environmental impacts that could result from the construction and operation of a new underground natural gas pipeline proposed by the Palomar Gas Transmission, LLC. An initial Notice of Intent (NOT) to prepare an ETS for this Project was issued by the FERC on October 29, 2007.

The U.S. Department of Agriculture, Forest Service, is a Cooperating Agency with the FERC in the preparation of the ETS for this project. The initial Notice of Intent issued by the FERC identified the possible need to amend the Mt. Hood National Forest Land and Resource Management Plan (Mt. Hood Forest Plan) if the Palomar Project is approved and constructed. Through the pre-filing process the Forest Service has determined amendments to the Mt. Hood Forest Plan are needed for this project and will include the analysis in the FERC EIS.

DATES: Comments concerning the scope of the analysis for the forest plan amendment must be received by January 5, 2009. The draft environmental impact statement is expected April 2009 and the final environmental impact statement is expected October 2009.

ADDRESSES: Submit written comments to: Mike Redmond, Mt. Hood National Forest, 16400 Champion Way, Sandy, OR 97055. Electronic comments can be submitted to: *comments-pacificnorthwestmthood@fs.fed.us.*

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to appeal the subsequent decision.

FOR FURTHER INFORMATION CONTACT: Mike Redmond, Environmental Coordinator, Mt. Hood National Forest, 16400 Champion Way, Sandy, OR 97055 or by e-mailing *mredmond@fs.fed.us* or by calling (503) 668–1776.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The staff of the Federal Energy Regulatory Commission (FERC) is preparing an environmental impact statement (EIS) that will discuss the environmental impacts of the Palomar Gas Transmission Project (PGT) that could result from the construction and operation of a new underground natural gas pipeline. An initial Notice of Intent (NOl) for this Project was issued by the FERC on October 29, 2007.

The U.S. Department of Agriculture, Forest Service, is a Cooperating Agency with the FERC in the preparation of the EIS for this project. The initial Notice of Intent issued by the FERC identified the possible need to amend the Mt. Hood National Forest Land and Resource Management Plan (Mt. Hood Forest Plan) if the Palomar Project is approved and constructed. Through the pre-filing process the Forest Service has determined amendments to the Mt. Hood Forest Plan are needed for this project. Section 372 of the 2005 Energy Policy Act directed the Secretary of Energy in consultation with the Secretaries of Agriculture, Interior and Defense to coordinate all applicable Federal authorizations and environmental reviews relating to a proposed or existing utility facility, including an agreement to prepare a single environmental review document to be used as the basis for all Federal authorization decisions. Therefore the Forest Service will be including an analysis of a Forest Plan amendment in the FERC EIS for this project.

The FERC is the lead federal agency in the preparation of the EIS, and is preparing the EIS to satisfy the requirements of the National Environmental Policy Act (NEPA). NEPA requires the FERC to take into account the environmental impacts that could result from an action when it considers whether or not a natural gas pipeline should be approved. FERC will use the ElS to consider the environmental impacts that could result if it issues project authorizations to PGT under Sections 3 and 7 of the Natural Gas Act. The Commission will use the EIS in its decision-making processes to determine whether or not to authorize the Project. The Forest Service will use the EIS to evaluate the proposed amendments to the Mt. Hood Forest Plan and for any forest plan amendment decisions made subsequently if FERC authorizes this project.

Proposed Action

Proposed Amendment to the Mt. Hood Forest Plan

The Forest Service has identified that there are aspects of the proposed pipeline that would not be consistent with the Mt. Hood Forest Plan as amended by the Northwest Forest Plan. Specifically, the proposed project would not be consistent with Standards and Guidelines for; Late-Successional Reserves (LSRs) crossed by the proposed pipeline; for the Clackamas Wild and Scenic River (which prohibit construction of utility lines within any river segment); for Key Site Riparian Areas (where rights-of-way and easements are prohibited); for restricting the use of ground equipment for vegetation clearing on earth flow areas; for cumulative impacts for soil disturbance; and with Standards and Guidelines limiting disturbance in riparian areas. In addition, the Project may not be consistent with visual quality objectives (VQOs) for the following:

- Eligible Wild, Scenic, and Recreational River Corridors Sensitivity Level I trails with a VQO of Retention, Partial Retention, and Modification in the near foreground, far foreground, and middleground, respectively
- Sensitivity Level II trails with a VQO of Partial Retention, Modification, and Modification in the near foreground, far foreground, and middleground, respectively.
- Portions of the Forest with Retention and Partial Retention VQOs.
- Designated Viewsheds (listed on Table Four–23 of the Forest Plan).

The proposed amendment of the Mt. Hood Forest Plan would include land use designation adjustments to add acres to the LSRs in order to offset LSR

acres that would be impacted by the project. The amendment would also include modifications to the text of the Standard and Guidelines mentioned above to account for the construction of the pipeline.

Summary of the Proposed Pipeline Being Reviewed by the FERC

PGT has proposed constructing and operating a new natural gas pipeline and associated structures with a bi-directional flow capacity of 1.4 billion cubic feet per day. The project would be located in northwest Oregon and consist of a 211-mile-long, 36-inch diameter pipeline running from near Shaniko, Wasco County, Oregon to the Bradwood sendout pipeline in Clatsop County, Oregon. Approximately 47 miles of the pipeline would be located on the Mt. Hood National Forest (Forest). The pipeline would enter the Forest near MP 42 and follow a westward route across the Forest just north of the Warm Springs Indian Reservation for approximately 13.2 miles. Between MP 48 and MP 49.9 the route would be adjacent to State Highway 216. The proposed route would continue in a southwest direction for approximately 3 miles and then continue west across the Forest until approximately MP 89.2. The proposed route would cross Late Successional Reserves (LSR) between MP 77 and MP 78 and between MP 88 and MP 89, directly affecting approximately 27 acres of LSR. It would also cross through two un-mapped LSRs, directly affecting approximately 5 acres. The proposed route would directly affect approximately 709 acres of National Forest System land, approximately 106 acres of which would be old-growth forest. The proposed route would also cross the Clackamas River, a federally designated Wild and Scenic River.

Additional information on PGT's proposed facilities is contained in the initial Notice of Intent. Also information about the Project is available from the FERC Office of External Affairs at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number (PFO7–13–000) excluding the last three digits in the Docket. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as Orders, notices, and rule makings.

Finally, PGT has established a Web site for this project at *http://www.palomargas.com/project.html.* The Web site includes a project overview, timeline, safety and environmental information, and answers to frequently asked questions. You can also request additional information by e-mailing PGT directly at *info@palomargas.com* or writing to: Palomar Gas Transmission, 1400 SW Fifth Avenue, Suite 900, Portland, Oregon 97225.

Responsible Official

The Responsible Official for the proposed forest plan amendment is the Forest Supervisor of the Mt. Hood National Forest.

Nature of Decision To Be Made

The nature of the decision to be made is how the forest plan should be amended if the FERC approves the PGT project.

Scoping Process

With this NOI, the Forest Service is requesting public comments on the scope of the analysis concerning proposed amendments to the Mt. Hood Forest Plan that should be addressed in the ETS. Comments must be received by January 5, 2009. All comments received will be considered by the Forest Service in the preparation of a forest plan amendment.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. Your comments should focus on the potential changes in the goods and services that the Mt. Hood National Forest produces, reasonable alternatives, and measures to avoid or lessen any adverse changes in the goods and services produced by the Forest. The more specific your comments, the more useful they will be. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated November 14, 2008.

Gary L. Larsen,

Forest Supervisor, Mt. Hood National Forest.

[FR Doc. E8–27704 Filed 11–21–08; 8:45 am]

BILLING CODE 3410–11–M

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: Marine Debris Survey in the Coastal North Carolina Region.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 160.

Number of Respondents: 383.

Average Hours per Response: 25 minutes.

Needs and Uses: The National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service (NOS) Center for Coastal Fisheries and Habitat Research (CCFHR) has received funding from the NOAA Marine Debris Program to assess perceptions of marine debris (including derelict fishing gear) occurrence and distribution, environmental impacts, potential causes, and suggestions for reduction. The mandate supporting this research are the Marine Debris Research, Prevention, and Reduction Act of 2006 (33 U.S.C. 1951 *et seq.*), and the Coastal Zone Management Act of 1972 (16 U.S.C. 1455).

NOS CCFHR requests information from fishermen holding either a commercial fishing license or a license for recreational fishermen to use commercial fishing gear issued by the State of North Carolina. Upon receipt, this information will help determine the status of marine debris within Core and Back Sounds, North Carolina.

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

Frequency: One-time only.

Respondent's Obligation: Voluntary.

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 6625, 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 19, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–27856 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–921)

Lightweight Thermal Paper from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order

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

SUMMARY: Based on an affirmative final determination by the International Trade Commission (ITC) and an amended affirmative final determination by the Department of Commerce (the Department), the Department is issuing this countervailing duty order on lightweight thermal paper (LWTP) from the People's Republic of China (PRC). The Department is amending its final determination to correct certain ministerial errors as explained below.

EFFECTIVE DATE: November 24, 2008.

FOR FURTHER INFORMATION CONTACT: David Layton or Scott Holland at (202) 482–0371 and (202) 482–1279, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Background

On October 2, 2008, the Department published its final determination in the countervailing duty investigation of LWTP from the PRC. *See Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) and corresponding ''Issues and Decision Memorandum'' (*Final Determination*).

On November 17, 2008, the ITC notified the Department of its final determination pursuant to sections 705(d) and 705(b)(1)(A)(ii) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is threatened with material industry by reason of subsidized imports of subject merchandise from the PRC. *See* Letter from the ITC to the Secretary of Commerce, ''Notification of Final Affirmative Determination of Lightweight Thermal Paper from the People's Republic of China'' (Investigation Nos. 701–TA–451 and 731–TA–1126–1127 (Final) (November 17, 2008). Pursuant to section 706(a) of the Act, the Department is publishing a countervailing duty order on the subject merchandise.

Scope of the Order

The merchandise covered by this order includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m^2) (with a tolerance of ± 4.0 g/m^2) or less; irrespective of dimensions;[1] with or without a base coat[2] on one or both sides; with thermal active coating(s)[3] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;[4] and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point–of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to this order may be classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under subheadings 4811.90.8040, 4811.90.9090, 3703.10.60, 4811.59.20, 4820.10.20, and 4823.40.00.[5] Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[1] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.

[2] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[3] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[4] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

[5] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for ''other'' including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for ''other,'' including LWTP).

Amendment to the Final Determination

On October 14, 2008, the petitioner[6] filed timely allegations stating that the Department made four ministerial errors in its final determination. Respondent Guangdong Guanhao High–Tech Co., Ltd. (''GG'') and its affiliated input supplier, Zhanjiang Guanlong Paper Industrial Co., Ltd. (''ZG'') (collectively, ''the respondents'') responded to the petitioner's allegations on October 20, 2008, stating that the petitioner failed to document and explain how the issues it had raised constituted ministerial errors as defined by the regulation. The respondents did not address the specifics of petitioner's allegations.

After analyzing the comments received, we have determined, in accordance with 19 CFR 351.224(e), that we made three ministerial errors in our calculations performed for the final determination.[7]

In summary, the petitioner contended that, the Department made errors in calculating the benefit from GG's policy loans, including incorrectly calculating the number of days outstanding for certain short–term loans, applying an incorrect short–term benchmark to another loan and miscalculating the benchmark interest rate for certain long–term loans to ZG. The Department agrees with the petitioner that certain of these three errors constitute ministerial errors that warrant correction. We are correcting these errors with this notice. *See Ministerial Error Allegations Memo* at pages 3–5.

As a result of correcting these errors, the countervailing duty rate calculated for GG has changed from 13.17 percent to 13.63 percent. Because the other rates calculated in our final determination relied in part on GG's policy loan rate, we are also amending those rates. The countervailing duty calculated for Shenzhen Yuanming Industrial Development Co., Ltd. has changed from 137.25 percent to 138.53 percent, the countervailing duty calculated for MDCN Technology Co., Ltd. and Xiamen Anne Paper Co., Ltd. has changed from 123.65 percent to 124.93 percent, and the countervailing duty calculated for all–other exporters has changed from 13.17 percent to 13.63 percent. In accordance with 19 CFR 351.224(e), we are amending the final determination in the countervailing

[6] The petitioner in this case is Appleton Papers Inc. (''Petitioner'').

[7] *See generally* Memorandum to Susan Kuhbach, Director, Office 1, AD/CVD Operations from Nancy Decker, Program Manager, Office 1, ''Countervailing Duty Investigation: Lightweight Thermal Paper from the People's Republic of China: Ministerial Error Allegations'' (October 29, 2008) (''*Ministerial Error Allegations Memo*'').

duty investigation of LWTP from the PRC to reflect these changes.

Countervailing Duty Order

In accordance with section 706(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, countervailing duties equal to the amount of the net countervailable subsidy for all relevant entries of LWTP from the PRC.

According to section 706(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based upon the threat of material injury. Section 706(b)(1) of the Act states, ''If the Commission, in its final determination under section 705(b), finds material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(2), would have led to a finding of material injury, then entries of the merchandise subject to the countervailing duty order, the liquidation of which has been suspended under section 703(d)(2), shall be subject to the imposition of countervailing duties under section 701(a).'' In addition, section 706(b)(2) of the Act requires CBP to refund any cash deposits or bonds of estimated countervailing duties posted since the Department's preliminary countervailing duty determination, if the ITC's final determination is threat–based. Because the ITC's final determination in this case is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination was published in the **Federal Register**,[8] section 706(b)(2) of the Act is applicable.

Therefore, the Department will direct CBP to reinstitute suspension of liquidation,[9] and to assess, upon further instruction from the Department, countervailing duties on all unliquidated entries of LWTP from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register**.

Cash Deposit Requirements

Effective on the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP will require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the net subsidy rates listed below. *See* section 706(a)(3) of the Act. The all–others rate applies to all producers and exporters of subject merchandise not specifically listed.

Exporter/Manufacturer	Net Subsidy Rate
Guangdong Guanhao High–Tech Co., Ltd.	13.63
Shanghai Hanhong Paper Co., Ltd.	0.57 (*de minimis*)
Shenzhen Yuanming Industrial Development Co., Ltd.	138.53
MDCN Technology Co., Ltd.	124.93
Xiamen Anne Paper Co., Ltd.	124.93
All Others	13.63

Termination of the Suspension of Liquidation

The Department will also instruct CBP to terminate the suspension of liquidation for entries of LWTP from the PRC entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC's notice of final determination, and refund any cash deposits made and release any bonds posted between the publication of the Department's preliminary determination on March 14, 2008, and the publication of the ITC's final determination in the **Federal Register**.

This notice constitutes the countervailing duty order with respect to LWTP from the PRC, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the Main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of Act, 19 CFR 351.224(e), and 19 CFR 351.211(b).

Dated: November 19, 2008.

Steven J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E8–27978 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–DS–S

[8] *See Lightweight Thermal Paper from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 13850 (March 14, 2008) (*Preliminary Determination*).

[9] The Department instructed CBP to discontinue the suspension of liquidation on July 12, 2008, in accordance with section 703(a) of the Act. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840, A–570–920]

Antidumping Duty Orders: Lightweight Thermal Paper From Germany and the People's Republic of China

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

SUMMARY: Based on affirmative final determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC''), the Department is issuing antidumping duty orders on lightweight thermal paper (''LWTP'') from Germany and the People's Republic of China (''PRC'').

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson or George McMahon (Germany), or Frances Veith (PRC), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3797, (202) 482–1167, (202) 482–4295, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2008, the Department published the final determinations of sales at less than fair value of LWTP from Germany and the PRC. *See Lightweight Thermal Paper from Germany: Notice of Final Determination of Sales at Less Than Fair Value,* 73 FR 57326 (October 2, 2008); and *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).

On November 17, 2008, the ITC notified the Department of its final determination pursuant to section 735(d) of the Tariff Act of 1930, as amended (''the Act''), that an industry in the United States is threatened with material injury within the meaning of section 735(b)(1)(A)(ii) of the Act by reason of less-than-fair-value imports of LWTP from Germany and the PRC. *See* Letter from the ITC to the Secretary of Commerce regarding, ''Notification of Final Affirmative Threat Determination of Lightweight Thermal Paper from Germany and from the People's Republic of China,'' Investigation Nos. 701–TA–451 and 731–TA–1126–1127 (Final) (November 17, 2008). Pursuant to section 736(a) of the Act, the

Department is publishing antidumping duty orders on LWTP from Germany and the PRC.

Scope of the Orders

The merchandise covered by these orders includes certain lightweight thermal paper, which is thermal paper with a basis weight of 70 grams per square meter (g/m²) (with a tolerance of ±4.0 g/m²) or less; irrespective of dimensions;[1] with or without a base coat [2] on one or both sides; with thermal active coating(s)[3] on one or both sides that is a mixture of the dye and the developer that react and form an image when heat is applied; with or without a top coat;[4] and without an adhesive backing. Certain lightweight thermal paper is typically (but not exclusively) used in point-of-sale applications such as ATM receipts, credit card receipts, gas pump receipts, and retail store receipts. The merchandise subject to these orders may be classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under subheadings 3703.10.60, 4811.59.20, 4811.90.8040, 4811.90.9090, 4820.10.20, and 4823.40.00.[5] Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Antidumping Duty Orders

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further information from the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or the constructed export price) of the merchandise for all relevant entries of LWTP from Germany and the PRC.

Pursuant to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted without the imposition of suspension of liquidation of entries since the Department's preliminary determination.

Additionally, section 736(b)(2) of the Act requires CBP to refund any cash deposits or bonds of estimated antidumping duties posted since the preliminary antidumping determination if the ITC's final determination is threat-based.

Because the ITC's final determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the *Preliminary Determination and Postponement of Final Determination*[6] section 736(b)(2) of the Act is applicable. Therefore, the Department will instruct CBP to assess, upon further advice, antidumping duties on all appropriate entries of lightweight thermal paper from Germany and the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register**, in accordance with the following dumping margins:

LWTP from Germany:

Exporter/producer	Weighted-average margin (percent)
Papierfabrik August Koehler AG and Koehler America, Inc	6.50
All Others	6.50

LWTP from the PRC:

Exporter/producer combination	Weighted-average margin (percent)
Exporter: Shanghai Hanhong Paper Co., Ltd, also known as Hanhong International Limited Producer: Shanghai Hanhong Paper Co., Ltd.	115.29
Exporter: Guangdong Guanhao High-Tech Co., Ltd Producer: Guangdong Guanhao High-Tech Co., Ltd.	19.77
PRC-Wide Entity*	115.29

* Includes Anne Paper Co., Ltd. and Yalong Paper Product (Kunshan) Co., Ltd.

This notice constitutes the antidumping duty orders with respect to LWTP from Germany and the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 1117 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is issued and published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

[1] LWTP is typically produced in jumbo rolls that are slit to the specifications of the converting equipment and then converted into finished slit rolls. Both jumbo and converted rolls (as well as LWTP in any other form, presentation, or dimension) are covered by the scope of these orders.

[2] A base coat, when applied, is typically made of clay and/or latex and like materials and is intended to cover the rough surface of the paper substrate and to provide insulating value.

[3] A thermal active coating is typically made of sensitizer, dye, and co-reactant.

[4] A top coat, when applied, is typically made of polyvinyl acetone, polyvinyl alcohol, and/or like materials and is intended to provide environmental protection, an improved surface for press printing, and/or wear protection for the thermal print head.

[5] HTSUS subheading 4811.90.8000 was a classification used for LWTP until January 1, 2007. Effective that date, subheading 4811.90.8000 was replaced with 4811.90.8020 (for gift wrap, a non-subject product) and 4811.90.8040 (for ''other'' including LWTP). HTSUS subheading 4811.90.9000 was a classification for LWTP until July 1, 2005. Effective that date, subheading 4811.90.9000 was replaced with 4811.90.9010 (for tissue paper, a non-subject product) and 4811.90.9090 (for ''other,'' including LWTP).

[6] *See Lightweight Thermal Paper from Germany: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 27498 (May 13, 2008); and *Lightweight Thermal Paper From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 73 FR 27504 (May 13, 2008) (collectively, ''*Preliminary Determination and Postponement of Final Determination*'').

Dated: November 19, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E8–27977 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Public Law 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before December 15, 2008. Address written comments to Statutory Import Programs Staff, Room 2104, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m.and 5:30 p.m. at the U.S. Department of Commerce in Room 2104.

Docket Number: 08–057. *Applicant:* Louisiana State University, Department of Chemistry, 232 Choppin Hall, Baton Rouge, LA 70803. *Instrument:* Electron Microscope, Model FEI Quanta 3D FEG DualBeam. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument is intended to be used for large area cross-sectioning and analytical work, automated 3D tomography, nanolithography, and TEM specimen preparation. This type of work necessitates a high performance Dualbeam system with Environmental SEM capabilities. Application accepted by *Commissioner of Customs:* October 21, 2008.

Docket Number: 08–058. *Applicant:* University of New Mexico, Center for Micro-Engineered Materials, MSC01 1120 Farris Eng. CTR 203, 1 University of New Mexico, Albuquerque, NM 87131. *Instrument:* Electron Microscope, Model FEI Quanta 3D FEG Focused Ion Beam. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument is intended to be used to study nanoscale materials. Specifically, it will be used for the study of heterogeneous catalysts, heteraoepitaxial semiconductors, quantum dots, lasers, microfluidic devices, ion channels, free-standing thin films, biosensors and for the study of interplanetary materials and meteorites. *Application accepted by Commissioner of Customs:* October 21, 2008.

Dated: November 18, 2008.

Christopher Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E8–27888 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Puerto Rico, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 2104, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 08–048. *Applicant:* University of Puerto Rico, San Juan, PR 00931–3334. *Instrument:* Electron Microscope, Model JEM 2100–F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 73 FR 63434, October 24, 2008.

Docket Number: 08–049. *Applicant:* University of Puerto Rico, San Juan, PR 00931–3334. *Instrument:* Electron Microscope, Model JEM 2200–FS. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* See notice at 73 FR 63434, October 24, 2008.

Docket Number: 08–053. *Applicant:* Purdue University, West Lafayette, IN 47907. *Instrument:* Electron Microscope, Model Tecnai G2 F20 TEM. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* See notice at 73 FR 63434, October 24, 2008.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: November 18, 2008.

Christopher Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E8–27887 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–936]

Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of circular welded carbon quality steel line pipe (line pipe) from the People's Republic of China (the PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or John Conniff, AD/CVD Operations, Office 3, Operations, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4793 and (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

Background

This investigation covers 30 programs and the following producers/exporters: Huludao Seven-Star Steel Pipe Group Co., Ltd. (Huludao Seven Star Group), Huludao Steel Pipe Industrial Co. Ltd. (Huludao Steel Pipe), and Huludao Bohai Oil Pipe Industrial Co. Ltd. (Huludao Bohai Oil Pipe) (collectively, the Huludao Companies), and Liaoning Northern Steel Pipe Co., Ltd. (Northern Steel).

The petitioners in this investigation are United States Steel Corporation, Maverick Tube Corporation, Tex-Tube Company, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (collectively, the petitioners).

Period of Investigation

The period of investigation (the POI) for which we are measuring subsidies is

January 1, 2007, through December 31, 2007, which corresponds to the PRC's most recently completed fiscal year. *See* 19 CFR 351.204(b)(2).

Case History

The following events have occurred since the Department announced the preliminary determination on September 3, 2008. *See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 73 FR 52297 (September 9, 2008) (*Line Pipe Preliminary Determination*).

On September 17, 2008, we issued a supplemental questionnaire to the Government of the People's Republic of China (GOC) and the Huludao Companies. On September 24, 2008, the GOC and the Huludao Companies submitted responses to the Department supplemental questionnaire. No supplemental questionnaire was issued to Northern Steel.

On September 23, 2008, the Department determined not to investigate petitioners' uncreditworthy allegations as well as certain subsidy allegations involving Northern Steel. Memorandum to Melissa G. Skinner, Director, Office 3, Operations, from Eric B. Greynolds, Program Manager, Office 3, Operations, ''Status of New Subsidy and Uncreditworthy Allegations Filed By Petitioners,'' the Department determined that it did not have the resources or time to examine petitioners' uncreditworthy allegations.

Also, in September 2008, petitioners and the GOC made several new factual submissions consistent within the deadline for the submission of factual information established by 19 CFR 351.301(b)(1).

From October 7 through October 14, 2008, we conducted verification of the questionnaire responses submitted by the GOC, Huludao Seven Star Group, Huludao Steel Pipe, and Huludao Bohai Oil Pipe and Northern Steel (collectively, respondents). We issued the verification reports on October 23, 24, 27, and 28, 2008.[1]

On November 3, 2008, we received case briefs from petitioners, the GOC, and the Huludao Companies. Rebuttal briefs were submitted on November 10, 2008. On November 12, 2008, we held separate *ex parte* meetings with representatives of petitioners and the GOC. *See* the Department's November 12, 2008, memoranda to the file, which are public documents on file in room 1117 of the main Commerce building.

Scope of Investigation

The merchandise covered by this investigation is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (welded line pipe), not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term ''carbon quality steel'' includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for non alloy steels imposed in the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, the term ''carbon quality'' includes products in which (1) iron predominates by weight over each of the other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:

(i) 2.00 percent of manganese,
(ii) 2.25 percent of silicon,
(iii) 1.00 percent of copper,
(iv) 0.50 percent of aluminum,
(v) 1.25 percent of chromium,
(vi) 0.30 percent of cobalt,
(vii) 0.40 percent of lead,
(viii) 1.25 percent of nickel,
(ix) 0.30 percent of tungsten,
(x) 0.012 percent of boron,
(xi) 0.50 percent of molybdenum,
(xii) 0.15 percent of niobium,
(xiii) 0.41 percent of titanium,
(xiv) 0.15 percent of vanadium, or
(xv) 0.15 percent of zirconium.

Welded line pipe is normally produced to specifications published by the American Petroleum Institute (API) (or comparable foreign specifications) including API A–25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non-graded material. Nevertheless, all pipe meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple-stenciled pipe with an API welded line pipe stencil is covered by the scope of this investigation.

Excluded from this scope are pipes of a kind used for oil and gas pipelines that are multiple-stenciled to a standard and/or structural specification and have one or more of the following characteristics: Is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term ''painted'' does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The welded line pipe products that are the subject of these investigations are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (the ITC) is required to determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury, to a U.S. industry. On June 3, 2008, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC of the subject merchandise. *See Certain Circular Welded Carbon Quality Steel Line Pipe from China and Korea*, Investigation Nos. 701–TA–455 and 731–TA–1149–1150 (Preliminary), 73 FR 31712 (June 3, 2008).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Decision Memorandum. Attached to this notice as an Appendix is a list of the issues that parties raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn/*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation: the Huludao Companies and Northern Steel. Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not investigated, we will determine an all-others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of the subject

[1] The public version of the verification reports and all public reports are on file in the Central Records Unit, room 1117 in the main building of the Commerce Department.

merchandise to the United States. The all-others rate may not include zero and *de minimis* net subsidy rates, or any rates based solely on the facts available.

Notwithstanding the language of section 705(c)(1)(B)(i)(I) of the Act, we have not calculated the all-others rate by weight averaging the rates of the Huludao Companies and Northern Steel because doing so risks disclosure of proprietary information. Therefore, for the all-others rate, we have calculated a simple average of the two responding firms' rates.

Producer/exporter	Subsidy rate (percent ad valorem)
Liaoning Northern Steel Pipe Co., Ltd.	40.05
Huludao Seven-Star Steel Pipe Group Co., Ltd. (Huludao Seven Star Group), Huludao Steel Pipe Industrial Co. Ltd. (Huludao Steel Pipe), and Huludao Bohai Oil Pipe Industrial Co. Ltd. (Huludao Bohai Oil Pipe) (collectively, the Huludao Companies)	35.63
All Others	37.84

As a result of the *Line Pipe Preliminary Determination* and pursuant to section 703(d) of the Act, we instructed the U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of line pipe from the PRC which were entered or withdrawn from warehouse, for consumption on or after September 9, 2008, the date of the publication of the *Line Pipe Preliminary Determination* in the **Federal Register**.

We will issue a CVD order under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: November 17, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix—Issues and Decision Memorandum

List of Comments and Issues in the Decision Memorandum

Comment 1: Whether the Department Should Reject the Ownership Data Supplied by the GOC for Use in the Provision of Hot-Rolled Steel (HRS) for Less Than Adequate Remuneration (LTAR) Program and Resort to the Use of Adverse Facts Available (AFA).

Comment 2: Whether the Huludao Companies Submitted Sufficient Information to Establish the Identity and Ownership of Producers that Sold HRS to the Huludao Companies through Trading Companies.

Comment 3: Whether the Five Factor Test Should Be Used To Asses Which Producers of HRS Are State-Owned.

Comment 4: Whether the Sale of HRS from Privately-Held Trading Companies Constitutes a Financial Contribution Under the Act.

Comment 5: Whether the Use of an In-Country Benchmark is Permissible When Calculating Benefits Under the Provision of HRS for LTAR Program.

Comment 6: Whether the Department's *De Facto* Specificity Analysis Under the Provision of HRS for LTAR Program was Flawed.

Comment 7: Whether to Adjust the Benchmark Used in the Provision of HRS for LTAR Program for International Freight.

Comment 8: Whether the Department Erred When Adding Import Duties and VAT to the Benchmark Price Used in the Provision of HRS for LTAR Program.

Comment 9: Whether the Department Should Add VAT of 17 Percent to the Purchase Price of HRS the Huludao Companies Acquired During the POI When Examining the Provision of HRS for LTAR.

Comment 10: Whether the Department Erred in Using an Inflation-Adjusted Interest Rate to Calculate the Short-Term Benchmark.

Comment 11: Whether the Department Should Revise Its Short-Term Benchmark Methodology by Either Basing the Short-Term Benchmark On a Simple Average of Applicable Short-Term Rates or Adding an Additional ''Governance Factor'' to the Regression Analysis.

Comment 12: Whether the IMF Rates Used in the Department's Short-Term Regression-Based Benchmark Methodology are, In Fact, Long-Term Rates and Therefore Flawed.

Comment 13: Whether the Regression-Based Analysis Used to Derive the Short-Term Benchmark Interest Rate is Invalid.

Comment 14: Whether the Department Should Revise the Manner in Which It Incorporated a Risk Premium to the RMB Denominated Long-Term Benchmark.

Comment 15: Whether the Department's Regulations Authorize the Use of Out-Of-Country Interest Rate Benchmarks.

Comment 16: Whether the Department Has the Legal Authority to Apply the CVD Law to the PRC While Simultaneously Treating the PRC as an NME in Parallel Antidumping Investigations.

Comment 17: Whether the Application of the CVD Law to the PRC Results in Double Counting of Duties.

Comment 18: Whether the Department Should Use a ''Cut-Off'' Date That Is More Recent Than December 11, 2001.

Comment 19: Whether Certain Interest-Free Loans the Huludao Companies Received Constituted Financial Contributions Received After December 11, 2001, the Date of the PRC's Accession to the World Trade Organization (WTO).

Comment 20: Whether the Department Erred in Refusing to Investigate the Creditworthiness of the Huludao Companies for Years 2004 Through 2007.

Comment 21: Whether the GOC Established an Industrial Policy to Encourage Preferential Lending to the Producers of Subject Merchandise.

Comment 22: Whether the Department Should Countervail the Provision of Land at LTAR.

Comment 23: Whether the Department Should Add an Additional Land-Use Right Acquisition by the Huludao Companies to its Subsidy Analysis Under the Provision of Land for LTAR Program.

Comment 24: Whether Northern Steel Acquired Land-Use Rights from a Government Authority.

Comment 25: Whether Certain Loans Issued to the Huludao Companies from State-Owned Banks Were Contingent Upon Exports.

Comment 26: Whether There Is Sufficient Information to Determine that a Program-Wide Change Occurred With Respect to the Domestic Income Tax Credit for Domestically-Produced Equipment Program.

[FR Doc. E8–27889 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2007), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review listed below. If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review, it should notify the Department within 30 days of publication of this notice in the **Federal Register** . The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the period of review. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review (POR). We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review 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.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *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 amplified by *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*). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://ia.ita.doc.gov/nme.nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

For entities that have not previously been assigned a separate rate, to demonstrate eligibility for such, the Department requires a Separate Rate Status Application. The Separate Rate Status Application will be available on the Department's Web site at *http://ia.ita.doc.gov/nme.nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 2009.

	Period to be reviewed
Antidumping Duty Proceedings	
India: Certain Lined Paper Products,[1] A–533–843	9/1/07–8/31/08
The People's Republic of China: Certain Helical Spring Lock Washers[2] A–570–822	
Hangzhou Spring Washer, Co., Ltd.	10/1/07–9/30/08
Trinidad and Tobago: Carbon and Certain Alloy Steel Wire Rod, A–274–804	
ArcelorMittal Point Lisas Limited	10/1/07–9/30/08
Countervailing Duty Proceedings	
None	
Suspension Agreements	

[1] We note that the Department erred by inadvertently including the manufacturer/exporter name: ''Ria ImpEx Pvt. Ltd.'' in the prior initiation notice under case number A–533–843 for the period of review: 9/1/07–8/31/08. *See* 73 FR 64305 (October 29, 2008). The Department did not receive a timely request to review Ria ImpEx Pvt. Ltd. for case number A–533–843, therefore, the Department retracts its initiation of an administrative review of the antidumping order with respect to Ria ImpEx Pvt. Ltd. for the period of review 9/1/07–8/31/08.

[2] If the above-named company does not qualify for a separate rate, all other exporters of Certain Helical Spring Lock Washers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States, 291 F.3d 806* (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 17, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–27885 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–533–848)

Commodity Matchbooks from India: Initiation of Antidumping Duty Investigation

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

EFFECTIVE DATE: November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3874.

SUPPLEMENTARY INFORMATION:

The Petition

On October 29, 2008, the Department of Commerce (the Department) received a petition concerning imports of commodity matchbooks from India (the petition) filed in proper form by D.D. Bean & Sons Inc. (the petitioner). *See* the Petition on Commodity Matchbooks from India filed on October 29, 2008. On November 3, 2008, the Department issued requests for additional information and clarification of certain areas of the petition, including the scope. Further, on November 6, 2008, the Department also requested additional information regarding constructed export price (CEP) profit. Based on the Department's requests, the petitioner filed two supplements to the petition on November 6, 2008, and an additional supplement on November 10, 2008. On November 17, 2008, the Government of India, an interested party to this proceeding as defined in section 771(9)(B) of the Act, submitted a letter challenging the definition of the domestic like product as well as the completeness of the industry as reported by the petitioner. The petitioner filed its reply to this challenge on November 18, 2008.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of commodity matchbooks from India are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports materially injure, or threaten material injury to, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the antidumping duty investigation that the petitioner is requesting that the Department initiate (*see* ''Determination of Industry Support for the Petition'' section, below).

Scope of Investigation

The merchandise covered by this investigation is commodity matchbooks. *See* Attachment I to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with the petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1117, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaire

We are requesting comments from interested parties regarding the appropriate physical characteristics of commodity matchbooks to be reported in response to the Department's antidumping duty questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: 1) general product characteristics; and 2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe commodity matchbooks, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaire, we must receive comments at the above–referenced address by December 1, 2008. Additionally, rebuttal comments must be received by December 8, 2008.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. On November 17, 2008, the Government of India, an interested party to this proceeding as defined in section 771(9)(B) of the Act, submitted a letter challenging the definition of the domestic like product. On November 18, 2008, the petitioner filed its reply to this challenge. We have analyzed these comments, and based on our analysis of the information submitted on the record, we have determined that commodity matchbooks as defined by the petitioner constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Commodity Matchbooks from India (Initiation Checklist), at Attachment II (Analysis of Industry Support for the Petition), on file in the CRU, Room 1117 of the main Department of Commerce building.

With regard to section 732(c)(4)(A) of the Act, in determining whether the petitioner has standing (*i.e.*, the domestic workers and producer supporting the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition), we considered the industry support data contained in the petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section, above. According to the petitioner, there are three producers of the domestic like product: itself; Bradley Industries, LLC; and Atlas Match Corp., LLC. (Atlas Match Corp. is owned by Bradley Industries, LLC.) To establish industry support, the

petitioner provided its production of the domestic like product for calendar year 2007. In addition, Bradley Industries, LLC provided a letter of support for the petition and included its production figures for calendar year 2007. *See* Petition at 3; *see also* Letter of Support filed by Bradley Industries, LLC, on October 31, 2008. We have relied upon data provided by the petitioner and supporters of the petition for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II.

The Department's review of the data provided in the petition, and other information readily available to the Department, indicates that the petitioner has established industry support. First, the petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 732(c)(4)(D) of the Act and Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product. *See* Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Initiation Checklist at Attachment II.

The Department finds that the petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department initiate. *See* Initiation Checklist at Attachment II.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production and capacity utilization, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Petition).

Period of Investigation

In accordance with 19 CFR 351.204(b)(1), because this petition was filed on October 29, 2008, the period of investigation (POI) is October 1, 2007, through September 30, 2008.

Allegation of Sales at Less Than Fair Value

The following is a description of the allegation of sales at less than fair value upon which the Department has based its decision to initiate an investigation. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act, we may reexamine the information and revise the margin calculations, if appropriate.

Constructed Export Price

The petitioner calculated CEP based on actual POI sales prices obtained from a U.S. distributor for Indian–produced commodity matchbooks sold by an Indian producer through its U.S. affiliate. The petitioner made adjustments to the starting price, where applicable, for foreign inland freight, ocean freight, and marine insurance. The petitioner calculated foreign inland freight, ocean freight, and marine insurance based on price quotes obtained from service providers. Because the petitioner's calculation of CEP excluded CEP profit, we requested further information from the petitioner on this issue. On November 10, 2008, the petitioner stated that the information necessary to calculate CEP profit was not reasonably available to it. Therefore, to be conservative, the Department has not made an adjustment for CEP profit in our calculation of CEP. *See* Initiation Checklist and ''Fair Value Comparisons'' section, below, for the CEP–to-NV margins.

Normal Value

With respect to NV, the petitioner stated that home market prices were not reasonably available to it. The petitioner made a reasonable attempt to determine the existence of a viable home market for commodity matchbooks in India. According to the petitioner, it was unsuccessful in obtaining such pricing information, despite its best efforts. *See* the Petition at Exhibit 32. Therefore, the petitioner based NV on third country prices.

The petitioner calculated NV based on a purchase of Indian–made commodity matchbooks from a Canadian matchbook retailer. The petitioner deducted a series of standard markups to estimate the price at the importer level. The petitioner made additional adjustments to the starting third country price, where applicable, for foreign inland freight, ocean freight, marine insurance, and Canadian customs duties. *See* the Petition at page 42 and Exhibit 36.

Fair–Value Comparison

Based on the data provided by the petitioner, there is reason to believe that imports of commodity matchbooks from India are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of CEP to NV, the estimated dumping margin is 135.95 percent.

Initiation of Antidumping Investigation

Based upon the examination of the petition on commodity matchbooks from India and other information reasonably available to the Department, the Department finds that this petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of commodity matchbooks from India are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Respondent Selection

The Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S.

imports during the POI. We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice, and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within 10 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Website at *http://ia.ita.doc.gov/apo*.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the petition have been provided to the representatives of the Government of India. We will attempt to provide a copy of the public version of the petition to all known foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

International Trade Commission (ITC) Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than December 13, 2008, whether there is a reasonable indication that imports of commodity matchbooks from India materially injure, or threaten material injury to, a U.S. industry. A negative ITC determination covering all classes or kinds of merchandise covered by the petition would result in the investigation being terminated. Otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 18, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Attachment I

Scope of the Investigation Covering Commodity Matchbooks from the India

The scope of this investigation covers commodity matchbooks, also known as commodity book matches, paper matches or booklet matches.[1] Commodity matchbooks typically, but do not necessarily, consist of twenty match stems which are usually made from paperboard or similar material tipped with a match head composed of any chemical formula. The match stems may be stitched, stapled or otherwise fastened into a matchbook cover of any material, on which a striking strip composed of any chemical formula has been applied to assist in the ignition process.

Commodity matchbooks included in the scope of this investigation may or may not contain printing. For example, they may have no printing other than the identification of the manufacturer or importer. Commodity matchbooks may also be printed with a generic message such as ''*Thank You*'' or a generic image such as the American Flag, with store brands (*e.g.*, *Kroger*, *7–Eleven*, *Shurfine* or *Giant*); product brands for national or regional advertisers such as cigarettes or alcoholic beverages; or with corporate brands for national or regional distributors (*e.g.*, *Penley Corp.* or *Diamond Brands*). They all enter retail distribution channels. Regardless of the materials used for the stems of the matches and regardless of the way the match stems are fastened to the matchbook cover, all commodity matchbooks are included in the scope of this investigation.

All matchbooks, including commodity matchbooks, typically comply with the United States Consumer Product Safety Commission (CPSC) Safety Standard for Matchbooks, codified at 16 CFR § 1202.1 et seq.

The scope of this investigation excludes promotional matchbooks, often referred to as ''not for resale,'' or ''specialty advertising'' matchbooks, as they do not enter into retail channels and are sold to businesses that provide hospitality, dining, drinking or entertainment services to their customers, and are given away by these businesses as promotional items. Such promotional matchbooks are distinguished by the physical characteristic of having the name and/or logo of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue or individual establishment printed prominently on the matchbook cover. Promotional matchbook cover printing also typically includes the address and the phone number of the business or establishment being promoted.[2] Also excluded are all other matches that are not fastened into a matchbook cover such as wooden matches, stick matches, box matches, kitchen matches, pocket matches, penny matches, household matches, strike–anywhere matches (aka ''SAW'' matches), strike–on-box matches (aka ''SOB'' matches), fireplace matches, barbeque/grill matches, fire starters, and wax matches.

The merchandise subject to this investigation is properly classified under subheading 3605.00.0060 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 3605.00.0030 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

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[1] Such commodity matchbooks are also referred to as ''for resale'' because they always enter into retail channels, meaning businesses that sell a general variety of tangible merchandise, *e.g.* convenience stores, supermarkets, dollar stores, drug stores and mass merchandisers.

[2] The gross distinctions between commodity matchbooks and promotional matchbooks may be summarized as follows: (1) if it has no printing, or is printed with a generic message such as ''Thank You'' or a generic image such as the American Flag, or printed with national or regional store brands or corporate brands, it is commodity; (2) if it has printing, and the printing includes the name of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue, or individual establishment prominently displayed on the matchbook cover, it is promotional.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–849]

Commodity Matchbooks From India: Initiation of Countervailing Duty Investigation

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

DATES: Effective Date: November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Paul Matino, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3964 and (202) 482–4146, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On October 29, 2008, the Department of Commerce (the Department) received a petition on commodity matchbooks from India filed in proper form by D.D. Bean & Sons Co. (Petitioner), a domestic producer of commodity matchbooks. On November 3, 2008, the Department

issued requests for additional information and clarification of certain areas of the petition involving general issues. Based on the Department's request, Petitioner timely filed additional information concerning the petition on November 6, 2008. On November 5, 2008, the Department issued requests for additional information and clarification of some of the subsidy allegations. Based on the Department's requests, Petitioner timely filed the requested additional information on November 10, 2008.

On November 13, 2008, the Government of India (GOI), an interested party to this proceeding as defined in section 771(9)(B) of the Tariff Act of 1930, as amended (the Act), submitted a letter challenging the definition of the domestic like product in analyzing industry support. On November 17, 2008, Petitioner filed its reply to this challenge.

In accordance with section 702(b)(1) of the Act, Petitioner alleges that manufacturers, producers or exporters of commodity matchbooks in India receive countervailable subsidies within the meaning of section 701 of the Act, and that imports of commodity matchbooks materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and Petitioner has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department to initiate (*see infra,* ''Determination of Industry Support for the Petition'').

Period of Investigation

The period of investigation (POI) is January 1, 2007, through December 31, 2007, or the most recently completed fiscal year for the GOI and the producers and exporters under investigation, provided the GOI and the companies have the same fiscal year. *See* 19 CFR 351.204(b)(2).

Scope of Investigation

The merchandise covered by this investigation is commodity matchbooks. *See* Attachment I to this notice for a complete description of the merchandise covered by this investigation.

Comments on Scope of the Investigation

During our review of the petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the GOI for consultations with respect to the countervailing duty petition. The Department held these consultations on November 17, 2008. *See* Memorandum to the File, *Consultations with the Government of India Regarding the Countervailing Duty Petition on Commodity Matchbooks from India,* November 17, 2008, and on file in the CRU, Room 1117 of the main Department of Commerce building.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd.* v. *United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied*, 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.* , the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. On November 13, 2008, the GOI submitted a letter challenging the definition of the domestic like product. *See* the GOI's November 13, 2008 letter. On November 17, 2008, Petitioner filed its reply to this challenge. We have analyzed these comments, and based on our analysis all of the information submitted on the record, we have determined that commodity matchbooks as defined by Petitioner constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see Countervailing Duty Investigation Initiation Checklist: Commodity Matchbooks from India (Initiation Checklist)*, at Attachment II (Analysis of Industry Support for the

Petition), on file in the CRU, Room 1117 of the main Department of Commerce building.

With regard to section 702(c)(4)(A), in determining whether Petitioner has standing, (*i.e.* , those domestic workers and producers supporting the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition), we considered the industry support data contained in the petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above. According to Petitioner, there are three producers of the domestic like product: itself; Bradley Industries, LLC; and Atlas Match Corp., LLC. (Atlas Match Corp. is owned by Bradley Industries, LLC.) To establish industry support, Petitioner provided its production of the domestic like product for calendar year 2007. In addition, Bradley Industries, LLC, provided a letter of support for the petition and included its production figures for calendar year 2007. *See* Petition at 3; *see also* Letter of Support filed by Bradley Industries, LLC, on October 31, 2008. We have relied upon data provided by Petitioner and supporters of the petition for purposes of measuring industry support. For further discussion, *see Initiation Checklist* at Attachment II.

The Department's review of the data provided in the petition, and other information readily available to the Department, indicates that Petitioner has established industry support. First, the petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). See Section 702(c)(4)(D) of the Act and *Initiation Checklist* at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product. *See Initiation Checklist* at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See Initiation Checklist* at Attachment II.

The Department finds that Petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the countervailing duty investigation that it is requesting the Department initiate. *See Initiation Checklist* at Attachment II.

Injury Test

Because India is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India materially injures, or threatens material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of commodity matchbooks from India are benefitting from countervailable subsidies and that such imports are causing or threaten to cause, material injury to the domestic industry producing commodity matchbooks. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production and capacity utilization, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist* at Attachment III (Analysis of Allegations and Evidence of Material Injury and Causation for the Petition).

Subsidy Allegations

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to Petitioner supporting the allegations. The Department has examined the countervailing duty petition on commodity matchbooks from India and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of commodity matchbooks from India receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see Initiation Checklist*.

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers or exporters of the subject merchandise:

A. Export Oriented Unit Scheme
   1. Duty-Free Import of Capital Goods and Raw Materials
   2. Reimbursement of Central Sales Tax Paid on Goods Manufactured in India
   3. Duty Drawback on Fuel Procured from Domestic Oil Companies
   4. Exemption from Income Tax under Sections 10A and 10B of Income Tax Act
B. Export Promotion Capital Goods Scheme
C. Duty Entitlement Passbook Scheme
D. Advance License Program
E. Duty Free Import Authorization Scheme
F. Pre-Shipment and Post-Shipment Export Financing

For further information explaining why the Department is investigating these programs, *see Initiation Checklist*.

We are not including in our investigation the following program alleged to benefit producers and exporters of the subject merchandise in the GOI: Exemption from Payment of Central Excise Duty on Goods Procured from a Domestic Tariff Area for Goods Manufactured in India. For further explanation of the Department's decision not to investigate this program, *see Initiation Checklist*.

Respondent Selection

Petitioner claims that there is only one Indian producer/exporter of commodity matchbooks that shipped to the United States during the proposed POI. The Department intends to release U.S. Customs and Border Protection (CBP) data under Administrative Protective Order (APO) to all parties

with access to information protected by APO within five days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven days of publication of this **Federal Register** notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the GOI. To the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is reasonable indication that imports of subsidized commodity matchbooks from India are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* Section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 18, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

Attachment I

Scope of the Investigation Covering Commodity Matchbooks from India

The scope of this investigation covers commodity matchbooks, also known as commodity book matches, paper matches or booklet matches.[1] Commodity matchbooks typically, but do not necessarily, consist of twenty match stems which are usually made from paperboard or similar material tipped with a match head composed of any chemical formula. The match stems may be stitched, stapled or otherwise fastened into a matchbook cover of any material, on which a striking strip composed of any chemical formula has been applied to assist in the ignition process.

Commodity matchbooks included in the scope of this investigation may or may not contain printing. For example, they may have no printing other than the identification of the manufacturer or importer. Commodity matchbooks may also be printed with a generic message such as ''*Thank You*'' or a generic image such as the American Flag, with store brands (*e.g., Kroger, 7-Eleven, Shurfine or Giant)*; product brands for national or regional advertisers such as cigarettes or alcoholic beverages; or with corporate brands for national or regional distributors (*e.g., Penley Corp. or Diamond Brands)*. They all enter retail distribution channels. Regardless of the materials used for the stems of the matches and regardless of the way the match stems are fastened to the matchbook cover, all commodity matchbooks are included in the scope of this investigation.

All matchbooks, including commodity matchbooks, typically comply with the United States Consumer Product Safety Commission (CPSC) Safety Standard for Matchbooks, codified at 16 CFR 1202.1 *et. seq*.

The scope of this investigation excludes promotional matchbooks, often referred to as ''not for resale,'' or ''specialty advertising'' matchbooks, as they do not enter into retail channels and are sold to businesses that provide hospitality, dining, drinking or entertainment services to their customers, and are given away by these businesses as promotional items. Such promotional matchbooks are distinguished by the physical characteristic of having the name and/or logo of a bar, restaurant, resort, hotel, club, café coffee shop, grill, pub, eatery, lounge, casino, barbecue or individual establishment printed prominently on the matchbook cover. Promotional matchbook cover printing also typically includes the address and the phone number of the business or establishment being promoted.[2] Also excluded are all other matches that are not fastened into a matchbook cover such as wooden matches, stick matches, box matches, kitchen matches, pocket matches, penny matches, household matches, strike-anywhere matches (aka ''SAW'' matches), strike-on-box matches (aka ''SOB'' matches), fireplace matches, barbeque/grill matches, fire starters, and wax matches.

The merchandise subject to this investigation is properly classified under subheading 3605.00.0060 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under subheading 3605.00.0030 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

[FR Doc. E8–27875 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–DS–P

[1] Such commodity matchbooks are also referred to as ''for resale'' because they always enter into retail channels, meaning businesses that sell a general variety of tangible merchandise, *e.g.* convenience stores, supermarkets, dollar stores, drug stores and mass merchandisers.

[2] The gross distinctions between commodity matchbooks and promotional matchbooks may be summarized as follows: (1) If it has not printing, or is printed with a generic message such as ''Thank You'' or a generic image such as the American Flag, or printed with national or regional store brands or corporate brands, it is commodity; (2) if it has printing, and the printing includes the name of a bar, restaurant, resort, hotel, club, café/coffee shop, grill, pub, eatery, lounge, casino, barbecue, or individual establishment prominently displayed on the matchbook cover, it is promotional.

DEPARTMENT OF COMMERCE

International Trade Administration

(C–570–940)

Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination

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

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain tow–behind lawn groomers (lawn groomers) and certain parts thereof from the People's Republic of China (PRC). For information on the estimated subsidy rates, see the ''Suspension of Liquidation'' section of this notice. This notice also serves to align the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty investigation of lawn groomers from the PRC.

EFFECTIVE DATE: November 24, 2008.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3586 and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the Department's notice of initiation in the **Federal Register**. *See Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 73 FR 42324 (July 21, 2008) (*Initiation Notice*).

On August 14, 2008, the Department selected as mandatory respondents the two largest Chinese producers/exporters of lawn groomers that could reasonably be examined, Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited (collectively, Princeway) and Jiashan Superpower Tools Co., Ltd. (Superpower). *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Selection of Respondents for the Countervailing Duty Investigation of Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China'' (August 14, 2008) (Respondent Selection Memorandum). A public version of this memorandum is on file in the Department's Central Records Unit (CRU) in Room 1117 of the main Department building. On August 18, 2008, we issued the CVD questionnaire to the Government of the People's Republic of China (GOC), requesting that the GOC forward the company sections of the questionnaire to the mandatory respondent companies.

On August 21, 2008, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of lawn groomers from China. *See Certain Tow–Behind Lawn Groomers and Parts Thereof From China Determinations*, 73 FR 49489 (August 21, 2008); and *Certain Tow–Behind Lawn Groomers and Parts Thereof from China (Preliminary)*, USITC Pub. 4028, Inv. Nos. 701–TA–457 and 731–TA–1153 (August 2008).

On August 26, 2008, we published a postponement of the preliminary determination of this investigation until November 17, 2008. *See Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 73 FR 50307 (August 26, 2008). We received responses from the GOC and both mandatory respondent companies on October 8, 2008. We issued supplemental questionnaires to Princeway and Superpower on October 24, 2008, and to the GOC on October 29, 2008. Complete responses to these questionnaires are due November 18, 2008.

On August 20, 2008, Agri–Fab, Inc. (Petitioner) submitted new subsidy allegations regarding eight programs. On September 11, 2008, the GOC submitted comments on these allegations. On October 8, 2008, the Department determined to investigate all of these newly alleged subsidy programs pursuant to section 775 of the Tariff Act of 1930, as amended (the Act). *See* Memorandum to Barbara E. Tillman, Director AD/CVD Operations, Office 6, ''Countervailing Duty Investigation of Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China (PRC): Initiation Analysis of New Subsidy Allegations'' (October 8, 2008). Questions regarding these newly alleged subsidies were sent to the GOC and the mandatory respondent companies on October 10, 2008. The GOC, Princeway, and Superpower submitted responses to the new subsidy allegations questionnaires on October 27, 2008.

Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

On July 21, 2008, the Department initiated the CVD and antidumping duty investigations of lawn groomers from the PRC. *See Initiation Notice* and *Certain Tow Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 42315 (July 21, 2008). The CVD investigation and the antidumping duty investigation have the same scope with regard to the merchandise covered.

On August 8, 2008, Petitioner submitted a letter, in accordance with section 705(a)(1) of the Act, requesting alignment of the final CVD determination with the final antidumping duty determination of lawn groomers from the PRC. Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final antidumping duty determination. Consequently, the final CVD determination will be issued on the same date as the final antidumping duty determination, which is currently scheduled to be issued no later than April 6, 2009,[1] unless postponed.

Scope Comments

As explained in the preamble to the Department's regulations, we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 21 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997); and *Initiation Notice*, 73 FR at 42324. No such comments were filed on the record of either this investigation or the companion antidumping duty investigation.

Scope of the Investigation

The scope of this investigation covers certain non–motorized tow behind lawn groomers, manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this investigation, even if the lawn groomer is designed to perform additional non–subject functions (*e.g.*, mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this investigation. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigation.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a ''plug aerator''), a series of discs with protruding spikes (a ''spike aerator''), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (*e.g.*, dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the

[1] The calculated signature date is April 5, 2009, a Saturday. The next business day is April 6, 2009.

frame. Lawn spreaders consist of a frame, as well as a hopper (*i.e.*, a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (''broadcast spreader''), a rotating agitator that allows the media to be released at a consistent rate (''drop spreader''), or any other configuration.

Lawn dethatchers with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigation. Other lawn groomers–sweepers, aerators, and spreaders–with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigation.

Also included in the scope of the investigation are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units–when imported with one or more lawn grooming modules–with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigation. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the order. When imported separately, modules that are designed to perform subject lawn grooming functions (*i.e.*, sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this investigation. For purposes of this investigation, ''unassembled lawn groomers'' consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following ''major components'':

1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
2) a sweeper brush;
3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
4) a spreader hopper;
5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
6) dethatcher tines;
7) aerator spikes, plugs, or other aerating component; or
8) a hitch.

The major components or parts of lawn groomers that are individually covered by this investigation under the term ''certain parts thereof'' are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The products for which relief is sought specifically exclude the following: 1) agricultural implements designed to work (*e.g.*, churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; 5) ''push'' lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers–sweepers, aerators, and spreaders–with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (*e.g.*, ''drum–style'' spike aerators).

The lawn groomers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.90.0030, 8432.90.0080, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product.

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2007 through December 31, 2007.

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) (*CFS from the PRC*), and the accompanying Issues and Decision Memorandum (CFS Decision Memorandum). In *CFS from the PRC*, the Department found that, ''given the substantial differences between the Soviet–style economies and the PRC's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet–style economies does not act as a bar to proceeding with a CVD investigation involving products from the {PRC}.'' *See* CFS Decision Memorandum, at Comments 1 and 6.

The Department has subsequently affirmed its decision to apply the CVD law to the PRC in several final determinations, most recently in *Lightweight Thermal Paper From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*LWTP from the PRC*), and the accompanying Issues and Decision Memorandum (LWTP Decision Memorandum).

Additionally, for the reasons stated in the LWTP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization, as the date from which the Department will identify and measure subsidies in the PRC for purposes of this preliminary determination. *See* LWTP Decision Memorandum, at Comment 2.

Subsidies Valuation Information

Allocation Period

The average useful life (AUL) period in this proceeding as described in 19 CFR 351.524(d)(2) is 10 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture lawn groomers. No party in this proceeding has disputed this allocation period.

Denominator and Attribution of Subsidies

When selecting an appropriate denominator for use in calculating the *ad valorem* countervailable subsidy rate, the Department considered the bases for Princeway's and Superpower's approval of benefits under each program at issue. For export related subsidies, the Department attributed the subsidies only to products exported by the respondents and used export sales as the denominator. *See* 19 CFR 351.525(b)(2). For all other non–export related subsidies, the Department has attributed these subsidies to the total sales of all products of Princeway and Superpower and used total sales as the denominator in our calculations. *See* 19 CFR 351.525(b)(3).

Princeway Furniture (Dong Guan) Co., Ltd. is owned by and sells through its affiliate Princeway Limited for tax and currency control purposes. Princeway's production facility is located in Guangdong Province; therefore, we are relying on the sales figures recorded in the income statements of Princeway Furniture (Dong Guan) Co., Ltd. as denominators. *See* 19 CFR 351.525(b)(6)(i). Moreover, Princeway has not provided a justification for using any other sales figures as denominators such as the Department examined in our investigation of coated free sheet paper from the PRC. *See* CFS Decision Memorandum, at Comment 23. Superpower reported that it had no cross–owned affiliates that received subsidies and no affiliates involved in its sales transactions; therefore, we are using Superpower's sales figures as denominators. *Id.*

Discount Rate for Allocation

Consistent with 19 CFR 351.524(3)(i)(A), we used as our discount rate a long–term interest rate calculated according to the methodology that we used recently in our thermal paper investigation for the year in which the government agreed to provide the benefit. *See* LWTP Decision Memorandum, at Comments 8 and 9. The rates reported in International Financial Statistics represent short- and medium–term lending. However, there are no sufficient publicly–available long–term interest rate data upon which to base a robust benchmark for long–term loans. To address this problem, the Department developed an adjustment to medium–term rates to convert them to long–term rates using Bloomberg U.S. corporate BB–rated bond rates. *See id.*, at Comment 9. Because the short–term benchmark covers loans up to two years, we have calculated the long–term adjustment based on the difference between (1) the two–year BB–rated bond rate and (2) the 10–year BB–rated bond rate because 10 years is the AUL in this case. *See*, *also*, Memorandum to the File, ''Preliminary Calculation Memorandum for Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited'' (November 17, 2008) for a more detailed discussion of the discount rate methodology.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply ''facts otherwise available'' if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Non–Cooperative Companies

In the instant investigation, the following five companies provided no response to the Department's ''quantity and value'' questionnaire issued during the respondent selection process: Qingdao Hundai Tools Co., Ltd., Qingdao Taifa Group Co., Ltd., Maxchief Investments Ltd., Qingdao EA Huabang Instrument Co., Ltd., and World Factory Inc. (collectively, non–cooperative companies). We attempted twice to solicit quantity and value information from the first four of these companies, and confirmed delivery of our questionnaires through Federal Express. In our second attempt, we warned that ''{f}ailure to respond to this questionnaire may result in the Department determining that your company has decided not to participate in this proceeding and that your company has not cooperated to the best of its ability. As a consequence, the Department would consider applying facts available with an adverse inference in accordance with section 776(b) of the Tariff Act of 1930.'' *See* Letters to Hangzhou Geesun International Co., Ltd., *et al.*, from Barbara E. Tillman, Director, AD/CVD Operations, Office 6, ''Quantity and Value Questionnaire for the Countervailing Duty Investigation of Certain Tow–Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China'' (August 4, 2008). World Factory Inc. refused delivery of our first questionnaire. *See* Respondent Selection Memorandum for the details of our attempts to solicit information from 12 producers and exporters identified in the petition.

In the instant investigation, the non–cooperative companies withheld requested information and significantly impeded this proceeding. Specifically, by not responding to requests for information concerning the quantity and value of their sales, they impeded the Department's ability to select the most appropriate respondents in this investigation. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A) and (C) of the Act, we have based the CVD rate for the non–cooperative companies on facts otherwise available.

We also determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. By failing to submit responses to the Department's quantity and value questionnaires, these companies did not cooperate to the best of their ability in this investigation. Accordingly, we find that an adverse inference is warranted to ensure that the non–cooperating companies will not obtain a more favorable result than had they fully complied with our request for information.

In deciding which facts to use as adverse facts available (AFA), section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. It is the Department's practice to select, as AFA, the highest calculated rate in any segment of the proceeding. *See*, *e.g.*, *Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) (*LWS from the PRC*) and the accompanying Issues and Decision Memorandum (LWS Decision Memorandum) at ''Selection of the Adverse Facts Available''.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and

accurate information in a timely manner.'' *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. I, at 870 (1994). In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

For the preliminary determination, consistent with the Department's recent practice, we are computing a total AFA rate for the non–cooperating companies generally using program–specific rates determined for the cooperating respondents or past cases. Specifically, for programs other than those involving income tax exemptions and reductions, we will apply the highest calculated rate for the identical program in this investigation if a responding company used the identical program. If there is no identical program match within the investigation, we will use the highest non–*de minimis* rate calculated for the same or similar program in another PRC CVD investigation. Absent an above–*de minimis* subsidy rate calculated for the same or similar program, we will apply the highest calculated subsidy rate for any program otherwise listed that could conceivably be used by the non–cooperating companies. *See, e.g.*, LWTP Decision Memorandum, at Comment 3.

Also, as explained in the *Initiation Notice*, and accompanying Initiation Checklist, where the GOC can demonstrate through complete, verifiable, positive evidence that non–cooperative companies (including all their facilities and cross–owned affiliates) are not located in particular provinces whose subsidies are being investigated, the Department will not include those provincial programs in determining the countervailable subsidy rate for the non–cooperative companies. In this investigation, the GOC did not provide any such information. Therefore, the Department included all provincial programs in determining the countervailable subsidy rate for the non–cooperative companies.

Foreign–Invested Enterprise (FIE) Income Tax Rate Reduction and Exemption Programs

For the 11 income tax rate reduction or exemption programs,[2] we have applied an adverse inference that the non–cooperative companies paid no income taxes during the POI. Information from the petition indicates that during the POI, the standard income tax rate for corporations was 30 percent; there was an additional local income tax of 3 percent. *See* Petitioner's June 24, 2008 Submission, at Exhibit II–21. Therefore, the highest possible benefit for all income tax reduction or exemption programs combined is 33 percent. Thus, we are applying a countervailable rate of 33 percent on an overall basis for these 11 income tax programs (*i.e.*, these 11 income tax programs combined to provide a countervailable benefit of 33 percent). This 33 percent AFA rate does not apply to tax credit or tax refund programs. *See, e.g.*, CFS Decision Memorandum, at 3; *see, also*, LWTP Decision Memorandum, at Comment 3.

Income Tax Credit and Refund Programs

For the ''Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export–Oriented Enterprise'' program, a tax refund program, we have preliminarily determined to apply the rate calculated for Superpower under the same program in this investigation, which is 0.64 percent. Neither of the two mandatory respondents used the three remaining income tax credit and refund programs,[3] and the Department has not calculated a non–de minimis rate for any of these programs in any prior investigation. Therefore, for each of these three tax credit and refund programs, we have preliminarily determined to apply the highest non–*de minimis* rate for any indirect tax program from a PRC CVD investigation because, after examining each PRC CVD final determination, there were only *de minimis* rates for income tax credit or refund programs from prior investigations. The rate we selected for these programs is 1.51 percent, the rate calculated for respondent Gold East Paper (Jiangsu) Co., Ltd. (GE) for the ''VAT and Tariff Exemptions on Imported Equipment'' program in *CFS from the PRC. See* CFS Decision Memorandum, at 13–14.

Value Added Tax (VAT) and Tariff Exemptions and Rebates for Equipment Programs

For the ''VAT and Import Tariff Exemption for Imported Equipment'' program, we have preliminarily determined to apply the rate calculated for Princeway under this program in this investigation, which is 0.49 percent.[4] Neither of the two mandatory respondents used the ''VAT Exemption for Domestically Produced Equipment'' program. Therefore, for this program, we have preliminarily determined to apply the highest non–*de minimis* rate for the identical program from *CFS from the PRC*: 1.51 percent, GE's calculated rate for the program ''VAT and Tariff Exemptions on Imported Equipment.'' *See id.*

Export Promotion Programs

Neither of the mandatory respondents used the ''Export–Based Reward' Programs for Enterprises in Zhejiang Province'' program, the ''Refunds of Legal Fees Paid in Antidumping and Countervailing Duty Investigation in Zhejiang Province and Jiashan County'' program, the ''Export–Based Reward' Subsidies for Enterprises in Huimin Industrial Park'' program, or the ''Funds for Outward Expansion' of Industries in Guangdong Province'' program. The Department has not calculated a non–*de minimis* rate for any similar program in any prior investigation. Therefore, for these four programs, we have preliminarily determined to apply the highest calculated subsidy rate for any program otherwise listed that could conceivably have been used by the non–cooperating companies: 44.91 percent,

[2] ''Two Free, Three Half'' Tax Exemption for FIEs; Income Tax Reductions for Export-Oriented Enterprises; Reduced Income Taxes Based on Geographic Location - Zhejiang and Shandong Provinces; Income Tax Programs for FIEs in Zhejiang Province; Income Tax Programs in the Huimin Industrial Park in Zhejiang Province; Income Tax Programs in the Hangzhou Export Processing Zone in Zhejiang Province; Income Tax Programs for FIEs Located in Qingdao Municipality; Income Tax Programs in the Lingang Processing Industrial Zone in Qingdao Municipality; Income Tax Programs for FIEs in Guangdong Province; Income Tax Programs for FIEs in Dongguan City, Guangdong Province; and Income Tax Programs for Export-Oriented FIEs in Dongguan City, Guangdong Province.

[3] Income Tax Credits for FIEs Purchasing Domestically Produced Equipment; Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically-Owned Companies; and Income Tax Offsets and/or Refunds for FIEs Purchasing Domestic Equipment in Qingdao Municipality.

[4] As discussed below under ''Programs Preliminarily Determined To Be Not Used by Princeway and Superpower,'' the Department has preliminarily determined that there are only two VAT exemptions and rebates for equipment programs under investigation.

the rate calculated for Kingland for the ''Provision of Hot–Rolled Steel at Less than Adequate Remuneration'' program in the investigation of circular welded carbon quality steel pipe. *See* Memorandum to Susan Kuhbach, Director, Office 1, AD/CVD Operations, ''Countervailing Duty Investigation: Circular Welded Carbon–Quality Steel Pipe from the People's Republic of China: Ministerial Error Allegation,'' (July 2, 2008) at 7.

In addition, neither of the two mandatory respondents used the program ''Preferential Loans and Development Funds' for Export–Oriented Enterprises in Guangdong Province,'' and the Department has not calculated a non–*de minimis* rate for this program in any other PRC CVD investigation. Therefore, we have preliminarily determined to apply the highest non–*de minimis* rate for a loan program from a PRC CVD investigation: 7.99 percent, the rate calculated for Guangdong Guanhao High–Tech Co., Ltd. for the program ''Government Policy Lending'' in *LWTP from the PRC*. *See* LWTP Decision Memorandum, at 11–12.

Provision of Land at Less Than Adequate Remuneration (LTAR) Programs

Finally, neither of the mandatory respondents used the ''Provision of Land for LTAR for Export–Oriented FIEs Located in Shandong Province'' program, or the ''Provision of Land for LTAR for Export–Oriented FIEs Located in Qingdao Municipality'' program. Therefore, for these two programs, we have preliminarily determined to apply the highest non–*de minimis* rate for a similar land at LTAR program from a PRC CVD investigation: 13.36 percent, the rate calculated for Zibo Aifudi Plastic Packaging Company Limited in *LWS from the PRC*. *See* LWS Decision Memorandum, at 14–18.

Allegations Not Affecting the AFA Rate

As discussed below, we have preliminarily determined that we require more information regarding the ''Provision of Hot–Rolled Steel at Less Than Adequate Remuneration'' program and the ''VAT Export Rebate'' program.[5] Also as discussed below, we have preliminarily determined that producers and exporters of lawn groomers are ineligible for benefits under programs related to consumption taxes. Therefore, these programs are not reflected in the calculation of our AFA rate.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See, e.g.*, SAA, at 870. It is the Department's practice to consider information to be corroborated if it has probative value. *Id*. Further, it is also the Department's practice to corroborate secondary information, the Department will, to the extent practicable, by examining the reliability and relevance of the information to be used. *See, e.g.*, SAA, at 869. However, it is also our practice that we need not prove that the selected facts available are the best alternative information.

When the Department applies AFA, to the extent practicable, it will determine whether such information has probative value by evaluating the reliability and relevance of the information used. With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final CVD determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company–specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it. *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996).

The Department has reviewed the information concerning PRC subsidy programs in this and other cases. For those programs for which the Department has found a program–type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program–type match, the Department has selected the highest calculated subsidy rate for any PRC program from which the non–cooperating companies could conceivably receive a benefit to use as AFA. The relevance of this rate is that it is an actual calculated CVD rate for a PRC program from which the non–cooperating companies could actually receive a benefit. The Department has corroborated the rates it selected to the extent practicable.

On this basis, we preliminarily determine that the AFA countervailable subsidy rate for the five non–cooperating companies is 254.52 percent *ad valorem*.

Application of ''All Others'' Rate to Companies Not Selected as Mandatory Respondents

In addition to Princeway and Superpower, the Department received responses to its quantity and value questionnaire from the following four companies: Hangzhou Geesun International Co., Ltd., Nantong D&B Machinery Co., Ltd., Qingdao Huatian Hand Truck Co., Ltd., and T.N. International, Inc. *See* Respondent Selection Memorandum. However, the Department was unable to deliver the quantity and value questionnaire to Sidepin Ltd., another of the twelve producers and exporters listed in the petition, because of an address error. *Id*. While these five companies were not chosen as mandatory respondents, because they cooperated fully with the Department's request for quantity and value information regarding their sales, or, in the case of Sidepin Ltd., were not uncooperative, we are applying the all others rate to these five companies.

Analysis of Programs

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined to Be Countervailable

A. Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)

Petitioner alleges that under Article 8 of the *Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises* (*FIE Tax Law*), FIEs of a ''productive nature'' that are scheduled to operate for not less than 10 years may be exempt from income taxes during the first two years of profitability, and may pay half of the applicable tax for the next three years.

[5] As discussed below under ''Programs Preliminarily Determined To Be Not Used by Princeway and Superpower,'' the Department has preliminarily determined that there is only one VAT export rebates program under investigation.

Princeway states it received benefits under this program during the POI. Specifically, it paid no tax in 2006 pursuant to Article 8 of the *FIE Tax Law* as reflected in the tax return it filed during the POI, which it submitted as an attachment to its questionnaire response.

According to Superpower's response, it also qualified for benefits under this program during the POI. Specifically, Superpower qualified for ''three half'' benefits during tax year 2006, reflected in the tax return it filed during the POI. Therefore, during tax year 2006, Superpower's central government income tax rate was reduced from 24 percent to 12 percent, and its local income tax rate was reduced from 2.4 percent to 1.2 percent.[6]

We preliminarily determine that the income tax exemptions received by Princeway and Superpower under this program confer a countervailable subsidy. The exemptions are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also preliminarily determine that the exemptions afforded by this program are limited as a matter of law to certain enterprises, ''productive'' FIEs, and, hence, are specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Princeway and Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided each company's tax savings received during the POI by its total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Princeway and Superpower would have paid in the absence of the program with the income tax rate the companies actually paid. On this basis, we preliminarily determine that Princeway received a countervailable subsidy of 0.46 percent *ad valorem* under this program and Superpower received a countervailable subsidy of 1.32 percent.

Finally, we address Superpower's arguments that any tax benefits it received pursuant to activities taking place before the POI (2007) are not germane to this investigation. Primarily, in its discussion of this program and others, Superpower argues that it submits quarterly tax returns to local authorities. Three of the quarterly ''returns'' for tax year 2007 activity were filed in 2007, with the fourth filed in 2008. According to Superpower, these quarterly documents are a more accurate measure of benefits received in the POI than the Department's practice of calculating benefits using the annual tax return filed in the POI, which reflects activity for the prior year. Superpower also argues that exemptions and rebates (discussed below) it has received should be attributable to the year in which it accrued the right to these exemptions and rebates.

The Department, however, is maintaining its practice of calculating benefits for the POI using the tax return filed in the POI. *See* 19 CFR 351.509(b)(1). According to the GOC, ''income taxes are paid in quarterly installments,'' but ''{w}ithin four months of the end of the year, an annual tax return form and final accounting statements must be submitted and tax accounts are finally settled within five months of the end of the year.'' *See* GOC's October 8, 2008 Questionnaire Response, at I–12. Thus, while benefits reflected on Superpower's 2007 tax return are attributable to activity in 2006, these benefits do not become final until 2007 (the POI). Likewise, as discussed below, rebates received by Superpower, which are not reflected in any of its tax returns, while attributable to activity before 2007, were applied for, approved, and paid in 2007.

B. Income Tax Reductions for Export–Oriented Enterprises (EOEs)

Petitioner alleges Article 75 of the *Detailed Implementation Rules of the Income Tax Law of the People's Republic of China of Foreign Investment Enterprises an Foreign Enterprises* (*FIE Tax Rules*) provides that FIEs that export 70 percent or more of the total value of their products may benefit from reduced tax rates. According to Petitioner, income tax rates for enterprises participating in this program may be reduced by 50 percent.

Superpower states that it received benefits under this program for tax year 2006. Specifically, according to Superpower, it qualified for a 50 percent reduction in its central tax rate and a 100 percent reduction in its local tax rate. Because it had already received a 50 percent reduction in its central tax rate pursuant to the ''Two Free, Three Half'' program, only the 100 percent reduction of the local tax rate provided additional benefits. These benefits were provided in the form of a rebate of the remaining 1.2 percent local income tax, which Superpower applied for and received in the POI.

We preliminarily determine that the income tax rebate received by Superpower under this program confers a countervailable subsidy. The rebate is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

Superpower states that in order to receive this rebate it had to obtain ''the Certification of Export–oriented FIE.'' *See* Superpower's October 8, 2008 Questionnaire Response, at 19. Likewise, the GOC explains how benefits under this program are contingent on a demonstration by an FIE that its export sales amount to 70 percent of its total sales. *See* GOC's October 8, 2008 Questionnaire Response, at I–19. Therefore, we preliminarily determine that the rebate afforded by this program is contingent on Superpower's export performance and, hence, is specific under section 771(5A)(B) of the Act.

To calculate the benefit, we treated the income tax rebate enjoyed by Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the rebate received during the POI by the company's total export sales during that period. On this basis, we preliminarily determine that Superpower received a countervailable subsidy of 0.15 percent *ad valorem* under this program.

C. Refund of Enterprise Income Taxes on FIE Profits Reinvested in an EOE

Petitioner alleges that export–oriented FIEs are eligible for tax refunds on profits that are reinvested in the FIE, or into a new high–technology enterprise or EOE.

According to Superpower's response, it received two payments under this program in 2007. While the payments arise from profits made during tax years 2005 and 2006, Superpower applied for the rebates in 2007. Moreover, the rebates were approved and the rebate funds were paid to Superpower in 2007. According to Superpower, ''the amount of assistance provided was determined by the amount of the reinvested profit and the amount of income tax already paid for this amount of reinvested profit.'' *See* Superpower's October 8, 2008 Questionnaire Response, at 22. Likewise, according to the GOC, the refund amount depends on the ''original applicable enterprise income tax rate,'' which, according to the *FIE Tax Rules*, would appear to be the effective rate (*i.e.*, the standard 30 percent rate minus

[6] Superpower's eligibility for a 24 percent central rate, instead of the standard 30 percent rate, and a 2.4 percent local rate, instead of the standard 3 percent rate, is discussed below under the ''Reduced Income Taxes Based on Geographic Location (Zhejiang and Shandong Provinces)'' section.

FIE reductions, *etc.*) applied to the enterprise in question in the year the profit was made (in this case, 2005 and 2006). *See* GOC's October 8, 2008 Questionnaire Response, at I–24.

Moreover, according to the GOC, while ''the program is available to all qualifying FIEs,'' the amount of the refund is larger for reinvestments in EOEs. *Id.* Specifically, a standard FIE receives 40 percent of the refund received by an EOE. *Id.* The documents provided by Superpower (applications, approvals, *etc.*) are consistent with the formulas stated by the GOC and included in the *FIE Tax Rules.* It also notes that ''{t}he FIE, not the investor, applies for and receives the refund, of income taxes paid by the FIE, which it may pay to the investor.'' *Id.* at I–28.

We preliminarily determine that the rebates received by Superpower under this program confer a countervailable subsidy. The rebates are a financial contribution in the form of revenue forgone by the GOC and they provide a benefit to the recipients in the amount of the tax savings. See Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1).

As noted above, the GOC's response explains that larger rebates are provided to EOEs than to other FIEs. Based on our examination of the application and approval documents submitted by Superpower, we have determined that one of the two rebates received by Superpower during the POI was pursuant to the EOE formula and one was pursuant to the standard FIE formula. Therefore, we preliminarily determine that one of the rebates afforded by this program is contingent on Superpower's export performance and, hence, is specific under section 771(5A)(B) of the Act. The other rebate is limited as a matter of law to certain enterprises (FIEs) and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax rebates enjoyed by Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided one rebate by total export sales and the other by total sales during the POI. On this basis, we preliminarily determine that Superpower received a countervailable subsidy of 0.64 percent *ad valorem* under this program.

D. Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations

Petitioner alleges that the GOC administers a program that offers VAT and import tariff rebates on imported equipment. According to Petitioner, this program is available to both FIEs and domestic enterprises, and its purpose is to encourage foreign investment and introduce foreign advanced technology equipment and industry technology upgrades.

According to Princeway, it received benefits under this program for imported equipment because it ''was established as an export–oriented enterprise to export all of its products to overseas markets. This status of the company falls within the category of encouragement under the Catalog of Industries Guidance for Foreign Business Investment . . . .'' Consequently, it received an exemption from customs duties and VAT on imported equipment.

We preliminarily determine that the exemption received by Princeway under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the VAT and tariff savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.510(a)(1).

As noted above, Princeway qualified for this exemption because it ''was established as an export–oriented enterprise to export all of its products to overseas markets.'' Therefore, we determine the VAT and tariff exemption under this program is contingent on Princeway's export performance and, hence, is specific under section 771(5A)(B) of the Act.

Normally, we treat exemptions from indirect taxes and import charges, such as VAT and tariff exemptions, as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits only in the year that they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non–recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

We requested that Princeway identify the equipment for which it received a VAT and tariff exemption from 2001 through the end of the POI. In some of these years, the total amount of the VAT and tariff exemption approved was less than 0.5 percent of Princeway's export sales for those years. *See* 19 CFR 351.524(b)(2). For those years, therefore, we do not reach the issue of whether the VAT and tariff exemption was tied to the capital structure or capital assets of the firm. Instead, we expense the benefit to the year in which it is received, consistent with 19 CFR 351.524(a).

In some other years, however, the total amount of VAT and tariff exemption exceeded 0.5 percent of Princeway's export sales for those years. Based on Princeway's reported information, the VAT and tariff exemption were for capital equipment. *See* Princeway's October 8, 2008 Questionnaire Response, at Exhibit 14. Accordingly, the Department is treating the VAT and tariff exemption for those years as a non–recurring benefit consistent with 19 CFR 351.524(c)(2)(iii).

To calculate the benefit for Princeway, we used our standard methodology for non–recurring benefits (*see* 19 CFR 351.524(b)) and recurring benefits, as applicable (*i.e.*, for the years for which we determined the benefits to be non–recurring, we first allocated the benefits to the POI). We then summed these allocated benefits from Princeway's VAT and tariff exemptions from years 2002 to 2007. On this basis, we preliminarily determine that Princeway received a countervailable subsidy of 0.49 percent *ad valorem* under this program.

E. Reduced Income Taxes Based on Geographic Location (Zhejiang and Shandong Provinces)

Petitioner alleges that special economic zones (SEZs) exist in the PRC to encourage foreign investment and the development of industry. According to Petitioner, these SEZs may be designated as coastal economic development zones, SEZs, or as economic and technical development zones. Petitioner claims that benefits received by the industries operating in these SEZs include, *inter alia*, preferential income tax rates.

Superpower states that it is eligible for reduced income tax rates as it is located in Jiashan, a coastal economic development zone. Specifically, under Article 7 of the *FIE Tax Law*, it is eligible for a central government tax rate of 24 percent and, apparently under the discretion afforded to provincial and municipal governments by Article 9 of the *FIE Tax Law*, it is eligible for a local tax rate of 2.4 percent, because of its location in a coastal economic development zone. These reduced tax rates are reflected in the tax return Superpower filed in 2007.

We preliminarily determine that the income tax exemption received by Superpower under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption afforded by this program is

limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Superpower as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POI by its total sales during that period. To compute the amount of the tax savings, we compared the income tax rate Superpower would have paid in the absence of the program with the income tax rate the company actually paid. On this basis, we preliminarily determine that Superpower received a countervailable subsidy of 0.66 percent *ad valorem* under this program.

F. Income Tax Programs for FIEs in Dongguan City in Guangdong Province

Petitioner alleges that the government of Guangdong province provides income tax incentives to FIEs operating within the province. According to Petitioner, productive FIEs operating for at least 10 years may take advantage of a ''Two Free, Three Half'' program similar to that operated by the central government. Petitioner also claims that ''export–oriented'' FIEs that export 70 percent or more of their produced goods may qualify for a reduced income tax rate once the ''Two Free, Three Half'' period has expired. Petitioner further claims that export–oriented FIEs operating in SEZs within Guangdong province may qualify for a further reduced income tax rate of 10 percent. Further, Petitioner states that an FIE may receive an income tax refund ranging from 40 to 100 percent when its profits are either reinvested into the enterprise, or reinvested in an export–oriented FIE.

According to Princeway, it is entitled to a 24 percent central government tax rate, reduced from the standard central tax rate of 30 percent, because it is located in Dongguan, a coastal economic development zone. We preliminarily determine that the income tax exemption received by Princeway under this program confers a countervailable subsidy. The exemption is a financial contribution in the form of revenue forgone by the GOC and it provides a benefit to the recipients in the amount of the tax savings. *See* Section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that the exemption afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act. However, as Princeway is already exempted from all taxes as part of the ''Two Free, Three Half'' program discussed above, no additional benefits are provided from Princeway's eligibility for a reduced rate under this program.

II. Programs for Which We Preliminarily Determine More Information is Needed

A. Provision of Hot–Rolled Steel at Less Than Adequate Remuneration

Petitioner alleges that hot–rolled steel is the primary input into the subject merchandise and many producers of subject merchandise purchase hot–rolled steel directly and handle both the processing and assembly operations to manufacture law grooming products thereof. Petitioner claims that Chinese producers have benefited by obtaining steel from GOC–owned or controlled steel producers at artificially low prices. Petitioner argues that the GOC's control over the steel industry allows it to distribute steel at favorable prices to industries producing higher–value-added products that drive its export–focused economy, which, Petitioner continues, lowers the cost of production for Chinese producers of subject merchandise.

Both Princeway and Superpower reported purchasing hot–rolled steel during the POI. According to Princeway, all of the hot–rolled steel it purchased during the POI was produced in Taiwan. The Department has requested documentation supporting this claim. According to Superpower, all of the hot–rolled steel it purchased during the POI was produced by privately held companies. The Department has requested additional documentation concerning this claim as well and will consider this issue further for the final determination.

B. Export Incentive Payments Characterized as ''VAT Rebates''

Petitioner alleges that the GOC has a program in which producers and exporters of subject merchandise may receive rebates of VAT fees on exported goods. Petitioner claims that taxpayers pay no VAT on exported goods, and they are entitled to refunds on any VAT paid on inputs purchased and used to produce exported goods.

Both Princeway and Superpower state they were entitled to export rebates. Moreover, Princeway also states it paid no VAT on imported inputs used in the production of exported goods. Depending on our analysis of responses to supplemental questionnaires due after the issuance of this notice, we may request additional information concerning whether the GOC's export rebate calculation takes into consideration the fact that VAT is often not paid on the inputs used in producing the exported goods. Likewise, we may have similar questions concerning whether the ''cap'' the GOC calculates to prevent excessive rebates takes into consideration the fact that VAT is often not paid on such inputs.

III. Program for Which We Preliminarily Determine Producers and Exporters of Lawn Groomers To Be Ineligible

Consumption Tax and VAT Exemptions for Processing and Assembling Goods for Export, and for Related Processing Costs

Petitioner states that the consumption tax in the PRC is levied at the rate of three to 17 percent, depending on the good, and is applied to all products purchased in the production processing of goods for export. According to information submitted by Petitioner, companies located in the municipality of Dongguan that process and assemble goods for export, are exempt from paying the VAT and consumption tax on these goods.

According to the GOC, as a general matter, the consumption tax is levied on goods that the state does not encourage the consumers to use, such as luxury goods, cigarettes, alcohol, *etc.* Furthermore, the GOC explained that payers of this tax are enterprises or individuals that produce or import these goods. The GOC also provided State Council regulations concerning the consumption tax, including a list of taxed products. The document confirms the GOC's statements concerning the types of goods subject to the consumption tax. Therefore, we preliminarily determine that producers and exporters of lawn groomers are not subject to a consumption tax as they are not producers of the taxed goods and, thus, that they are not eligible to benefit from any reduced rates for consumption taxes.

IV. Programs Preliminarily Determined To Be Not Used by Princeway and Superpower

We preliminarily determine that Princeway and Superpower did not apply for or receive benefits during the POI under the programs listed below. We note that the GOC submitted information in its October 27, 2008 supplemental questionnaire response supporting its claims that many local and provincial programs the Department is investigating are actually part of central programs being investigated. The GOC has made such claims regarding several income tax, VAT, and import tariff programs. We do not believe it is necessary to address these arguments

and supporting information regarding income tax programs. The Department's AFA methodology, as discussed above, relies on a flat 33 percent figure for use as AFA for income tax programs. Thus, the number of income tax programs does not affect the AFA rate, and will have no other affect on the results of this investigation. Regarding the GOC's claims and supporting information addressing the number of VAT and import tariff programs, we preliminarily agree with the GOC. There are three such programs under investigation: 1) ''Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations,'' established by the *Circular of the State Council on Adjusting Tax Policies on Imported Equipment* (Guofa (1997) No. 37), and used by Princeway and addressed above; 2) ''VAT Refunds for FIEs Purchasing Domestically Produced Equipment,'' regulated by the *Circular on Trial Administrative Measures on Purchase of Domestically Produced Equipment by Projects with Foreign Investment* (Guoshuifa (2006) No. 111), and not used by either Princeway or Superpower and listed below; and 3) ''Export Incentive Payments Characterized as VAT Rebates,''' sometimes referred to in previous investigations simply as ''VAT Export Rebates,'' regulated by the *Provisional VAT Rules of China* (Decree 134 of the State Council, 1993), for which we are gathering more information as discussed above.

We preliminarily determine that the GOC provided adequate information demonstrating that local and provincial governments do not have the authority to regulate the collection of VAT or import tariffs, beyond their involvement in local level administration. For example, according to the *Notice of the State Council of Taxation on Adhering to Administering Tax by Law and Strictly Administering the Reduction and Exemption of Taxes*, Exhibit N–A.2 of the GOC's October 27, 2008 Questionnaire Response, ''The legislative powers in respect of national taxes, shared taxes and local taxes shall be centralized by the central authorities. Each locality . . . should not institute or interpret tax policies beyond their powers, neither they may exceed their terms of reference to grant tax reduction and exemption, nor allow deferment of tax payment, nor exempt somebody from taxes that have been overdue.'' In addition, the *Implementation Opinion on Establishing Direct Tax Authorities at Local Level and Local Tax Bureau*, Exhibit N–B.2 of the GOC's October 27, 2008 Questionnaire Response, states that the State Taxation Bureau system is responsible for the levy and management of VAT. Finally, the *Customs Law of the People's Republic of China*, Exhibit N–B.3 of the GOC's October 27, 2008 Questionnaire Response, states that ''Customs duties for import or export goods in special areas, for special enterprises and for special purposes may be reduced or exempted. The State Council shall formulate detailed regulations about the scope and method of the reduction or exemption.'' Given this information the following list of programs not used has been consolidated by removing what we have preliminarily determined to be redundant VAT and import tariff allegations. *See*, *also*, Memorandum to File, ''Preliminary Adverse Facts Available Calculation for Lawn Groomers'' (November 17, 2008). We will explore this issue further through supplemental questionnaires issued after this preliminary determination and during verification. We will also consider information Petitioner might place on the record to rebut the GOC's claims. We have also removed from the list below the allegation regarding consumption tax, because, as discussed above, we have preliminarily determined producers and exporters of lawn groomers would not be eligible for benefits under this allegation.

A. Income Tax Credits for FIEs Purchasing Domestically Produced Equipment
B. Income Tax Credits on Purchases of Domestically Produced Equipment by Domestically Owned Companies
C. VAT refunds for FIEs Purchasing Domestically Produced Equipment
D. Export–Based ''Reward'' Subsidies for Enterprises in Zhejiang Province
E. Refunds of Legal Fees Paid in Antidumping and Countervailing Duty Investigations in Zhejiang Province and Jiashan County
F. Income Tax Programs in Huimin Industrial Park in Zhejiang Province
G. Export–Based ''Reward'' Subsidies for Enterprises in Huimin Industrial Park in Zhejiang Province
H. Income Tax Programs in the Hangzhou Export Processing Zone in Zhejiang Province
I. Provision of Land for LTAR for Export–Oriented FIEs for Enterprises Located in Shandong Province
J. Income Tax Programs for FIEs Located in Qingdao Municipality
K. Income Tax Offsets and/or Refunds for FIEs Purchasing Domestic Equipment in Qingdao Municipality
L. Provision of Land for LTAR for Export–Oriented FIEs Located in Qingdao Municipality
M. Income Tax Programs in the Lingang Processing Industrial Zone
N. Income Tax Programs for FIEs in Guangdong Province
O. Funds for Outward Expansion of Industries in Guangdong Province
P. Loans and Development Funds for Export–Oriented Enterprises in Guangdong Province
Q. Income Tax Programs for FIEs in Dongguan City in Guangdong Province
R. Income Tax Programs for Export–Oriented FIEs in Dongguan City in Guangdong Province

Verification

In accordance with section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated an individual rate for each producer/exporter of the subject merchandise. We preliminarily determine the total estimated net countervailable subsidy rates to be:

Exporter/Manufacturer	Net Subsidy Rate
Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited	0.95% (*de minimis*)
Jiashan Superpower Tools Co., Ltd.	2.77%
Maxchief Investments Ltd.	254.52%
Qingdao EA Huabang Instrument Co., Ltd.	254.52%
Qingdao Hundai Tools Co., Ltd.	254.52%
Qingdao Taifa Group Co., Ltd.	254.52%
World Factory, Inc.	254.52%
All Others	2.77%

Sections 703(d) and 705(c)(5)(A) of the Act state that, for companies not investigated, we will determine an all others rate by weighting the individual company subsidy rate of each of the companies investigated by each company's exports of subject merchandise to the United States. However, the all others rate may not include zero and *de minimis* rates or any rates based solely on the facts available.[7] In this investigation, only Superpower's rate meets the criteria for the all others rate, that of Superpower. Therefore, we have assigned

[7] Pursuant to 19 CFR 351.204(d)(3), the Department must also exclude the countervailable subsidy rate calculated for a voluntary respondent. In this investigation we had no producers or exporters request to be voluntary respondents.

Superpower's rate to all other producers and exporters.

In accordance with sections 703(d)(1)(B) and (2) of the Act, except for Princeway, which has a *de minimis* rate, we are directing U.S. Customs and Border Protection to suspend liquidation of all entries of lawn groomers from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration. In accordance with section 705(b)(2)(B) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Unless otherwise notified by the Department, case briefs for this investigation must be submitted no later than 50 days after the date of publication of the preliminary determination. *See* 19 CFR 351.309(c) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: November 17, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–27891 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL85

Notice of Availability of a Draft Environmental Impact Statement/ Environmental Impact Report for the Proposed Replacement of the National Oceanic and Atmospheric Administration's Southwest Fisheries Science Center Located in La Jolla, CA

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of Availability of a National Environmental Policy Act (NEPA) Draft Environmental Impact Statement (EIS) and a California Environmental Quality Act (CEQA) Environmental Impact Report (EIR); request for comments.

SUMMARY: NOAA announces the availability for comment a joint Draft EIS/EIR analyzing the environmental impacts of replacing its Southwest Fisheries Science Center (SWFSC) near the Scripps Institution of Oceanography (SIO) within the University of California at San Diego (UCSD) campus in La Jolla, California.

Publication of this notice is to request public comment on the Draft EIS/EIR and its associated environmental findings and to provide information as to how to participate.

DATES: A public meeting will be held on the following date: Tuesday, December 9, 2008—6 p.m. meeting start time, Southwest Fisheries Science Center, Building A, Large Conference Room, 8604 La Jolla Shores Drive, La Jolla, CA 92037.

ADDRESSES: Written comments on the Draft EIS/EIR must be postmarked or transmitted via e-mail by January 12, 2009. Comments should be submitted to Anne Elston, Environmental Research Analyst, SRI International, 333 Ravenswood Avenue, G 234, Menlo Park, CA 94025–3493; e-mail *Anne.Elston@sri.com*.

FOR FURTHER INFORMATION CONTACT: Anne Elston, Environmental Research Analyst, SRI International, (650) 859–2693; e-mail *Anne.Elston@sri.com*.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Services (NMFS) is responsible for the management, conservation, and protection of living marine resources within the U.S. Exclusive Economic Zone. The SWFSC in La Jolla, California, manages and conducts research involving Pacific fisheries and marine mammal research for the protection and management of these resources throughout Western Pacific and Antarctica. The existing SWFSC facility, built in 1964, is currently adjacent to a coastal bluff that is undergoing severe erosion and retreat. NOAA proposes to construct a new SWFSC building to replace its existing NMFS administrative and marine research facilities currently located in La Jolla, California. A minimum of two existing at-risk SWFSC structures would be removed and the property currently used by NOAA would be returned to UCSD for other appropriate uses.

NOAA is the lead Federal agency for implementation of the NEPA. The University of California is the lead agency under the CEQA. The existing and preferred sites for the SWFSC headquarters are at the UCSD campus. The NMFS, SIO and other marine research organizations conduct independent and joint research at the SWFSC and its salt water laboratory facilities.

The proposed project will require construction of a new facility to support SWFSC administrative and marine research operations. The preferred site will enable NMFS, SIO, and others to

continue collaboration within a wide range of programmatic marine research disciplines. NOAA, in cooperation with UCSD, has prepared a joint EIS/EIR to analyze the environmental impacts of relocating the SWFSC facilities at UCSD.

Other alternative actions considered were: Use of other NOAA facility locations in California and other Pacific Coast states; use of alternative sites at or adjacent to SIO for collaborative research; and use of existing alternative NOAA facilities and properties away from UCSD.

This joint Draft EIS/EIR analyzes environmental impacts that may result from construction and/or operation of the proposed facilities. The environmental issues addressed in the Draft EIS/EIR include: Land use and coastal zone management, geology, hydrology and water resources; biological resources and protected species; utilities and public services; transportation and traffic circulation, recreational resources; air quality; noise and vibration; visual effects and aesthetics; cultural resources; and socioeconomics and environmental justice; public services and utilities; population and housing; solid waste and hazardous materials; and cumulative effects.

Copies of the draft EIS/EIR have been made available at the UCSD library, at the existing SWFSC, and at La Jolla Public Library.

Decision Process

Following due consideration of all comments received during the official comment period, a Final EIS/EIR will be prepared. The government decision as to how to proceed will be announced in a Record of Decision (ROD) to be issued no earlier than 30 days after issuance of the Final EIS/EIR. The official responsible for a final decision is William F. Broglie, Chief Administrative Officer, National Oceanic and Atmospheric Administration.

Dated: November 18, 2008.

Sandra R. Manning,

Acting Chief Administrative Officer, Office of the Chief Administrative Officer, National Oceanic and Atmospheric Administration.

[FR Doc. E8–27788 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XL88

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public scoping meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene scoping meetings to address loggerhead sea turtle interactions with reef fish bottom longlines.

DATES: The scoping meetings will be held December 9 & 10, 2008 at two locations. For specific dates, times, and subjects, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The scoping meetings will be held in the following locations: Madeira Beach, FL and Panama City, FL. For specific addresses, see **SUPPLEMENTARY INFORMATION**.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Carrie Simmons, Fishery Biologist; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) has scheduled two scoping meetings on the estimated bycatch and subsequent mortality of hard shell sea turtles based on observer data in the bottom longline portion of the Gulf of Mexico reef fish fishery. The purpose of these scoping meetings is to explore possible alternatives to reduce takes of loggerhead sea turtles in the bottom longline fishery to levels that do not jeopardize the continued existence of the population. In response to observer data that indicates increased takes of sea turtles, the Council is required to take action to provide protection for threatened loggerhead sea turtles from interactions with fishing gear in compliance with the Endangered Species Act (ESA) and to reduce bycatch and bycatch mortality in compliance with National Standard 9 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Scoping meetings are part of the initial phase of preparing a plan amendment. The purpose is to identify issues and a reasonable range of alternatives to address those issues. Such alternatives could include time/area closures, gear modifications, alternative baits, observer program, effort limitation, or other measures to reduce sea turtle takes and mortality of sea turtles from interactions with reef fish longline gear. The public is encouraged to attend and provide input. Public input will be used by the Council to further develop the amendment. The scoping meetings will begin at 6 p.m. and conclude at the end of public testimony or no later than 9 p.m. at each of the following locations:

Tuesday, December 9, 2008, Hilton Garden Inn, 1101 US Highway 231, Panama City, FL 32405; telephone: (850) 392–1093;

Wednesday, December 10, 2008, City of Madeira Beach, 300 Municipal Drive, Madeira Beach, FL 33708; telephone: (727) 391–9951.

Copies of the Amendments scoping documents can be obtained by calling the Council office at (813) 348–1630.

Special Accommodations

These scoping meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: November 18, 2008.

Tracey L Thompson,

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

[FR Doc. E8–27683 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XL96

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council(s (Council) Herring Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, December 16, 2008 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft Hotel, 50

Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee(s agenda are as follows:

1. Continue development of management alternatives for Amendment 4 to the Atlantic Herring Fishery Management Plan (FMP); alternatives may include measures to establish a catch monitoring program for the Atlantic herring fishery, annual catch limits (ACLs) and accountability measures (AMs), and measures to address river herring bycatch;

2. Review and discuss stakeholder proposals/ideas regarding a catch monitoring program for the Atlantic herring fishery;

3. Review and discuss alternatives to establish ACLs and AMs for the Atlantic Herring fishery;

4. Review and discuss updated observer and bycatch information, if available;

5. Discuss other issues related to the development of Amendment 4; and

6. Other Business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council(s intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: November 19, 2008.

Tracey L. Thompson,

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

[FR Doc. E8–27830 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 18, 2008.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, U.S. Customs and Border Protection adjusting limits.

EFFECTIVE DATE: November 25, 2008.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Bureau of Customs and Border Protection website (http://www.cbp.gov), or call (202) 863–6560. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to Paragraph 4 of the Memorandum of Understanding between the Governments of the United States and the People's Republic of China concerning Trade in Texile and Apparel Products, signed and dated on November 8, 2005, the current limits for certain categories are being increased by the recrediting of the unused carryforward that was previously applied to the 2007 limits and deducted from the 2008 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov). Also see 72 FR 67719 published on November 30, 2007, and 71 FR 65090, published on November 7, 2006.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 18, 2008.

Commissioner,
U.S. Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 27, 2007, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2008 and extends through December 31, 2008.

Effective on November 25, 2008, you are directed to increase the current limits for the following categories, as provided for under the terms of the Memorandum of Understanding between the Governments of the United States and the People's Republic of China concerning Trade in Texile and Apparel Products, signed and dated on November 8, 2005:

Category	Adjusted twelve-month limit [1]
345/645/646	10,673,870 dozen.
352/652	24,515,187 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 2007.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Janet E. Heinzen,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E8–27892 Filed 11–21–08; 8:45 am]

BILLING CODE 3510–DS

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Wednesday December 3, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: DCIO Risk Surveillance.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E8–27994 Filed 11–20–08; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday December 19, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield

Staff Assistant.

[FR Doc. E8–27995 Filed 11–20–08; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday December 12, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E8–27996 Filed 11–20–08; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m., Wednesday December 17, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E8–27998 Filed 11–20–08; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday December 5, 2008.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Staff Assistant.

[FR Doc. E8–27999 Filed 11–20–08; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License for a U.S. Army Owned Invention to Skytel, Inc.

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army announces that, unless there is an objection within 15 days of this notice, that it is contemplating granting an exclusive license to Skytel, Inc, a corporation having a place of business in Clinton, MS, on ''System And Method For Tactical Centralized Event Warning/Notification For Individual Entities'' by Paul Manz of PM Battle Command, disclosure docket number—CECOM 5531; ''System And Method For Semi-Distributed Event Warning/Notification For Individual Entities'' by Paul Manz of PM Battle Command, disclosure docket number—CECOM 5530; ''System And Method For Tactical Distributed Event Warning/Notification For Individual Entities'' by Paul Manz of PM Battle Command and Fernando Maymi of the U.S. Military Academy (USMA), disclosure docket number—CECOM 5532; and ''System For Event Warning/Notification And Reporting For Individual Entities'' by Paul Manz of PM Battle Command and Fernando Maymi of USMA, disclosure docket number—CECOM 5533.

Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

DATES: File written objections by December 9, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy S. Ryan, Technology Transfer Program Manager, AMSRD–AAR–EMB, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806–5000, e-mail: *timothy.s.ryan@us.army.mil;* (973) 724–7953.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 15 days from publication date of this notice in the **Federal Register**. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–27829 Filed 11–21–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Amendment.

SUMMARY: The notice of the names of members of a Performance Review Board for the Department of the Army published in the **Federal Register** on November 17, 2008 (72 FR 60662) has added four additional members.

DATES: *Effective Date:* November 18, 2008.

FOR FURTHER INFORMATION CONTACT: Constance B. Ray, Civilian Senior Leader Management Office, 140 Army Pentagon, Washington, DC 20310–0140.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Department of the Army Performance Review Boards are:

1. Major General Don T. Riley, Deputy Commanding General and Deputy Chief of Engineers, United States Army Corps of Engineers.

2. Major General Jeffrey J. Dorko, Deputy Commanding General for Military and International Operations, United States Army Corps of Engineers.

3. Ms. Jeannie A. Davis, Director of Human Resources, United States Army Corps of Engineers.

4. Mr. Wesley C. Miller, Director of Resources, United States Army Corps of Engineers.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–27828 Filed 11–21–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; DoD Acquisition Process—Miscellaneous Requirements (OMB Control Number 0704–0187)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through February 28, 2009. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by January 23, 2009.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0187, using any of the following methods:

○ Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

○ E-mail: *dfars@osd.mil.* Include OMB Control Number 0704–0187 in the subject line of the message.

○ Fax: 703–602–7887.

○ Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Information Collection in Support of the DoD Acquisition Process (Miscellaneous Requirements) (Defense Federal Acquisition Regulation Supplement (DFARS) Parts 208, 209, 226, and 235 and associated clauses in Part 252); OMB Control Number 0704–0187.

Needs and Uses: This information collection requirement pertains to information required by DFARS Parts 208, 209, 226, and 235 and associated clauses in Part 252, that an offeror must submit to DoD with regard to a solicitation or contract requirement. DoD uses this information to—

○ Determine whether to provide precious metals as Government-furnished material.

○ Determine an entity's eligibility for award of a contract under a national security program.

○ Determine whether there is a compelling reason for a contractor to enter into a subcontract with a firm, or subsidiary of a firm, that is identified in the List of Parties Excluded from Federal Procurement and Nonprocurement Programs as being ineligible for award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

○ Verify the status of an offeror as a historically black college or university (HBCU) or minority institution (MI) in order to determine whether the offeror is eligible for award under a HBCU/MI set-aside.

○ Evaluate claims of indemnification for loss or damage occurring under a research and development contract.

○ Keep track of radio frequencies for electronic equipment under research and development contracts, so that the user does not interfere with other use of the same frequency.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 1,845.

Number of Respondents: 698.

Responses per Respondent: Approximately 2.

Annual Responses: 1,260.

Average Burden per Response: 1.5 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection pertains to the following DFARS requirements:

○ *252.208–7000, Intent to Furnish Precious Metals as Government-Furnished Material.* Paragraph (b) of this clause requires an offeror to cite the type and quantity of precious metals required in the performance of the contract. Paragraph (c) requires the offeror to submit two prices for each deliverable item that contains precious metals: One based on the Government furnishing the precious metals, and the other based on the contractor furnishing the precious metals.

○ *252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country.* Paragraph (c) of this provision requires an offeror to provide a disclosure with its offer if the government of a terrorist country has a significant interest in the offeror, in a subsidiary of the offeror, or in a parent company of which the offeror is a subsidiary.

○ *252.209–7002, Disclosure of Ownership or Control by a Foreign Government.* Paragraph (c) of this provision requires the offeror to provide a disclosure with its offer of any interest a foreign government has in the offeror when that interest constitutes control of the offeror by a foreign government.

○ *252.209–7004, Subcontracting with Firms that are Owned or Controlled by the Government of a Terrorist Country.* Paragraph (b) of this clause requires the Contractor to notify the contracting officer in writing before entering into a subcontract with a party that is identified in the List of Parties Excluded from Federal Procurement and Nonprocurement Programs as being ineligible for award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the compelling reasons for doing business with the subcontractor.

○ *252.226–7000, Notice of Historically Black College or University and Minority Institution Set-Aside.* Paragraph (c)(2) of this clause requires that, upon request of the contracting officer, the offeror will provide evidence prior to award that the Secretary of Education has determined the offeror to be a historically black college or university or minority institution.

○ *252.235–7000, Indemnification Under 10 U.S.C. 2534—Fixed Price; and 252.235–7001, Indemnification Under 10 U.S.C. 2534—Cost-Reimbursement.* Paragraphs (f) and (e), respectively, of these clauses require the contractor to notify the contracting officer of any claim that might trigger the Government's liability under the clause, to furnish proof or evidence of any such claim, and to provide copies of all pertinent papers relating to the claim.

○ *252.235–7003, Frequency Authorization.* Paragraph (b) of this clause requires that the contractor provide to the contracting officer the technical operating characteristics for any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E8–27787 Filed 11–21–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 24, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: November 18, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Planning, Evaluation and Policy Development

Type of Review: New Collection.

Title: Evaluation of the Growth Model Pilot Program.

Frequency: Other: One time.

Affected Public: Businesses or other for-profit State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 36.

Burden Hours: 41.

Abstract: In November 2005 the U.S. Department of Education initiated the Growth Model Pilot Program (GMPP) with the goal of approving up to ten states to incorporate growth models in school AYP determinations under the No Child Left Behind (NCLB). As a condition of participation in Growth Model Pilot Program (GMPP), states are required to participate in an evaluation. The evaluation is designed to provide a more comprehensive picture of Growth Model Pilot Program (GMPP). Authorization to conduct this study is provided by the No Child Left Behind Act of 2001 (Pub. L. 107–110), Part E, Section 1501.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3759. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–27762 Filed 11–20–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–346]

Application To Export Electric Energy; Credit Suisse Energy LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Credit Suisse Energy LLC (CSE) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before December 24, 2008.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–5860).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On October 31, 2008, DOE received an application from CSE for authority to transmit electric energy from the United States to Mexico as a power marketer. CSE does not own any electric transmission facilities nor does it hold

a franchised service area. The electric energy which CSE proposes to export to Mexico would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

CSE proposes to export electric energy to Mexico and to arrange for the delivery of those exports over the international transmission facilities presently owned by AEP Texas Central, El Paso Electric Company, Central Power & Light Company, San Diego Gas & Electric Company, Sharyland Utilities, and Comision Federal de Electricidad, the national electric utility of Mexico.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by CSE was previously authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each comment, petition, and protest should be filed with DOE on or before the dates listed above.

All filings in this proceeding should be clearly marked with Docket No. EA–346. Additional copies are to be filed directly with Matthew Adams, VP Energy Trading and Marketing, 1100 Louisiana Street, Suite 4500, Houston, TX 77007.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://oe.energy.gov/permits_pending.htm*, or by e-mailing Odessa Hopkins at *odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on November 18, 2008.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E8–27837 Filed 11–21–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–145–D]

Application To Export Electric Energy; Powerex Corp.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Powerex Corp. (Powerex) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before December 24, 2008.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On May 30, 1997, the Department of Energy (DOE) issued Order No. EA–145 authorizing Powerex to transmit electric energy from the United States to Mexico as a power marketer for a two-year term. That Order was subsequently renewed on June 18, 1999, in Order No. EA–145–A; on August 13, 2001, in Order No. EA–145–B; and on April 26, 2004, in Order No. EA–145–C. The current export authorization will expire on April 26, 2009. On October 23, 2008, Powerex filed an application with DOE to renew the export authority contained in Order No. EA–145–C for an additional five-year term.

Powerex, the wholly owned marketing subsidiary of the British Columbia Hydro and Power Authority (BC Hydro), does not own or control any transmission facilities nor does it have a franchised service area. The electric energy which Powerex proposes to export to Mexico would be surplus energy purchased from BC Hydro or other Canadian utilities, from other power marketers, independent power producers, or U.S. electric utilities and Federal power marketing agencies in the United States.

Powerex will arrange for the delivery of exports to Mexico over the international transmission facilities owned by San Diego Gas & Electric Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Powerex was previously authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

DOE expects exporters of electric energy to obtain the necessary authorization from DOE to export electricity and to abide by the terms and conditions established for such export in the Orders issued by DOE, including any term limit for the authorization and the requirement to create and preserve full and complete records and file quarterly reports. Failure to first obtain an Order authorizing the export of electricity, or continuing to export after the expiration of such an Order, may result in a denial of authorization to export in the future and subject the exporter to sanctions and penalties under the FPA. DOE also expects transmitting utilities owning border facilities and entities charged with the operational control of those border facilities, such as Independent System Operators or RTO's, to verify that companies seeking to schedule an electricity export have the requisite authority from DOE to export such power.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each comment, petition, and protest should be filed with DOE on or before the dates listed above.

All filings in this proceeding should be clearly marked with Docket No. EA–145–D. Additional copies are to be filed directly with Mike MacDougall, Director, Trade Policy, Powerex Corp., 666 Burrard Street, Suite 1400, Vancouver, British Columbia, Canada V6C 2X8.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the

reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://oe.energy.gov/permits_pending.htm*, or by emailing Odessa Hopkins at *odessa.hopkins@hq.doe.gov*.

Issued in Washington, DC, on November 19, 2008.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E8–27836 Filed 11–21–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–344]

Application To Export Electric Energy; Twin Cities Power—Canada, ULC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Twin Cities Power—Canada, ULC (TCP) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before December 24, 2008.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, *Mail Code:* OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On October 14, 2008, DOE received an application from TCP for authority to transmit electric energy from the United States to Canada as a power marketer. TCP has requested an electricity export authorization with a 5-year term. TCP does not own or control any electric generation, transmission, or distribution assets, nor does it have a franchised service area. The electric energy which TCP proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

TCP will arrange for the delivery of exports to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by TCP has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the TCP application to export electric energy to Canada should be clearly marked with Docket No. EA–344. Additional copies are to be filed directly with Larry Severson, Severson, Sheldon, Dougherty & Molenda P.A., Suite 600, 7300 West 147th Street, Apple Valley, MN 55124–7580 AND Tim Kreiger, Twin Cities Power, LLC, 17725 Juniper Path, Lakeville, MN 55504.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm*, or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov*.

Issued in Washington, DC, on November 18, 2008.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E8–27835 Filed 11–21–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–716–000, FERC–716]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

November 18, 2008.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due January 23, 2009.

ADDRESSES: An example of this collection of information may be obtained from the Commission's Web site at (*http://www.ferc.gov/docs-filing/elibrary.asp*). Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09–716–000. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp*.

Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. First time users will have to establish a user name and password (*http://www.ferc.gov/docs-filing/eregistration.asp*) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling.

Commenters filing electronically should not make a paper filing. Commenters that are not able to file electronically must send an original and 14 copies of their comments to: Federal

Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription (at *http://www.ferc.gov/docs-filing/esubscription.asp*). In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's Web site using the ''eLibrary'' link and searching on Docket Number IC09–716. For user assistance, contact FERC Online Support (e-mail at *ferconlinesupport@ferc.gov*, or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659).

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION: The FERC is now combining the requirements from both FERC–716 (''Good Faith Request for Transmission Service and Response by Transmitting Utility Under sections 211(a) and 213(a) of the Federal Power Act'' (OMB No. 1902–0170)) and FERC–716A (''Application for Transmission Services Under section 211 of the Federal Power Act'' (OMB No. 1902–0168)) into a single notice. In addition, the requirements will be labeled FERC–716 and consolidated into a single OMB control no. (OMB No. 1902–0170).

The information collected under the requirements of FERC–716 ''Good Faith Request for Transmission Service and Response by Transmitting Utility Under sections 211(a) and 213(a) of the Federal Power Act'' (existing/current OMB No. 1902–0170) is used by the Commission to implement the statutory provisions of sections 211 and 213 of the Federal Power Act (FPA) as amended and added by the Energy Policy Act 1992. For the initial process, the information is not filed with the Commission, however, the request and response may be analyzed as a part of a section 211 proceeding. This collection of information covers the information that must be contained in the request and in the response. Should the parties be unable to resolve outstanding issues, an application may be submitted to the FERC. The Commission may order transmission services under the authority of FPA 211.

The Energy Policy Act of 1992 amended section 211 of the FPA and expanded the Commission's authority to order transmission service. Under the revised section 211, the Commission may order transmission services if it finds that such action would be in the public interest, would not unreasonably impair the continued reliability of electric systems affected by the order, and would meet the requirements of amended section 211 of the FPA.

The Commission's policy statement under Public Law 93–3, Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities Under section 211(a) and 213(a) of the Federal Power Act, as Amended, implemented a data exchange between a transmission requester and a transmitting utility prior to the submission of a section 211 request with the Commission. Components of the data exchange are identified in the Code of Federal Regulations (CFR), 18 CFR 2.20. The general policy sets forth standards by which the Commission determines whether and when a valid good faith request for transmission has been made under section 211 of the FPA. In developing the standards, the Commission sought to encourage an open exchange of information with a reasonable degree of specificity and completeness between the party requesting transmission services and the transmitting utility. As a result, 18 CFR 2.20 identifies twelve components of a good faith estimate and five components of a reply to a good faith request.

Information in the data exchange is not filed as noted above with the Commission, unless negotiations between the transmission requestor and the transmitting utility have not been successful and the transmission requestor files a section 211 request (formerly FERC–716A, 1902–0168, and incorporated herein) with the Commission.

When negotiations are unsuccessful, the information collected for the ''Application for Transmission Services Under section 211 of the Federal Power Act'' is used by the Commission to implement the statutory provisions of section 211 of the Federal Power Act (FPA) 16 U.S.C. (824) as amended by the Energy Policy Act 1992 (Pub. L. 102–486) 106 Stat. 2776. Under section 211, the Commission may order transmission services if it finds that such action would be in the public interest and would not unreasonably impair the continued reliability of systems affected by the order. The requirements are detailed in the Code of Federal Regulations (CFR) under 18 CFR part 36.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data. The existing requirements for the collections formerly known as FERC–716 and FERC–716A are being combined here under FERC–716.

Burden Statement: Public reporting burden for this collection is estimated as:

FERC data collection FERC–716	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
Information exchange between parties	3	1	100	300
Application submitted to FERC if parties' negotiations are unsuccessful	3	1	2.5	8
Total	3	2		308

For the information exchange, the estimated cost burden to respondents is $18,228.00 (300 hours ÷ 2080 hours per year × $126,384 per year average per employee = $18,228.00). The cost per respondent is $6,076.00. For the application to FERC, the estimated cost burden to respondents is $486.00 (8 hours ÷ 2080 hours per year × $126,384 per year average per employee = $486.00). The cost per respondent is $162.00. The total burden hours per year for the information exchange and the application would be 308.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information;

(3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.*, permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27813 Filed 11–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12740–001]

Hydro Matrix Limited Partnership; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approval of Use of the Traditional Licensing Process

November 18, 2008.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 12740–001.

c. *Dated Filed:* September 24, 2008.

d. *Submitted By:* Hydro Matrix Limited Partnership.

e. *Name of Project:* Flannagan Hydroelectric Project.

f. *Location:* The project would be located at the U.S. Army Corps of Engineers Flannagan Dam on the Pound River in Dickenson County, Virginia.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* James B. Price, President, Hydro Matrix Limited Partnership, P.O. Box 903, Gatlinburg, TN 37738, (865) 436–0402 (business), (803) 215–4165 (mobile).

i. *FERC Contact:* Nicholas Palso, (202) 502–8854 or *nicholas.palso@ferc.gov*.

j. Hydro Matrix Partnership Limited filed its request to use the Traditional Licensing Process on September 24, 2008. Hydro Matrix Partnership Limited filed public notice of its request on September 24, 2008. In a letter dated November 12, 2008, the Director of the Office of Energy Projects approved Hydro Matrix Partnership Limited's request to use the Traditional Licensing Process.

k. With this notice, we are approving Hydro Matrix Limited Partnership's request to be designated as the non-federal representative for section 7 of the Endangered Species Act and its request to initiate consultation under section 106 of the National Historic Preservation Act; and recommending that it begin informal consultation with: (a) The U.S. Fish and Wildlife Service; and (b) the Virginia State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Hydro Matrix Partnership Limited filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27816 Filed 11–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13300–000]

Marmc Enterprises, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

November 18, 2008.

On October 14, 2008 and supplemented on November 17, 2008, MARMC Enterprises, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Third District Reach Project, located on the Mississippi River in Orleans and St. Bernard Parishes, Louisiana. The project uses no dam or impoundment.

The proposed project would consist of: (1) 40 bi-directional Underwater Electric Kite (UEK) turbine generating units, with a total installed capacity of 16-megawatts, (2) an underwater cable approximately 300 foot in length, and (3) appurtenant facilities. The project is estimated to have an annual generation of 137.357-gigawatt-hours, which would be sold to a local utility, industrial or commercial customer, or into the wholesale energy markets.

Applicant Contact: Ms. Nicoline Marinovich, MARMC Enterprises, LLC, 816 Pacific Avenue, New Orleans, Louisiana 70114–2438, phone 986–705–2940.

FERC Contact: Kelly Houff (202) 502–6393.

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–13300) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27817 Filed 11–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

September 12, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC08–123–000.

Applicants: J–POWER USA Generation, L.P.; DJ Power LLC; Freeport Power, LLC; Harbinger Independent Power Fund II, L.L; Harbinger Pinelawn LLC; NM Regal, LLC.

Description: J–POWER USA Generation LP *et al.* submits a joint application for authorization of Transactions and request for waivers and expedited consideration etc Pursuant to Section 203 of the Federal Power Act.

Filed Date: 09/09/2008.

Accession Number: 20080911–0110.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 30, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG08–97–000.

Applicants: Walnut Creek Energy, LLC.

Description: Notice of Self Certification of Exempt Wholesale Generator Status.

Filed Date: 09/11/2008.

Accession Number: 20080911–5048.

Comment Date: 5 p.m. Eastern Time on Thursday, October 2, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–837–007; ER99–3151–008; ER03–327–002; ER08–448–000; ER08–447–000;

Applicants: PSEG Inc; PSEG Nuclear LLC; PSEG Power Connecticut LLC; PSEG Fossil LLC.

Description: Public Service Electric and Gas Company's *et al.* response to FERC's data request & submission of Updates Market Power Analysis.

Filed Date: 09/02/2008.

Accession Number: 20080911–0079.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 23, 2008.

Docket Numbers: ER07–758–012.

Applicants: Inland Empire Energy Center, L.L.C.

Description: Notice of Non-Material Change in Status.

Filed Date: 09/03/2008.

Accession Number: 20080903–5067.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 24, 2008.

Docket Numbers: ER07–874–001; ER94–1061–029.

Applicants: Rainbow Energy Ventures LLC; Rainbow Energy Marketing Corporation.

Description: Rainbow Energy Ventures, LLC *et al.* requests for clarification as a Category 1 Seller Determination pursuant to Order 697 & 697–A.

Filed Date: 09/09/2008

Accession Number: 20080911–0073.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 30, 2008.

Docket Numbers: ER08–1335–001.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits Substitute Third Revised Service Agreement 391, in its entirety and Substitute Fourth Revised Service Agreement 391 etc.

Filed Date: 09/10/2008.

Accession Number: 20080912–0117.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 1, 2008.

Docket Numbers: ER08–1503–000.

Applicants: Duke Energy Carolinas, LLC.

Description: Duke Energy Carolinas, LLC submits a Notice of Succession.

Filed Date: 09/08/2008.

Accession Number: 20080909–0099.

Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: ER08–1504–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection submits an executed Interconnection Service Agreement etc.

Filed Date: 09/08/2008.

Accession Number: 20080909–0098.

Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: ER08–1505–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submit its Adjacent Balancing Authority Coordination Agreement.

Filed Date: 09/08/2008.

Accession Number: 20080909–0097.

Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: ER08–1506–000.

Applicants: Old Dominion Electric Cooperative, Inc.

Description: Old Dominion Electric Cooperative submits a Notice of Cancellation of the Amended and Restated Wholesale Power Contract.

Filed Date: 09/08/2008.

Accession Number: 20080909–0096.

Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: ER08–1508–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits proposed revisions to their 9/8/08 filing re allocation and auction of Congestion Revenue Rights for calendar year 2009.

Filed Date: 09/09/2008.

Accession Number: 20080910–0067.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 30, 2008.

Docket Numbers: ER08–1509–000.

Applicants: Burgess Capital LLC.

Description: Burgess Capital, LLC submits petition for acceptance of initial tariff (FERC Electric Tariff, Original Volume 1), waivers and blanket authority.

Filed Date: 09/09/2008.

Accession Number: 20080911–0109.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 30, 2008.

Docket Numbers: ER08–1510–000.

Applicants: American Electric Power Service Corporation.

Description: AEP Operating Companies submits a fourth revision to the Interconnection and Local Delivery Service Agreement 1427 with the City of St Clairsville.

Filed Date: 09/09/2008.

Accession Number: 20080911–0072.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 30, 2008.

Docket Numbers: ER08–1511–000.

Applicants: Kentucky Utilities Company.

Description: Kentucky Utilities Company informs that on 3/31/08 they submitted for filing an executed copy of Amendment 1 to Contract for Electric Service between Bardstown Municipal Electric Light & Power and KU.

Filed Date: 09/09/2008.

Accession Number: 20080911–0074.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 30, 2008.

Docket Numbers: ER08–1512–000.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits the Installed Capacity. Requirement, Hydro Quebec Interconnection Capability Credits and related values for the 2011/2012 Capability Year under ER08–1512.

Filed Date: 09/09/2008.

Accession Number: 20080912–0116.

Comment Date: 5 p.m. Eastern Time on Tuesday, September 30, 2008.

Docket Numbers: ER08–1515–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Meter Agent Services Agreement between Noble Great plains Windpark, LLC as the Market Participant and Southwestern Public Service Company as the Meter Agent under ER08–1515.

Filed Date: 09/10/2008.

Accession Number: 20080912–0114.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 1, 2008.

Docket Numbers: ER08–1516–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Joint Operating Agreement with Associated Electric Cooperative, Inc, effective 8/12/08 under ER08–1516.

Filed Date: 09/10/2008.

Accession Number: 20080912–0113.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 1, 2008.

Docket Numbers: ER08–1517–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits an executed Large Generator Interconnection Agreement between PNM and High Lonesome Mesa, LLC dated 8/11/08 and designated as Service Agreement etc under ER08–1517.

Filed Date: 09/10/2008.

Accession Number: 20080912–0112.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 1, 2008.

Docket Numbers: ER08–1518–000.

Applicants: Virginia Electric and Power Company.

Description: Dominion Virginia Power submits a Notice of Cancellation and revised service agreement cover sheet to cancel a Generator Interconnection and Operating Agreement between Dominion and Southeastern Public Service etc under ER08–1518.

Filed Date: 09/10/2008.

Accession Number: 20080912–0111.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 1, 2008.

Docket Numbers: ER08–1520–000.

Applicants: E. ON U.S. LLC.

Description: E.ON U.S LLC *et al.* submits proposed revisions to LG&E/KU joint Open Access Transmission Tariff under ER08–1520.

Filed Date: 09/10/2008.

Accession Number: 20080912–0110.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 1, 2008.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES08–62–000; ES08–63–000; ES08–64–000.

Applicants: PSEG Fossil LLC; PSEG Nuclear LLC; PSEG Energy Resources & Trade LLC.

Description: Application of PSEG Fossil LLC, PSEG Nuclear LLC and PSEG Energy Resources & Trade LLC for Renewal and Expansion of Authorization to Issue Securities in Connection with Credit Facilities.

Filed Date: 09/12/2008.

Accession Number: 20080912–5002.

Comment Date: 5 p.m. Eastern Time on Friday, October 3, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–153–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submits First Revised Sheet 2 *et al.* to FERC Electric Tariff, Second Revised Volume 6 to their Open Access Transmission Tariff under OA08–153.

Filed Date: 09/05/2008.

Accession Number: 20080910–0074.

Comment Date: 5 p.m. Eastern Time on Friday, September 26, 2008.

Docket Numbers: OA08–153–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Company of New Mexico submit amendments to its Second Revised Volume 6 Open Access Transmission Tariff to reflect the changes required by the Commission's Order 890–B.

Filed Date: 09/08/2008.

Accession Number: 20080910–0073.

Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–154–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Co submits compliance filing with revisions to its Fourteenth Revised Volume 2 Open Access Transmission Tariff etc pursuant to Order 890–B.

Filed Date: 09/08/2008.

Accession Number: 20080911–0106.

Comment Date: 5 p.m. Eastern Time on Monday, September 29, 2008.

Docket Numbers: OA08–155–000.

Applicants: Tieton Hydropower, LLC.

Description: Tieton Hydropower, LLC's Petition to Waive Open Access Tariff Filing Requirement.

Filed Date: 09/11/2008.

Accession Number: 20080911–5095.

Comment Date: 5 p.m. Eastern Time on Thursday, October 2, 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 docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–27808 Filed 11–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

November 13, 2008.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–19–000.
Applicants: Sempra Energy Trading LLC, Sempra Energy Solutions LLC, The Royal Bank of Scotland plc.
Description: Sempra Energy Trading LLC *et al.* submits emergency application for authorization for disposition of jurisdictional facilities and request for expedited action and effective date of authorization.
Filed Date: 11/10/2008.
Accession Number: 20081113–0009.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–12–000.
Applicants: NRG Texas Power LLC.
Description: Self Certification Notice of NRG Texas Power LLC.
Filed Date: 11/07/2008.
Accession Number: 20081107–5117.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: EG09–13–000.
Applicants: FPL Energy Oliver Wind I, LLC.
Description: Notice of Self Certification of Exempt Wholesale Generator Status of FPL Energy Oliver Wind I, LLC.
Filed Date: 11/10/2008.
Accession Number: 20081110–5154.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: EG09–14–000.
Applicants: Bull Creek Wind LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Bull Creek Wind LLC.
Filed Date: 11/12/2008.
Accession Number: 20081112–5098.
Comment Date: 5 p.m. Eastern Time on Wednesday, December 3, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER94–1188–045; ER98–4540–014; ER99–1623–014; ER98–1279–016.
Applicants: LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company, Western Kentucky Energy Corporation.
Description: Errata of LG&E Energy Marketing Inc., *et al.*
Filed Date: 11/13/2008.
Accession Number: 20081113–5027.
Comment Date: 5 p.m. Eastern Time on Thursday, December 4, 2008.

Docket Numbers: ER98–4421–010; ER99–791–008; ER99–806–007; ER99–3677–009; ER01–570–010; ER04–543–006.
Applicants: Consumers Energy Company, CMS Energy Resource Management Company, GRAYLING GENERATING STATION LIMITED PART, Genesee Power Station Ltd. Partnership, CMS Generation Michigan Power, L.L.C., Dearborn Industrial Generation, L.L.C.
Description: Consumers Energy Co submits notice of non-material change in status.
Filed Date: 11/10/2008.
Accession Number: 20081113–0011.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER06–1552–007; ER08–416–005.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission of System Operator, Inc submits filing supplementing the Midwest ISO's 9/17/08 compliance filing.
Filed Date: 11/07/2008.
Accession Number: 20081110–0258.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER08–370–005; EL08–22–003.
Applicants: Midwest Independent System Transmission Operator, Inc.
Description: Missouri River Energy Services and the Midwest Independent System Operator, Inc submits revised MRES Attachment O transmission rate formula tariff sheets etc.
Filed Date: 10/30/2008.
Accession Number: 20081104–0130.
Comment Date: 5 p.m. Eastern Time on Thursday, November 20, 2008.

Docket Numbers: ER08–1072–001.
Applicants: Nevada Power Company.
Description: Nevada Power Company submits compliance filing.
Filed Date: 11/07/2008.
Accession Number: 20081110–0202.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER08–1209–001.
Applicants: ISO New England Inc. & New England Power.
Description: ISO New England Inc *et al.* informs that on 7/1/08 filed tariff revisions related to resources needed for reliability in the Forward Capacity Market.
Filed Date: 11/07/2008.
Accession Number: 20081110–0259.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER08–1521–002.
Applicants: American Electric Power Service Corp.
Description: American Electric Power Service Corp submits Exhibit AEP–4 which was inadvertently excluded from the 11/6/08 filing.
Filed Date: 11/10/2008.
Accession Number: 20081113–0010.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–62–001.
Applicants: Enel Stillwater, LLC.
Description: Enel Stillwater, LLC submits an Amendment to the Application of Enel for Order Accepting Market-Based Rate Tariff, Granting Waivers and Blanket Authority, and Request for Waiver of Prior Notice Requirement etc.
Filed Date: 11/06/2008.
Accession Number: 20081110–0201.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–226–000.
Applicants: ALLETE, Inc.
Description: Allete, Inc submits seventeen full energy and capacity requirements contracts for service to provide wholesale customers located in Northeastern Minnesota etc under ER09–226.
Filed Date: 11/03/2008.
Accession Number: 20081110–0263.
Comment Date: 5 p.m. Eastern Time on Monday, November 24, 2008.

Docket Numbers: ER09–247–000.
Applicants: CenterPoint Energy Houston Electric, LLC.
Description: CenterPoint Energy Houston Electric, LLC submits Second Revised Sheet No. 29 *et al.* to FERC Electric Tariff, Fifth Revised Volume No. 1, effective 11/5/08.
Filed Date: 11/06/2008.
Accession Number: 20081110–0244.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–248–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits a Large Generator Interconnection Agreement with Taloga Wind, LLC.
Filed Date: 11/06/2008.
Accession Number: 20081110–0243.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–249–000.
Applicants: Public Service Electric and Gas Company.
Description: Public Service Electric and Gas Company submits Revised Sheet 311U *et al.* to FERC Electric Tariff, Sixth Revised Volume 1 etc and on 11/6/08 submit Revised Sheets to its OATT illustrating the proposed changes to Attachment 7, Schedule H–10A etc.

Filed Date: 11/04/08; 11/06/2008.
Accession Number: 20081113–0171; 20081110–0241.
Comment Date: 5 p.m. Eastern Time on Tuesday, November 25, 2008.

Docket Numbers: ER09–250–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corp submits a cost-based power sales agreement with the City of Gainesville, Florida.
Filed Date: 11/06/2008.
Accession Number: 20081110–0242.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–251–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits a Large Generator Interconnection Agreement with Spitfire Power Partners, LLC.
Filed Date: 11/06/2008.
Accession Number: 20081110–0245.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–253–000.
Applicants: Wisconsin Public Service Corporation.
Description: Wisconsin Public Service Corp *et al.* submits the Local Balancing Area Operations Coordination Agreement.
Filed Date: 11/07/2008.
Accession Number: 20081110–0247.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–254–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits revised pages to its Open Access Transmission Tariff to Implement New Pricing Rate Zones etc.
Filed Date: 11/07/2008.
Accession Number: 20081110–0248.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–255–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits an addition of rate zone and formula rate template to SPP tariff for new member: Nebraska Public Power District.
Filed Date: 11/07/2008.
Accession Number: 20081110–0249.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–256–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits the direct testimony and exhibits of Jay D Anderson on behalf of the Omaha Public Power District to implement a revenue requirement formula rate etc.
Filed Date: 11/07/2008.
Accession Number: 20081110–0250.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–257–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc on behalf of Lincoln Electric System submits exhibits to implement a formula rate for transmission service using the facilities of LES etc.
Filed Date: 11/07/2008.
Accession Number: 20081110–0251.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–258–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Co submits the Interconnection and Operating Agreement with Florida Power Corp under ER09–258.
Filed Date: 11/07/2008.
Accession Number: 20081110–0252.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–259–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits a unilaterally-executed Second Amended and Restated NCPA MSS Aggregator Agreement under ER09–259.
Filed Date: 11/07/2008.
Accession Number: 20081110–0256.
Comment Date: 5 p.m. Eastern Time on Friday, November 28, 2008.

Docket Numbers: ER09–260–000.
Applicants: Weyerhaeuser Company.
Description: Weyerhaeuser Company submits Notice of Cancellation of Market Based Rate Tariff, Original Volume 1, to be effective 1/1/09 under ER09–260 *et al.*
Filed Date: 11/10/2008.
Accession Number: 20081112–0106.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–261–000.
Applicants: Southern Company Services, Inc.
Description: Alabama Power Co *et al.* (Southern Companies) submits Notice of Cancellation of the network integration transmission service agreement with PowerSouth Electric Cooperative under ER09–261.
Filed Date: 11/10/2008.
Accession Number: 20081112–0105.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–262–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc petition the Commission to grant a waiver of certain provisions of its Large Generator Interconnection Procedures to its Open Access Transmission Tariff etc under ER09–262.
Filed Date: 11/10/2008.
Accession Number: 20081112–0104.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–263–000.
Applicants: El Paso Electric Company.
Description: El Paso Electric Co submits First Amendment to Service Agreements for Firm Point-to-Point Transmission Service with Public Service Company of New Mexico under ER09–263.
Filed Date: 11/10/2008.
Accession Number: 20081112–0103.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–264–000.
Applicants: Florida Power Corporation.
Description: Florida Power Corp and Progress Energy Florida, Inc submits an executed interconnection and operating agreement with Tampa Electric Co designated as FERC Rate Schedule 202 under ER09–264.
Filed Date: 11/10/2008.
Accession Number: 20081112–0102.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–265–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits a Small Generator Interconnection Agreement and a Service Agreement for Wholesale Distribution Service with FlexEnergy, LLC under ER09–265.
Filed Date: 11/10/2008.
Accession Number: 20081112–0101.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–266–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits its Coordination Agreement with the Independent Electricity System Operator under ER09–266.
Filed Date: 11/10/2008.
Accession Number: 20081112–0113.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–267–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits its Adjacent Balancing Authority Coordination Agreement with Dairyland Power Coop under ER09–267.

Filed Date: 11/10/2008.
Accession Number: 20081112–0107.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–268–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits First Revised Sheet 1 to FERC Electric Tariff Volume 11, reflecting termination of a Supplemental Generation Agreement with the City of Burlingame, Kansas under ER09–268.
Filed Date: 11/10/2008.
Accession Number: 20081112–0108.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–269–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits First Revised Sheet 1 to FERC Electric Tariff Volume 12, reflecting termination of a Supplemental Generation Agreement with City of Herington, Kansas under ER09–269.
Filed Date: 11/10/2008.
Accession Number: 20081112–0110.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–270–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits First Revised Sheet 1 to FERC Electric Tariff Volume 13, reflecting termination of a Supplemental Generation Agreement with City of Horton, Kansas under ER09–270.
Filed Date: 11/10/2008.
Accession Number: 20081112–0109.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–271–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits First Revised Sheet 1 to FERC Electric Tariff Volume 14, reflecting termination of a Supplemental Generation Agreement with Osage City, Kansas under ER09–271.
Filed Date: 11/10/2008.
Accession Number: 20081112–0111.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 2008.

Docket Numbers: ER09–272–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits First Revised Sheet 1 to FERC Electric Tariff Volume 15, reflecting termination of a Supplemental Generation Agreement with City of Wamego, Kansas under ER09–272.
Filed Date: 11/10/2008.
Accession Number: 20081112–0112.
Comment Date: 5 p.m. Eastern Time on Monday, December 1, 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.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–27809 Filed 11–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–9–000]

Wabash Valley Power Association, Inc. Complainant v. Midwest Independent Transmission System Operator, Inc. Respondent; Notice of Complaint

November 18, 2008.

Take notice that on November 12, 2008, Wabash Valley Power Association, Inc. (Complainant) filed, pursuant to sections 206 and 212 of the Rules and Practice and Procedure, 18 CFR 385.206 and 385.212, a second complaint and motion for consolidation, or alternatively, motion for extension of refund period against Midwest Independent Transmission System Operator, Inc. (Respondent) alleging that the Revenue Sufficiency Guarantee charge allocation provisions of the Respondent's tariff are unjust, unreasonable, and unduly discriminatory, and should be revised. Complainant also requests that the Commission establish the earliest possible refund-effective date with respect to the requested revisions.

The Complainant states that copies of the complaint were served upon the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 2, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27818 Filed 11–21–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF08–27–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed TEMAX and TIME III Projects and Request for Comments on Environmental Issues

November 18, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will identify and address the potential environmental impacts that could result from the construction and operation of the TEMAX and TIME III Projects (Projects) planned by Texas Eastern Transmission, LP (Texas Eastern). The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help determine which issues need to be evaluated in the EA. Please note that the scoping period will close on December 19, 2008. Details on how to submit comments are provided in the Public Participation section of this notice.

This notice is being sent to affected landowners; Federal, State, and local government agencies; elected officials; Native American groups; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and to encourage them to comment on their areas of concern. If you are a landowner receiving this notice, you may not be affected by construction of facilities, but may be affected by the planned increase in the maximum allowable operating pressure (MAOP) on Texas Eastern's existing pipeline where no construction would occur.

As a landowner receiving this notice, you may be contacted by a Texas Eastern representative about the acquisition of an easement to construct, operate, and maintain the project facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with federal or state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Projects

The planned Projects consist of the replacement of 25.9 miles of various diameter pipeline, construction of 9.6 miles of loop,[1] use of 0.8 mile of existing pipeline, and construction of 26.5 miles of new pipeline lateral. In addition, Texas Eastern plans to add 85,633 horsepower (hp) of compression at four existing compressor stations and abandon 9,500 hp of compression at one compressor station, resulting in a net increase of 76,133 hp of compression for the project. Texas Eastern also plans to uprate the MAOP of its Lines 1 and 2 from 1,000 to 1,112 pounds per square inch gauge for 268 miles between its Uniontown and Marietta Compressor Stations. The facilities are located in Greene, Bedford, Franklin, Adams, Lancaster and York Counties, Pennsylvania.

More specifically, Texas Eastern plans the following:

The Holbrook Discharge

- Construct 0.5 mile of 36-inch-diameter loop as an addition onto the existing Line 30;
- Replace 9.2 miles of the existing 20-inch-diameter Line 2 and 24-inch-diameter Line 1 with 36-inch-diameter pipeline; and
- Construct 9.1 miles of 36-inch-diameter loop.

The Uniontown Discharge

- Replace 3.7 miles of the existing 24-inch-diameter Line 1 with 36-inch-diameter pipeline.

The Bedford Discharge

- Replace 6.8 miles of the existing 24-inch-diameter Line 1 with 36-inch-diameter pipeline.

The Chambersburg Discharge

- Replace 2.1 miles of the existing 24-inch-diameter Line 1 with 36-inch-diameter pipeline.

The Heidlersburg Discharge

- Replace 2.4 miles of the existing 24-inch-diameter Line 1 with 36-inch-diameter pipeline.

The Marietta Extension

- Replace 1.7 miles of the existing 24-inch-diameter Line 1 with 36-inch-diameter pipeline;
- Utilize 0.8 mile of existing 36-inch-diameter pipeline crossing the Susquehanna River; and
- Construct 26.5 miles of new 30-inch-diameter pipeline to the interconnect with Transcontinental Gas Pipeline Corporation (Transco).

The Holbrook Compressor Station

- Abandon one 2,000-horsepower (hp) reciprocating gas-powered compressor unit; and
- Install a 13,333-hp turbine-driven centrifugal compressor.

The Uniontown Compressor Station

- Install a 20,000-hp electric-powered compressor unit.

The Bedford Compressor Station

- Install pressure regulators on Line 1 and 2.

The Chambersburg Compressor

- Abandon three reciprocating gas-powered compressor units totaling 7,500 hp;
- Install a new 27,000-hp electric-powered compressor unit; and
- Add 3,330 hp to the existing electric-powered compressor unit.

The Heidlersburg Compressor Station

- Install a 22,000-hp electric-powered compressor unit.

The purpose of the Projects is to provide additional natural gas transportation capacity of 395,000 dekatherms per day (Dth/d) from a

[1] A pipeline ''loop'' is a segment of pipe installed adjacent and parallel to an existing pipeline system that is connected to the system at both ends. A loop allows more gas to be moved through that portion of the pipeline system or functions as a backup system.

receipt point with the Rockies Express Pipeline LLC in Clarington, Ohio, and 60,000 Dth/d from a receipt point in Oakford, Pennsylvania, to an interconnect with Transco in York County, Pennsylvania.

The general location of the planned facilities is shown in appendix A.[2]

The EA Process

We[3] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impact that could result if it authorizes Texas Eastern's proposal. By this notice, we are also asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments provided below.

NEPA also requires the FERC to discover and address concerns the public may have about the proposal. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, we are requesting public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the Projects under these general headings:

- Geology and soils.
- Land use and visual quality.
- Water quality and wetlands.
- Cultural resources.
- Vegetation and wildlife (including threatened and endangered species).
- Air quality and noise.
- Reliability and safety.

We will also evaluate possible alternatives to the Projects or portions of the Projects, where necessary, and make recommendations on how to lessen or avoid impacts on the various resources.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies; public interest groups; Native American groups; interested individuals; affected landowners; local newspapers and libraries; and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the ''Public Participation'' section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Projects. Your comments should focus on the potential environmental effects of the proposal, reasonable alternatives, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before December 19, 2008.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances, please reference the project docket number with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *eFiling@ferc.gov*.

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project.

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister*.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing.''

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

- Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1, and
- Reference Docket No. PF08–27–000 on the original and both copies.

Environmental Mailing List

As described above, we may publish and distribute the EA for comment. If you are interested in receiving an EA for review and/or comment, please return the Environmental Mailing List Form (appendix B). All individuals who either return the Environmental Mailing List Form or provide written scoping comments will remain on our environmental mailing list for this project. If you do not return the Environmental Mailing List Form or file comments, you will be taken off the mailing list.

Additional Information

Once Texas Eastern formally files its application with the Commission, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application is filed with the Commission.

Additional information about the Projects is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Click on the eLibrary link, then on ''General Search'' and enter the docket number excluding the last three digits (i.e., PF08–27) in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Texas Eastern.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information. You can also request additional information by calling Texas Eastern at 1–800–831–0043.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27812 Filed 11–21–08; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS08–405–000]

Dixie Pipeline Company; Notice of Extension of Time for Technical Conference

November 18, 2008.

On November 14, 2008, Dixie Pipeline Company (Dixie) and the protesting parties [1] in the above-captioned proceeding (Joint Movants) filed a Joint Motion to Extend Date for Technical Conference.

In the order issued August 22, 2008,[2] the Commission established a technical conference in this proceeding. By notice issued October 3, 2008, the technical conference was scheduled for 9 a.m. on Thursday, October 23, 2008, at the Commission's offices. By further notice issued October 22, 2008, the conference was postponed at the request of Dixie and the protesting parties until November 20, 2008, at 9 a.m. at the Commission's offices.

Joint Movants state that the parties are continuing to work toward a settlement of the issues in this proceeding and that they believe an additional extension of time for the technical conference will benefit the ongoing discussions. Joint Movants ask the Commission to further extend the date of the technical conference and agree to report their progress before December 19, 2008. Dixie states that, if the parties have not resolved the matter before that date, it will withdraw FERC Tariffs No. 92 and 93 and refile them at a later date to allow the parties time to confer.

Take notice that the Commission will convene the technical conference in this proceeding on Tuesday, December 16, 2008, at 9 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FERC 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.

All parties and staff are permitted to attend. For further information, please contact Jenifer Lucas at (202) 502–8362 or *Jenifer.Lucas@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27814 Filed 11–21–08; 8:45 am]

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[1] The protesting parties include Dow Hydrocarbon and Resources LLC; CITGO Petroleum Corporation; ConocoPhillips Company; Targa Midstream Services Limited Partnership and Targa Louisiana; and Crosstex NGL Marketing, L.P. and Crosstex Processing Services, LLC. Joint Movants state that the following intervenors and/or commenters do not oppose the motion: National Propane Gas Association, FerrellGas, L.P., BP Products North America Inc., and the South Carolina Department of Labor, Licensing and Regulation, Liquefied Petroleum Gas Board. Dixie further states that it informed an additional intervenor, Petrologistics Olefins LLC, of the instant motion, but as of the time it filed the motion, Dixie had not received a response.

[2] *Dixie Pipeline Co.*, 124 FERC ¶ 61,175 (2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12652–001]

Gerald M. Lutticken; Notice of Surrender of Preliminary Permit

November 18, 2008.

Take notice that Gerald M. Lutticken, permittee for the proposed Helltown Ravine Hydroelectric Project, has requested that its preliminary permit be terminated. The permit was issued on November 3, 2006, and would have expired on October 31, 2009.[1] The project would have been located on Helltown Ravine, a tributary to Butte Creek, in Butte County, California.

The permittee filed the request on November 7, 2008, and the preliminary permit for Project No. 12652 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, part-day holiday that affects the Commission, or legal holiday as described in section 18 CFR 385.2007, in which case the effective date is the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–27815 Filed 11–21–08; 8:45 am]

BILLING CODE 6717–01–P

[1] 117 FERC ¶ 62,123.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8742–9]

Leviathan Mine Superfund Site; Notice of Proposed CERCLA Administrative Order on Consent

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), the EPA is hereby providing notice of a proposed administrative settlement agreement and order on consent (''Settlement Agreement'') with Atlantic Richfield Company (''Respondent'') concerning the Leviathan Mine Superfund Site in Alpine County, California (''Site''). Section 122(h) of CERCLA, 42 U.S.C. 9622(h), provides EPA with the authority to enter into administrative settlements for claims for costs incurred by EPA under CERCLA.

The Settlement Agreement resolves certain claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607. Under the Settlement Agreement, Respondent will perform certain response actions at the Site through July 31, 2013, pay over $1.7 million to reimburse the United States for certain past costs, pay certain future response costs, pay a civil penalty of $90,000, and perform a specified supplemental environmental project in Douglas County, Nevada, with costs estimated at $400,000. EPA estimates that the response actions to be performed under the Settlement Agreement will cost approximately $5,600,000.

The Settlement Agreement and its appendices may be examined at the U.S.

Environmental Protection Agency Region IX, 75 Hawthorne Street, Office of Regional Counsel, San Francisco, California 94105, and also at any of the following public information repositories:

Nevada State Library & Archives, 100 N. Stewart Street, Carson City, NV 89701; Douglas County Public Library, 1625 Library Lane, Minden, NV 89423; or Alpine County Library, 270 Laramie Street, Markleeville, CA 96120.

The Settlement Agreement, together with descriptions of the removal action and the supplemental environmental project to be performed under the Settlement Agreement may also be examined at the following EPA Web site: *http://www.epa.gov/region09/LeviathanMine*. A copy of the Settlement Agreement may also be obtained by mail from Joshua Wirtschafter, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street (mail code ORC–3), San Francisco, California 94105–3901.

DATES: EPA must receive comments by December 24, 2008 relating to the Settlement Agreement. EPA will consider all comments it receives during this period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Written comments may be submitted to Joshua Wirtschafter, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street (mail code ORC–3), San Francisco, California 94105–3901. Written comments may also be e-mailed to Joshua Wirtschafter at *Wirtschafter.Joshua@epa.gov* or faxed to him at (415) 947–3570.

FOR FURTHER INFORMATION CONTACT: Additional information about the Leviathan Mine Super-fund Site and about the proposed Settlement Agreement may be obtained by contacting Joshua Wirtschafter, Esq. at the above e-mail address or at (415) 972–3912.

Dated: November 13, 2008.

Keith Takata,

Director, Superfund Division, Region IX.

[FR Doc. E8–27751 Filed 11–21–08; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8744–2; Docket ID No. EPA–HQ–ORD–2008–0789]

Literature Search for 2,3,7,8–Tetrachlorodibenzo-p-Dioxin (TCDD) Dose-Response Studies for Use in an Upcoming Expert Panel Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice; availability of a literature search, public review period, and request for information.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 45-day public review and request for additional information on available peer-reviewed literature for 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) dose-response for use in human health risk assessment. An initial literature search was conducted by EPA through an Interagency Agreement with the Department of Energy's Argonne National Laboratory. Results of this preliminary search are available via the dioxin Web site *http://www.epa.gov/ncea/dioxin*. The public is invited to review the preliminary literature search results and submit any additional information, specifically peer-reviewed TCDD dose-response studies, to EPA that are not already identified in the literature search. Please submit any information in accordance with the instructions provided below. It is requested that the full publication be provided to EPA if possible. Results of this literature search will be used by scientists from EPA and other scientists from outside of EPA in the conduct of a scientific expert workshop, open to the public, to be held in Cincinnati, Ohio, on February 18–20, 2009. This workshop will be announced in a future **Federal Register** notice.

This notice provides: (1) A link to the electronic list of recent literature search results for TCDD dose-response; and (2) instructions to the public for submitting additional scientific information pertinent to TCDD dose-response assessment to EPA that is not already identified in the literature search.

DATES: The 45-day public comment period begins November 24, 2008, and ends January 8, 2009.

ADDRESSES: Please submit relevant scientific information, identified by docket ID number EPA–HQ–ORD–2008–0789, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *ord.docket@epa.gov*; by mail to the Office of Environmental Information (OEI) Docket (*Mail Code:* 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or by hand delivery or courier to the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Please *see* **SUPPLEMENTARY INFORMATION** below for detailed instructions.

FOR FURTHER INFORMATION CONTACT: For information and help on submitting scientific information, please contact the OEI Docket by e-mail (*ord.docket@epa.gov*), by phone (202–566–1752), or by fax (202–566–1753). For information and help on accessing the Literature Search for TCDD Dose-Response and for technical information, please contact Glenn E. Rice, National Center for Environmental Assessment (Mail Code: MSA–110), Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268; telephone: 513–569–7813; *facsimile:* 513–487–2539; or *e-mail: rice.glenn@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In 1991, EPA announced that it would conduct a scientific reassessment of the potential health risks of exposure to dioxin and related compounds. EPA's Science Advisory Board (SAB) first reviewed the draft dioxin reassessment in 1995, and the document was revised to address SAB comments. In 2000, the SAB reviewed the integrated summary, risk characterization, and other information on toxic equivalency of dioxin-like compounds. Reports of the findings and recommendations of these SAB reviews are available on the SAB Web site at *http://www.epa.gov/sab* (*see* reports EPA–SAB–EC–95–021 and EPA–SAB–EC–01–006).

In 2003, EPA produced an external review draft of the multi-year comprehensive reassessment of dioxin exposure and human health effects (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87843)*. This draft dioxin reassessment document, titled *Exposure and Human Health Reassessment of 2,3,7,8–Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds*, consisted of three parts: (1) A scientific review of information relating to sources and exposures to TCDD and other dioxins in the environment; (2) detailed reviews of scientific information on the health effects of TCDD, other dioxins, and dioxin-like compounds; and (3) an integrated summary and risk

characterization for TCDD and related compounds.

In 2004, EPA asked the National Research Council of the National Academy of Sciences (NAS) to review the 2003 dioxin reassessment document. The NAS was charged with reviewing ''EPA's modeling assumptions (including those associated with dose-response curve and points-of-departure dose ranges and associated likelihood estimates identified for human health outcomes); EPA's quantitative uncertainty analysis; and EPA's selection of studies as a basis for its assessments and gaps in scientific knowledge.'' The NAS was also charged with addressing two points of controversy: (1) The scientific evidence for classifying dioxin as a human carcinogen; and (2) the validity of the nonthreshold, low-dose, linear dose-response model and the cancer slope factor calculated through the use of this model. In addition, EPA asked the NAS to comment on the usefulness of toxic equivalency factors (TEFs) and uncertainties associated with their use in risk assessment, as well as the uncertainty associated with EPA's approach to analysis of food sampling and human dietary intake data, taking into consideration the Institute of Medicine's report, *Dioxin and Dioxin-like Compounds in the Food Supply: Strategies to Decrease Exposure.* In 2006, the NAS published its review titled, *Health Risks from Dioxin and Related Compounds: Evaluation of the EPA Reassessment.* The NAS identified three areas that required substantial improvement to support a scientifically robust risk characterization. These three areas were: (1) Justification of approaches to dose-response modeling for cancer and non-cancer endpoints; (2) transparency and clarity in selection of key data sets for analysis; and (3) transparency, thoroughness, and clarity in quantitative uncertainty analysis. The NAS provided EPA with recommendations to address their key concerns. The full NAS report, including recommendations, is available at *http://books.nap.edu/catalog.php?record_id=11688*.

EPA is now beginning to prepare a response to the NAS review of the 2003 draft dioxin reassessment, and the development of this preliminary Literature Search for TCDD Dose-Response is one of the first steps in this process. EPA's response to the NAS review of the 2003 draft dioxin reassessment will focus on understanding human dose-response for TCDD, addressing both cancer and non-cancer endpoints. EPA's objective is to address the key findings of the NAS review regarding health effects associated with dioxin exposure, while maintaining transparency and openness throughout the process and providing opportunity for public participation and comment.

To fully address the key concerns of the NAS, EPA will host a scientific expert panel workshop that will include scientists and experts from inside and outside of EPA. These experts will consider the literature on TCDD dose-response and discuss key scientific issues related to this subject area. The literature search results will be used by these expert panelists to provide EPA with a list of the key studies it should consider in its response to the NAS comments. This workshop will be announced in the **Federal Register** the near future.

The quantitative assessment of dioxin health effects is important to EPA and other organizations with a high level of interest in the health risks associated with dioxin exposures. EPA plans to conduct its dioxin work in a transparent manner, with the active and open involvement of both stakeholders and the public. EPA is initiating the process by identifying and engaging with various groups with interest and expertise in dioxin health effects assessment. To provide for expert peer involvement and review, the SAB Staff Office has solicited nominations of nationally recognized scientists for consideration of membership on an SAB Panel to provide advice on EPA's reassessment of the health risks from dioxin and related compounds (73 FR 61114).

The broad scope of dioxin science will likely require various workshops, consultations, and other discussions of the state of the science. EPA may solicit input and seek technical advice at various steps during its response to the NAS report. EPA commits to a general principle of keeping such discussions open and public, including the use of **Federal Register** notices in advance of conducting workshops and releasing interim drafts for review. EPA also has an internet site for posting progress reports and news, and for soliciting and sharing information on the latest developments in dioxin science (*http://www.epa.gov/ncea/dioxin*).

How To Submit Technical Input to the Docket (including via www.regulations.gov)

Submit your input, identified by Docket ID No. EPA–HQ–ORD 2008–0789, by one of the following methods:

- *On-line: www.regulations.gov.* Follow the on-line instructions for submitting input.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide information by mail or hand delivery, please submit three copies.

Instructions: Direct your input to Docket ID No. EPA–HQ–ORD–2008–0789. Please ensure that your information is submitted within the specified open period. Information received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all information it receives in the public docket without change and to make this information available online at *www.regulations.gov*, including any personal information provided, unless the submission 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 information. If you send an e-mail directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the input that is placed in the public docket and made available on the Internet.

Dated: November 11, 2008.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E8–27853 Filed 11–21–08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–8743–6]

Underground Injection Control Program; Petition To Renew Exemption From Hazardous Waste Disposal Restrictions to the Resource Conservation and Recovery Act; Class I Hazardous Waste Injection; Occidental Chemical Corporation

AGENCY: Environmental Protection Agency.

ACTION: Notice of final decision on petition.

SUMMARY: Notice is hereby given that renewal of an exemption to the Land Disposal Restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to Occidental Chemical Corporation (Occidental) for five Class I hazardous waste injection wells, identified as Well Nos. 3, 4, 7, 8, and 9, and located at Occidental's chemical manufacturing facility near Wichita, Kansas. As required by Code of Federal Regulations (CFR) Part 148, Occidental has satisfactorily demonstrated to the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous, and therefore is protective of underground sources of drinking water. This time period is defined by 40 CFR 148.20 as 10,000 years. The final decision allows the underground injection by Occidental of the specific restricted hazardous waste, identified in the Petition, into Well Numbers 3, 4, 7, 8, and 9 for as long as the basis for granting approval of the petition remains valid, under provisions of 40 CFR 148.24. For the purpose of the required demonstration of no-migration of hazardous waste out of the injection zone over a 10,000 year period, modeling and projections were based on an operational lifetime projection date of December 31, 2020. Therefore, on or by the closing date of the aforementioned operational period, the operator will be required to obtain another exemption re-issuance from EPA. Included in this approval is the stipulation that Occidental acquires and continues to maintain approved Class I hazardous waste injection well permits from the Kansas Department of Health and Environment. As required by 40 CFR 124.10, a public notice was issued on July 21, 2008. In addition to having solicited written comments regarding the Agency's proposed approval, EPA also announced that a formal public hearing would be held if there was a significant degree of public interest, but no interest was expressed, hence no formal public hearing was conducted. The public comment period ended on September 3, 2008. All comments have been addressed and considered in the final decision. This decision constitutes final Agency action and there is no administrative appeal process that can be applied to a final petition decision.

DATES: *Effective Date:* This action is effective as of October 24, 2008.

ADDRESSES: Copies of the petition and all pertinent information relating thereto, including the Agency's response to comments, are on file at the following location: Environmental Protection Agency, Region 7, Regional Records Center, 901 N. 5th St., Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Mary T. Mindrup, Chief, Drinking Water Management Branch, Environmental Protection Agency, Region 7. Telephone (913) 551–7431, or e-mail to *mindrup.mary@epa.gov*.

Dated: October 24, 2008.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E8–27734 Filed 11–21–08; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Draft Staff Implementation Guidance, Fiduciary Activities Q&As

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued draft staff implementation guidance, Fiduciary Activities Q&As. The proposed staff implementation guidance would assist agencies in implementing Statement of Federal Financial Accounting Standards 31, Accounting for Fiduciary Activities. The proposed staff implementation guidance is available on the FASAB home page *http://www.fasab.gov/exposure.html*. Copies can be obtained by contacting FASAB at (202) 512–7350. Respondents are encouraged to comment on any part of the proposal.

Written comments are requested by December 3, 2008, and should be sent via e-mail to *fasab@fasab.gov* or in hard copy to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION, CONTACT: Wendy Payne, Executive Director, FASAB, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Public Law No. 92463.

Dated: November 18, 2008.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. E8–27669 Filed 11–21–08; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Release of Exposure Draft on Social Insurance

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released the Exposure Draft on Social Insurance.

The Social Insurance Exposure Draft is available on the FASAB home page *http://www.fasab.gov/exposure.html*. Copies can be obtained by contacting FASAB at (202) 512–7350. Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by February 9, 2009, and should be sent to:

Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

Any interested person may attend the meetings as an observer. Board discussion and reviews are open to the public. GAO Building Security requires advance notice of your attendance. Please notify FASAB of your planned attendance by calling 202–512–7350 at least one day prior to the respective meeting.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92–463.

Dated: November 18, 2008.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. E8–27747 Filed 11–21–08; 8:45 am]

BILLING CODE 1610–01–M

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 December 9, 2008.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. John E. Post, Coon Rapids, Minnesota, to acquire control of Community Pride Bank Corporation, Ham Lake, Minnesota, and thereby indirectly acquire control of Community Pride Bank, Isanti, Minnesota.

Board of Governors of the Federal Reserve System, November 19, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–27819 Filed 11–21–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 2008.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. 182 Bancshares, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Bank 182, a *de novo* bank, both of Mankato, Minnesota.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Ocwen Financial Corporation, West Palm Beach, Florida, to become a bank holding company by acquiring 100 percent of the voting shares of Kent County State Bank, Jayton, Texas.

C. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Tamalpais Bancorp, to become a bank holding company by acquiring 100 percent of the voting shares of Tamalpais Bank, both of San Rafael, California.

In connection with this application, Applicant also has applied to acquire Tamalpais Wealth Advisors, San Rafael, California, and thereby engage in financial and investment advisory activities, pursuant to section 225.28(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E8–27783 Filed 11–21–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 2008.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Standard Chartered Bank, London, England, to engage *de novo* through its subsidiary, Standard Chartered Securities (North America) Inc., New York, New York, in financial and investment advisory activities, securities brokerage activities, riskless–principal transactions, other transactional services, and underwriting and dealing in government obligations and money market instruments, pursuant to sections 225.28(b)(6); (b)(7)); and (b)(8) of Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–27784 Filed 11–21–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Advisory Committee on Blood Safety and Availability (ACBSA) will hold a meeting. The meeting will be open to the public on both Tuesday December 16 and Wednesday December 17, 2008.

DATES: The meeting will take place Tuesday December 16 and Wednesday December 17, 2008 from 9 a.m. to 5 p.m.

ADDRESSES: The Hilton Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852, Phone: (301) 468–1100.

FOR FURTHER INFORMATION CONTACT: Jerry A. Holmberg, PhD, Executive Secretary, Advisory Committee on Blood Safety and Availability, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852, (240) 453–8803, FAX (240) 453–8456, e-mail *ACBSA@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Blood and plasma donations are critical to provide blood products necessary for maintaining health delivery. Over the years the safety of the blood and plasma supply has increased through vigilant review of processes and adherence to layers of safeguards. While safety and availability is paramount to the intended recipient of blood and plasma products, the pre and post donation care of the donor is also important. Commitment to donor health as well as to transfusion recipient is necessary to build a robust and healthy donor based nationally.

The Nation's potential donor population is approximately 37% of those medically eligible to donate. Approximately 16 million units of blood were collected in 2006 which exceeded demand by 7.8%. First time whole blood donors represented approximately 28.5% of the donors, while the remaining 71.5% of the donors had given previously an equivalent of 1.7 whole blood donations in the year. As the American population ages, dependence on the younger generation is more critical. In some states, donors may be 16-years-old to be eligible.

Donor selection processes have the potential to detect health abnormalities or risks which could affect the donor and even public health. Adverse events to the donor either as a result of the process of donating blood (e.g. injury, syncope, or loss of iron) or discovery of abnormal screening results can impact the donor's health. For example, iron loss can be from 220 to 290 mg in whole blood donations and from 20 to 25 mg in plasmapheresis.

Informed consent is required by FDA regulation or recommended in guidance for apheresis procedures (source plasma and platelet collections) prior to donations to include the donation procedure, the risk of the procedure, and laboratory screenings performed to reduce the risk of transmission of infectious diseases to the recipient. A written statement of understanding for whole blood donations is proposed in the Food and Drug Administration's *Requirements for Human Blood and Blood Components Intended for Transfusion or for Further Manufacturing Use, November 2007.*

During the December 2008 meeting of the ACBSA, the Committee will be asked to comment on the responsibility of blood and plasma centers to donor and public health. Public comment will be solicited on both December 16 and 17, 2008. Comments will be limited to five minutes per speaker and must be pertinent to the discussion. Anyone planning to comment is encouraged to contact the Executive Secretary at his/her earliest convenience. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business December 12, 2008. Likewise, those who wish to utilize electronic data projection to the Committee must submit their materials to the Executive Secretary prior to close of business December 12, 2008.

Dated: November 18, 2008.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. E8–27852 Filed 11–21–08; 8:45 am]

BILLING CODE 4150–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Availability of the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) Test Method Evaluation Report: Validation Status of Five *In Vitro* Test Methods Proposed for Assessing Potential Pyrogenicity of Pharmaceuticals and Other Products and Final Background Review Document: Validation Status of Five *In Vitro* Test Methods Proposed for Assessing Potential Pyrogenicity of Pharmaceuticals and Other Products; Notice of Transmittal of ICCVAM Test Method Recommendations to Federal Agencies

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH)

ACTION: Availability of the ICCVAM Test Method Evaluation Report and Final Background Review Document.

SUMMARY: NICEATM announces availability of the *ICCVAM Test Method Evaluation Report: Validation Status of Five In Vitro Test Methods Proposed for Assessing Potential Pyrogenicity of Pharmaceuticals and Other Products* (NIH Publication 08–6392). The test method evaluation report (TMER) describes five *in vitro* pyrogen test methods that can be used for detecting Gram-negative endotoxin in human parenteral pharmaceuticals. The report includes ICCVAM's (a) Recommendations on uses and limitations for each test method, (b) recommendations for standardized protocols, (c) recommendations for future studies, and (d) recommendations for the development of performance standards.

ICCVAM concludes that none of these test methods can be considered as a complete replacement for the rabbit pyrogen test (RPT) for all testing situations for the detection of Gram-negative endotoxin. However, ICCVAM recommends that they can be considered for use on a case-by-case basis to detect Gram-negative endotoxin in human parenteral drugs, subject to product-specific validation to demonstrate equivalence to the RPT, in accordance with applicable U.S. Food and Drug Administration regulations. When used in this manner, these methods can reduce the number of animals needed for pyrogenicity testing. The report also recommends that these

and other *in vitro* alternative test methods be considered prior to *in vivo* pyrogenicity testing, where determined appropriate for a specific testing situation.

NICEATM also announces availability of the final *ICCVAM Background Review Document: Validation Status of Five In Vitro Test Methods Proposed for Assessing Potential Pyrogenicity of Pharmaceuticals and Other Products* (NIH Publication 08–6391). The final background review document (BRD) provides the data and analyses used to assess the current validation status of these five *in vitro* test methods.

The ICCVAM TMER and supporting BRDs have been forwarded to U.S. Federal agencies for regulatory and other acceptance consideration, where applicable. Responses received will be posted on the NICEATM–ICCVAM Web site.

ADDRESSES: Electronic copies of the ICCVAM TMER and final BRD are available from the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov* or by contacting NICEATM (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov* Courier address: NICEATM, NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 3128, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

In 2005, the European Centre for the Validation of Alternative Methods (ECVAM), a unit of the Institute for Health and Consumer Protection at the European Commission's Joint Research Centre, submitted BRDs for five *in vitro* pyrogen test methods proposed as replacements for the RPT to ICCVAM for formal evaluation of their scientific validity for regulatory testing purposes. ICCVAM unanimously agreed that the five submitted *in vitro* pyrogen test methods should have high priority for evaluation. On December 16, 2005, NICEATM published a **Federal Register** notice (Vol. 70, No. 241, pages 74833–74834), requesting public comments on the appropriateness and relative priority of convening an independent peer review panel (Panel) to evaluate the validation status of the five *in vitro* pyrogen test methods, the nomination of scientists to serve on the Panel, and the submission of data from *in vivo* and *in vitro* pyrogenicity testing. Based on the ECVAM BRDs as well as data and information submitted in response to the aforementioned **Federal Register** notice, NICEATM subsequently compiled a comprehensive draft BRD on the five *in vitro* pyrogen test methods and released it for public comment on December 12, 2006 (Vol. 71, No. 238, pages 74533–74534).

On February 6, 2007, NICEATM and ICCVAM convened a Panel to review the ICCVAM draft BRD for errors and omissions and to evaluate the validation status of the five *in vitro* pyrogen test methods. The Panel also reviewed the extent that the information contained in the ICCVAM draft BRD supported the ICCVAM draft test method recommendations for proposed test method uses, standardized protocols, test method performance standards, and additional studies. The Panel considered public comments made at the Panel meeting, as well as public comments submitted in advance of the meeting, before concluding their deliberations. NICEATM made the Panel's report available in May 2007 (Vol. 72, No. 89, pages 26395–26396). The ICCVAM draft BRD and draft recommendations, the Panel's report, and all public comments were made available to the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) for review and comment at their meeting on June 12, 2007 (Vol. 72, No. 83, pages 23831–23832).

ICCVAM considered the Panel's report, all public comments, and the comments of SACATM in finalizing its recommendations on the use of these five *in vitro* test methods proposed for assessing potential pyrogenicity of pharmaceuticals and other products. The ICCVAM TMER includes the ICCVAM recommendations on uses and limitations for each test method, standardized protocols, future studies, and the development of performance standards, as well as the Panel's report and **Federal Register** notices. The final BRD, which provides the supporting documentation for this report, is available as a separate document. ICCVAM forwarded the ICCVAM TMER and the supporting final BRD to U.S. Federal agencies for consideration, in accordance with the ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3). Agency responses to the ICCVAM test method recommendations will be made available on the NICEATM–ICCVAM Web site as they are received.

Background Information on ICCVAM, NICEATM, and SACATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM can be found at *http://www.iccvam.niehs.nih.gov.*

SACATM was established January 9, 2002 (Vol. 67, No. 49, page 11358), and is composed of scientists from the public and private sectors. SACATM provides advice to the Director of the NIEHS, to ICCVAM, and to NICEATM regarding the statutorily mandated duties of ICCVAM and activities of NICEATM. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167*.

Dated: November 7, 2008.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E8–27790 Filed 11–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Secretary's Advisory Committee on Human Research Protections

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

Authority: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Office for Human Research Protections (OHRP), a program

office in the Office of Public Health and Science, Department of Health and Human Services (HHS), is seeking nominations of qualified candidates to be considered for appointment as members of the Secretary's Advisory Committee on Human Research Protections (SACHRP). SACHRP provides advice and recommendations to the Secretary, HHS, and the Assistant Secretary for Health on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. SACHRP was established by the Secretary, HHS, on October 1, 2002. OHRP is seeking nominations of qualified candidates to fill two positions on the Committee membership that will be vacated in June of 2009.

DATES: Nominations for membership on the Committee must be received no later than January 23, 2009.

ADDRESSES: Nominations should be mailed or delivered to Dr. Jerry Menikoff, Director, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200; Rockville, MD 20852. Nominations also may be sent via e-mail to *sachrp@hhs.gov* or via facsimile at 240–453–6909.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, telephone: 240–453–8141. A copy of the Committee charter and list of the current members can be obtained by contacting Ms. Gorey, accessing the SACHRP Web site at *http://www.hhs.gov/ohrp/sachrp,* or requesting via e-mail at *sachrp@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Committee provides advice on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the Committee provides advice relating to the responsible conduct of research involving human subjects with particular emphasis on special populations such as neonates and children, prisoners, the decisionally impaired, pregnant women, embryos and fetuses, individuals and populations in international studies, investigator conflicts of interest and populations in which there are individually identifiable samples, data, or information.

In addition, the Committee is responsible for reviewing selected ongoing work and planned activities of the OHRP and other offices/agencies within HHS responsible for human subjects protection. These evaluations may include, but are not limited to, a review of assurance systems, the application of minimal research risk standards, the granting of waivers, education programs sponsored by OHRP, and the ongoing monitoring and oversight of institutional review boards and the institutions that sponsor research.

Nominations: The Office for Human Research Protections is requesting nominations to fill two positions for voting members of SACHRP. The two positions will become vacant in June of 2009. Nominations of potential candidates for consideration are being sought from a wide array of fields, including, but not limited to: public health and medicine, behavioral and social sciences, health administration, and biomedical ethics.

To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in any of the several disciplines and fields pertinent to human subjects protection and/or clinical research.

The individuals selected for appointment to the Committee can be invited to serve a term of up to four years. Committee members receive a stipend and reimbursement for per diem and any travel expenses incurred for attending Committee meetings and/or conducting other business in the interest of the Committee.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.* , specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address and daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that individuals from a broad representation of geographic areas, women and men, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Documentation must be included in the nomination to indicate that the nominated individual is willing to serve as a member of SACHRP. Individuals who are selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is necessary in order to determine if the selected candidate is involved in any activity that may pose a potential conflict with the official duties to be performed as a member of SACHRP.

Dated: November 18, 2008.

Jerry Menikoff,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. E8–27851 Filed 11–21–08; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Indian Tribes, Tribal Organizations or Tribal Consortia Letter of Intent to Operate a Title IV–E Program.

OMB No.: New Collection.

Description: The Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110–351) added section 479B to the Social Security Act (the Act), which allows Indian Tribes the option to apply to the Secretary to receive Federal funding to support the administration of their own foster care, adoption assistance and relative guardianship programs under title IV–E of the Act. The law also amended the Act at section 476(c)(2)(ii) to allow Indian Tribes to receive one-time development grants of up to $300,000 to be used to offset the cost of developing a title IV–E plan to carry out the requirements of section 479B of the Act, and required ACF to provide technical assistance and

implementation services to Indian Tribes regarding the title IV–E program.

In order to plan for the review of Tribal title IV–E plans and technical assistance needs, the Administration for Children and Families (ACF) is requesting that all Federally recognized Indian Tribes, Tribal organizations or Tribal consortia (hereafter, ''Tribes'') that plan to operate a title IV–E program send a letter of intent to their ACF Regional Program Manager by December 31, 2008.

ACF will ask Tribes to include in the letter of intent the following information:

1. The Federal fiscal year (FY) in which the Tribe expects to begin operation of a title IV–E program. (According to the law, the earliest possible implementation period is FY 2010.)

2. Information on the intended Tribal service area for the Tribal title IV–E program.

Respondents: Indian Tribes, Tribal organizations and Tribal consortia.

ANNUAL BURDEN ESTIMATES

Information collection	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Letter of Intent	562	1	1	562

Estimated Total Annual Burden Hours: 562.

Additional Information: ACF is requesting that OMB grant a 90-day approval for this information collection under procedures for emergency processing by November 28, 2008. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275 or e-mailing to *infocollection@acf.hhs.gov.*

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Dated: November 13, 2008.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E8–27668 Filed 11–21–08; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0589]

Agency Information Collection Activities; Proposed Collection; Comment Request; Mental Models Study of Health Care Providers' Understanding of Prescription Drug Effectiveness

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 and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Mental Models Study of Health Care Providers' Understanding of Prescription Drug Effectiveness. Together with other information being collected, the results from this study will be used to help inform FDA about how health care providers conceptualize the drug effectiveness portion of the risk/benefit tradeoff and how that conceptualization differs from how agency experts think about drug effectiveness. The information gathered in this study will be used to focus and strengthen future planned quantitative research. It will also contribute to FDA's ability to communicate drug effectiveness information to health care providers in labeling and other communications.

DATES: Submit written or electronic comments on the collection of information by January 23, 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 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.

Mental Models Study of Health Care Providers' Understanding of Prescription Drug Effectiveness

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information.

Section 903(b)(2)(c) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the act.

FDA regulations require that an advertisement that makes claims about a prescription drug include a ''air balance'' of information about the benefits and risks of the advertised product, in terms of both content and presentation (21 CFR 202.1(e)(5)(ii)). In past research, FDA has focused primarily on the risk component of the risk/benefit ratio. In the interest of thoroughly exploring the issue of fair balance, however, the presentation of effectiveness, or benefit, information is equally important. This component has received less scrutiny. The proposed information collection described here is the first step in a three-phase study designed to investigate the role of effectiveness information in prescription drug print advertising. Along the way, we plan to investigate how health care providers use labeling and other materials and experiences to reach conclusions about drug effectiveness. We will use this information to provide a benchmark with which to compare the information consumers receive from direct-to-consumer advertisements.

The information collection described here refers only to the qualitative portion of the study series, Phase I. The purpose of the proposed information collection is twofold. First, we plan to gather information in this phase that will help us to determine the proper concepts about which to inquire and the proper language to use when asking health care providers in the second phase about the effectiveness of certain drug products. Second, we will use the information gathered in this phase to identify gaps in the communication of effectiveness information in FDA sponsored materials, such as the physician labeling.

The proposed information collection described here (Phase I of a multi-phase project) will use ''mental modeling,'' a qualitative research method that compares a model of the decisionmaking processes of a group or groups to a model of the same decisionmaking processes developed from expert knowledge and experience. In this study, the decision models of certain health care providers concerning effectiveness decisions of various treatment options for individuals suffering from insomnia or rheumatoid arthritis will be compared to a decision model concerning drug effectiveness that was derived from the knowledge and experience of FDA reviewers responsible for product labeling, National Institutes of Health clinical experts in this field, and others involved in the training of medical professionals. FDA will use telephone interviews to determine from the health care providers the factors that shape their understanding and decisions about the effectiveness of various drug treatments for their patients. A comparison between expert and health care provider models based on the collected information may identify consequential knowledge gaps that can be redressed through messages designed by FDA and will provide information for designing the second (quantitative) phase of research with a national sample of health care providers.

Using a protocol derived from the research that resulted in the expert model, trained interviewers will conduct one-on-one telephone discussions with about 20 members of 2 categories of health care providers, general practitioners and rheumatologists, who provide direct patient care at least 50 percent of the time.

FDA has selected these two groups of physicians because the first group is reasonably likely to treat insomnia, whereas the second group treats rheumatoid arthritis. We selected these two medical conditions for focus in the next two phases of the research because prescription drug treatments for both are heavily advertised to consumers, drugs for these conditions are variable in their risk/benefit profiles, and yet they are each fairly complex in terms of risk/benefit profiles. Another function of the current information collection is to determine the feasibility of using these two medical conditions in the following quantitative phases.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
40	1	1	0.75	30.0
Total				30.0

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The study will involve about 40 respondents and take approximately 45 minutes each to complete. These estimates are based on the contractor's extensive experience with mental models research.

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 17, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–27801 Filed 11–21–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0474] (formerly Docket No. 2007N–0292)

George Kindness; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. George Kindness from

providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biologics license application. FDA bases this order on a finding that Mr. Kindness was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the act. After being given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation, Mr. Kindness failed to request a hearing. Mr. Kindness's failure to request a hearing constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective November 24, 2008.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0372.

SUPPLEMENTARY INFORMATION:

I. Background

On September 28, 2006, the U.S. District Court for the Western District of Tennessee accepted George Kindness's guilty plea to one count of being aided and abetted in the introduction and delivery for introduction into interstate commerce of a misbranded drug with intent to defraud and mislead, a Federal felony offense under sections 301(a) and 303(a)(2) of the act (21 U.S.C. 331(a) and 333(a)(2)) and 18 U.S.C. 2. This offense was committed when Mr. Kindness, president, part-owner and laboratory director of Amscot Medical Labs, Inc., manufactured and shipped a new drug for use in human beings for the treatment of cancer, without an investigational new drug application in effect.

As a result of this conviction, FDA sent Mr. Kindness by certified mail on September 7, 2007, a notice proposing to permanently debar Mr. Kindness from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biologics license application. The proposal also offered Mr. Kindness an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) and (c)(2)(A)(ii) of the act (21 U.S.C. 335a(a)(2)(A) and (c)(2)(A)(ii)), that Mr. Kindness was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product. Mr. Kindness was provided 30 days to file objections and request a hearing. Mr. Kindness did not request a hearing. Mr. Kindness's failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director of the Center for Biologics Evaluation and Research, under section 306(a)(2)(A) of the act, and under authority delegated to the Director (FDA Staff Manual Guide 1410.35), finds that Mr. Kindness has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product.

As a result of the foregoing finding, Mr. Kindness is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application (section 306(c)(1)(B) of the act). A drug product means a drug, including a biological product, subject to regulation under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262). Any person with an approved or pending drug product application including, but not limited to, a biologics license application, who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Kindness, in any capacity, during Mr. Kindness's permanent debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Kindness, during his permanent debarment, provides services in any capacity to a person with an approved or pending drug product application including, but not limited to, a biologics license application, Mr. Kindness will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated drug applications submitted by or with the assistance of Mr. Kindness during Mr. Kindness's permanent debarment (section 306(c)(1)(B) of the act).

Any application by Mr. Kindness for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. FDA–2007–N–0474 (formerly Docket No. 2007N–0292) and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies (§ 10.20(a) (21 CFR 10.20(a))). The public availability of information in these submissions is governed by § 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday (§ 10.20(j)(1)).

Dated: November 12, 2008.

Jesse Goodman,

Director, Center for Biologics Evaluation and Research.

[FR Doc. E8–27802 Filed 11–21–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0488] (formerly Docket No. 2007N–0291)

Roy Page, M.D.; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Dr. Roy Page from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biologics license application. FDA bases this order on a finding that Dr. Page was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the act. After being given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation, Dr. Page failed to request a hearing. Dr. Page's failure to request a hearing constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective November 24, 2008.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0372.

SUPPLEMENTARY INFORMATION:

I. Background

On August 4, 2005, the U.S. District Court for the Western District of Tennessee accepted Dr. Roy Page's guilty plea to one count of introduction and delivery for introduction into interstate commerce of a misbranded drug with the intent to mislead the FDA, a Federal felony offense under sections 301(a) and 303(a)(2) of the act (21 U.S.C. 331(a) and 333(a)(2). This offense was committed when Dr. Page shipped tumor tissue and blood samples to Amscot Medical Laboratories, Inc., for manufacture of a new drug for the treatment of cancer in human beings without an investigational new drug application in effect.

As a result of this conviction, FDA sent Dr. Page by certified mail on September 7, 2007, a notice proposing to permanently debar Dr. Page from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biologics license application. The proposal also offered Dr. Page an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) and (c)(2)(A)(ii) of the act (21 U.S.C. 335a(a)(2)(A) and (c)(2)(A)(ii)), that Dr. Page was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product. Dr. Page was provided 30 days to file objections and request a hearing. Dr. Page did not request a hearing. Dr. Page's failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director of the Center for Biologics Evaluation and Research, under section 306(a)(2)(A) of the act, and under authority delegated to the Director (FDA Staff Manual Guide 1410.35), finds that Dr. Page has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product.

As a result of the foregoing finding, Dr. Page is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application (section 306(c)(1)(B) of the act). A drug product means a drug, including a biological product, subject to regulation under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262). Any person with an approved or pending drug product application including, but not limited to, a biologics license application, who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Page, in any capacity, during Dr. Page's permanent debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Dr. Page, during his permanent debarment, provides services in any capacity to a person with an approved or pending drug product application including, but not limited to, a biologics license application, Dr. Page will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated drug applications submitted by or with the assistance of Dr. Page during Dr. Page's permanent debarment (section 306(c)(1)(B) of the act).

Any application by Dr. Page for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. FDA–2007–N–0488 (formerly Docket No. 2007N–0291) and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies (§ 10.20(a) (21 CFR 10.20(a))). The public availability of information in these submissions is governed by § 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday (§ 10.20(j)(1)).

Dated: November 12, 2008.

Jesse Goodman,

Director, Center for Biologics Evaluation and Research.

[FR Doc. E8–27803 Filed 11–21–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0592]

Draft Guidance for Industry on the Contents of a Complete Submission for the Evaluation of Proprietary Names; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Contents of a Complete Submission for the Evaluation of Proprietary Names.'' This draft guidance provides recommendations to industry regarding the submission of a complete package that FDA intends to use to assess the safety of proposed proprietary drug and biological product names and other factors that, in association with the name, can contribute to medication errors. In addition, FDA intends to use this information in the assessment of promotional aspects of proposed proprietary names.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by January 23, 2009.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance 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*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Carol Holquist, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4416, Silver Spring, MD 20993–0002, 301–796–2360, or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Contents of a Complete Submission for

the Evaluation of Proprietary Names.'' In performance goals agreed to under the September 27, 2007, reauthorization of the Prescription Drug User Fee Act (PDUFA IV), FDA agreed to implement various measures to reduce medication errors related to look-alike and sound-alike proprietary names, unclear label abbreviations, acronyms, dose designations, and error-prone label and packaging designs. Among these measures, FDA agreed to publish guidance on the contents of a complete submission package for a proposed proprietary name for a drug/biological product. FDA also agreed to performance goals for review of proprietary names submitted during the investigational new drug application (IND) phase or with a new drug application (NDA) or biologics license application (BLA); the goals stipulate that a complete submission is required to begin the review clock. (See section IX.A at *http://www.fda.gov/oc/pdufa4/pdufa4goals.html*).

This draft guidance, when finalized, is intended to promote prevention of medication errors by assisting industry in the submission of complete product information that will help FDA to evaluate the safety of proposed proprietary drug and biological product names, taking into account other factors that, in association with the name, can contribute to medication errors. In addition, FDA intends to use this information in the assessment of promotional aspects of proposed proprietary names.

This draft guidance applies to prescription drug products, including biologics, that are the subject of an IND, NDA, or abbreviated new drug application (ANDA); nonprescription drug products that are the subject of an NDA or ANDA; and biological products that are the subject of a BLA.

The draft guidance does not address other performance goals under PDUFA IV, including developing FDA internal policies and procedures to ensure that proprietary name review goals are met; developing guidance on best practices for naming, labeling, and packaging drugs and biologics to reduce medication errors; guidance on proprietary name evaluation best practices; and developing and implementing a pilot program for evaluating proposed proprietary names.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the contents of a complete submission for the evaluation of proprietary names. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. 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*.

III. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 and FDA Form 1571 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 and FDA Form 356h have been approved under OMB control number 0910–0338.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, or *http://www.regulations.gov*.

Dated: November 17, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–27896 Filed 11–21–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605–56606 as amended November 6, 1995; and as amended at 61 FR 65063, December 10, 1996; and last amended at 72 FR 33099, June 11, 2008.)

This notice reflects organizational changes in the Health Resources and Services Administration, Office of Rural Health Policy (RH). Specifically, this notice updates the functional statement of the Office of the Associate Administrator (RH), and creates the following components: Hospital-State Division (RH1), Community-Based Division (RH2), and the Border Health Division (RH3).

Chapter RH, Office of Rural Health Policy

Section RH, 00 Mission

Delete in its entirety and replace with the following:

The Office of Rural Health Policy serves as a focal point within the Department and as a principal source of advice to the Administrator and Secretary for coordinating efforts to strengthen and improve the delivery of health services to populations in the Nation's rural areas and border areas, providing leadership and interacting with stakeholders in the delivery of health care to underserved and at risk populations.

Section RH–10, Organization

Delete in its entirety and replace with the following:

The Office of Rural Health Policy (RH) is headed by the Associate Administrator who reports directly to the Administrator, Health Resources and Services Administration. The Office of Rural Health Policy includes the following components:

(1) Office of the Associate Administrator (RH);

(2) Hospital State Division (RH1);

(3) Community Based Division (RH2); and

(4) Border Health Division (RH3).

Section RH–20, Functions

Delete the functional statement for the Office of the Associate Administrator (RH) and replace in its entirety.

Office of the Associate Administrator (RH)

The Office of the Administrator is headed by the Associate Administrator who, in conjunction with other management officials within HRSA, is responsible for the overall leadership and management of the Office of Rural Health Policy. The Office of Rural Health Policy serves as a focal point within the Department and as a principal source of advice to the Administrator and Secretary for coordinating efforts to strengthen and improve the delivery of health services to populations in the Nation's rural areas and border areas, providing leadership and interacting with stakeholders in the delivery of health care to underserved and at risk populations. Specifically, the Office of Rural Health Policy is organized around the following primary issue areas:

Delivery of Health Services: (1) Collects and analyzes information regarding the special problems of rural health care providers and populations; (2) works with States, State hospital associations, private associations, foundations, and other organizations to focus attention on, and promote solutions to, problems related to the delivery of health services in rural communities; (3) provides staff support to the National Advisory Committee on Rural Health and Human Services; (4) stimulates and coordinates interaction on rural health activities and programs in the Agency, Department and with other Federal agencies; (5) supports rural health center research and keeps informed of research and demonstration projects funded by States and foundations in the field of rural health care delivery; (6) establishes and maintains a resource center for the collection and dissemination of the latest information and research findings related to the delivery of health services in rural areas; (7) coordinates congressional and private sector inquiries related to rural health; (8) advises the Agency, Administrator and Department on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under titles XVIII and XIX of the Social Security Act on the financial viability of small rural hospitals, the ability of rural areas to attract and retain physicians and other health professionals; (9) oversees compliance by CMS with the requirement that rural hospital impact analyses are developed whenever proposed regulations might have a significant impact on a substantial number of small rural hospitals; (10) supports specialized rural programs on minority health, mental health, preventive health education, oral health, and occupational health and safety; (11) directs the management of a nationwide rural health grants program; (12) directs the management of a program of State grants which support collaboration within State offices of rural health; (13) funds radiation exposure screening and education programs that screen eligible individuals adversely affected by the mining, transport and processing of uranium and the testing of nuclear weapons for cancer and other diseases.

Intergovernmental Affairs: (1) Provides the Administrator with a single point of contact on all activities related to important State and local government, stakeholder association, and interest group activities; (2) coordinates Agency cross-Bureau cooperative agreements and activities with organizations such as the National Governors Association, National Conference of State Legislatures, Association of State and Territorial Health Officials, National Association of Counties, and National Association of County and City Health Officials; (3) interacts with various commissions such as the Delta Regional Authority, Appalachian Regional Commission, Denali Commission and the United States and Mexico Border Health Commission; and (4) serves as the primary liaison to Department intergovernmental staff.

Hospital State Division (RH1)

The Hospital State Division serves as the focal point within the Office of Rural Health Policy to support rural hospital and State grant programs focused on rural populations. Specifically, the Hospital State Division is organized around the following primary issue areas: (1) Plans and manages a program of State grants which support collaboration within State offices of rural health; (2) works with States, State hospital associations, private associations, foundations, and other organizations to focus attention on, and promote solutions to, problems related to the delivery of health services in rural communities; and (3) provides coordinated technical assistance to grantees and rural communities.

Community Based Division (RH2)

The Community Based Division serves as the focal point within the Office of Rural Health Policy to support rural community grant programs. Specifically, the Community Based Division is organized around the following primary issue areas: (1) Plans and manages several nationwide rural health grants programs; (2) supports programs on rural health, public health, and health status improvement; (3) funds public and private non-profit entities for the operation of clinics that provide diagnosis, treatment and rehabilitation of active and retired coal miners and others with respiratory ailments (black lung) and other occupational related respiratory disease impairments; (4) funds radiation exposure screening and education programs that screen eligible individuals adversely affected by the mining, transport and processing of uranium and the testing of nuclear weapons for cancer and other diseases; and (5) provides technical assistance to grantees and rural communities.

Border Health Division (RH3)

The Border Health Division provides leadership and direction to coordinate the Agency's assets in border regions. Specifically, the Border Health Division: (1) Assures that the Agency's engagement with regions of the border is strategic, performance based, builds partnerships and alliances, and maximizes utilization of Agency assets; (2) assures agency-wide coordination by establishing border health program policies and procedures including tracking mechanisms; (3) conducts management and evaluation studies to improve the health delivery system on the border; (4) serves as the secretariat and chair for the agency's Border Health Workgroup; (5) plans, directs, and coordinates the Agency's border health activities; and (6) plans, coordinates and facilitates the agency agreements activities with border health issues.

Section RH–30, Delegations of Authority

All delegations and re-delegations of authority made to HRSA officials and employees of affected organizational components will continue in them or their successors pending further re-delegations, provided they are consistent with this reorganization.

This reorganization is effective upon the date of signature.

Dated: October 28, 2008.

Elizabeth M. Duke,

Administrator.

[FR Doc. E8–27776 Filed 11–21–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development Submission for OMB Review; Comment Request; Health Behaviors in School-Age Children

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This extension of data collection was previously published in the **Federal Register** on September 12, 2008, Volume 73, Number 128, pages 53030–53031 and allowed 60 days for public comment. One public comment was received asking for a copy of the data collection plans for the proposed collection. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health 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.

Submission for OMB Review; Comment Request

Title: Health Behaviors in School-Age Children—United States.

Type of Information Collection Request: Extension.

Need and Use of Information Collection: The goal of this research is to obtain data from a survey of adolescent health behavior conducted in the United States with a national probability sample of adolescents. This information will enable the improvement of health services and programs for youth. The study should provide needed information about adolescents nationally and will also enable international comparisons.

This U.S. survey is linked to the broader Health Behaviors in School-Age Children (HBSC) study, in which surveys are conducted every four years among nationally representative samples of students at ages 11, 13, and 15 years of age in 40 countries. The HBSC was conducted in the U.S. previously in 1997/1998, 2001/2002, and 2005/2006. Data from previous surveys have been used to identify adolescent health problem areas, develop programs to address these problems, and evaluate existing programs. The 2009/2010 U.S. survey will address a sample of health-related factors according to rigorous research protocols developed by the HBSC. The international HBSC survey requires at least 1,536 youth in each age group and a total of 5,000 students. In the U.S., a nationally representative sample of children in grades 6 through 10 will be surveyed and minority children will be over-sampled to permit comparisons across under-represented populations. The children will be students from approximately 386 schools; in order to assess health programs in those schools and how the school environment supports health behaviors, a school administrator from each school will be surveyed.

Affected Public: School-age children.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Adolescents	14,672	1	0.75	11,004
School Administrators	386	1	0.33	127

The estimated annualized cost to respondents is $5,392. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the extension of data collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the extension of data collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: 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: *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the extension of data collection or to obtain a copy of the data collection plans and instruments, contact Dr. Ronald J. Iannotti, Prevention Research Branch, Division of Epidemiology, Statistics, and Prevention Research, Eunice Kennedy Shriver National Institute of Child Health and Human Development, Building 6100, 7B05, 9000 Rockville Pike, Bethesda, Maryland 20892–7510, or call non-toll free number 301–496–5674 or E-mail your request, including your address to *ri25j@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: November 12, 2008.

Paul L. Johnson,

Project Clearance Liaison, NICHD, National Institutes of Health.

[FR Doc. E8–27792 Filed 11–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; The National Diabetes Education Program Comprehensive Evaluation Plan

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approval of the information listed below. The proposed information collection was previously published in the **Federal Register** on September 8, 2008, pages

52052–52053 and allowed 60 days for public comment. The National Institutes of Health received one comment that was determined to be not relevant to the specific questions stated in the notice. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, the collection of information that has been extended, revised, or implemented unless it displays a currently valid OMB control number.

Proposed Collection: Title: The National Diabetes Educations Program Comprehensive Evaluation Plan. *Type of Information Collection Request:* Extension of a currently approved collection (#0925–0552). *Need and Use of Information Collection:* The National Diabetes Education Program (NDEP) is a partnership of the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC) and more than 200 public and private organizations. The long-term goals of the NDEP are to improve the treatment and health outcomes of people with diabetes, to promote early diagnosis, and, ultimately, to prevent the onset of diabetes. The NDEP objectives are: (1) To increase awareness of the seriousness of diabetes, its risk factors, and strategies for preventing diabetes and its complications among people at risk for diabetes; (2) to improve understanding about diabetes and its control and to promote better self-management behaviors among people with diabetes; (3) to improve health care providers' understanding of diabetes and its control and to promote an integrated approach to care; (4) to promote health care policies that improve the quality of and access to diabetes care.

Multiple strategies have been devised to address the NDEP objectives. These have been described in the NDEP Strategic Plan and include: (1) Creating partnerships with other organizations concerned about diabetes; (2) developing and implementing awareness and education activities with special emphasis on reaching the racial and ethnic populations disproportionately affected by diabetes; (3) identifying, developing, and disseminating educational tools and resources for the program's diverse audiences; (4) promoting policies and activities to improve the quality of and access to diabetes care.

The NDEP evaluation will document the extent to which the NDEP program has been implemented, and how successful it has been in meeting program objectives. The evaluation relies heavily on data gathered from existing national surveys such as National Health and Nutrition Examination Survey (NHANES), the National Health Interview Survey (NHIS), the Behavioral Risk Factor Surveillance System (BRFSS), among others for this information. This generic clearance request is for the collection of additional primary data from NDEP target audiences on some key process and impact measures that are necessary to effectively evaluate the program. Approval is requested for a survey of audiences targeted by the National Diabetes Education Program including people at risk for diabetes, people with diabetes and their families and the public.

Frequency of Response: On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Adults. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3759, *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response: .153;* and *Estimated Total Annual Burden Hours Requested:* 575. There are no Capital Costs, Operating or Maintenance Costs to report.

ESTIMATES OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time per response	Total hour burden
Screening interview with ineligible persons	1659	1	.03	50
Eligible respondents	2100	1	.25	525
Totals	3759			575

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Evaluate the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention, Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Joanne Gallivan, M.S., R.D., Director, National Diabetes Education Program, NIDDK, NIH, Building 31, Room 9A06, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number 301–496–6110 or E-mail your request, including your address to: *Joanne_Gallivan@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: November 17, 2008.

Lucy Greene,

Executive Officer, NIDDK, National Institutes of Health.

[FR Doc. E8–27793 Filed 11–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Topics in Computation, Imaging, and Delivery.
Date: December 8–9, 2008.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808 Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: Center for Scientific Review Special Emphasis Panel Delivery Systems and Nanotechnology.
Date: December 9, 2008
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Steven J. Zullo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892, 301–435–2810, *zullost@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: Center for Scientific Review Special Emphasis, Panel Healthcare Delivery and Methodologies.
Date: December 9–11, 2008.
Time: 9 a.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: William N. Elwood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, 301/435–1503, *elwoodwi@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: Center for Scientific Review Special Emphasis, Panel New Approaches to Non-Viral Systems for Gene Transfer, Applications for Heart, Lung, and Blood Diseases (R21/R33).
Date: December 10–12, 2008,
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Steven J. Zullo, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849 Bethesda, MD 20892, 301–435–2810, *zullost@csr.nih.gov.*
Name of Committee: Center for Scientific Review Special Emphasis, Panel Adiposity, Aging, and Stem Cells.
Date: December 10, 2008.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Sherry L. Dupere, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*
Name of Committee: Center for Scientific Review Special Emphasis, Panel MDS Program Project Review.
Date: December 11, 2008.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Dan D. Gerendasy, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, 301–594–6830, *gerendad@csr.nih.gov.*
Name of Committee: Digestive Sciences Integrated Review Group, Clinical and Integrative Gastrointestinal, Pathobiology Study Section.
Date: January 26, 2009.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Mushtaq A. Khan, DVM, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*
Name of Committee: Cell Biology Integrated Review Group, Membrane Biology and Protein Processing Study Section.
Date: January 29–30, 2009.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Fishermans Wharf Hotel, 2500 Mason Street, San Francisco, CA 94133.
Contact Person: Janet M. Larkin, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 310–435–1026, *larkinja@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27785 Filed 11–21–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AARR Member Conflict SEP.
Date: November 24–25, 2008.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Hilary D. Sigmon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AARR Member Conflict SEP.
Date: November 25, 2008.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27786 Filed 11–21–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 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 Cancer Institute Initial Review Group; Subcommittee A—Cancer Centers.

Date: December 11, 2008.

Time: 8 a.m. to 3:40 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gail J Bryant, MD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd, Room 8107, MSC 8328, Bethesda, MD 20892–8328, (301) 402–0801, *gb30t@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27799 Filed 11–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in section 552b(6), as amended. The discussions could disclose personal information concerning NCI Staff and/or its contractors, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board Ad Hoc Subcommittee on Biomedical Technology.

Open: December 8, 2008, 6:30 p.m. to 8 p.m.

Agenda: Discussion on Biomedical Technology.

Place: Hyatt Regency Bethesda, One Metro Center, Bethesda, MD 20814.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Open: December 9, 2008, 8:30 a.m. to 3:15 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Closed: December 9, 2008, 3:15 p.m. to 3:55 p.m.

Agenda: Review intramural program site visit outcomes. Discussion of confidential personnel issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

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://deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27800 Filed 11–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 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: Heart, Lung, and Blood Initial Review Group, NHLBI Institutional Training Mechanism Review Committee.

Date: December 12, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton/BWI, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: Charles Joyce, Ph.D., Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 14, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27796 Filed 11–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(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 Neurological Disorders and Stroke Special Emphasis Panel.

Date: December 3–4, 2008.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Tuscan Inn, 495 Jefferson Street, San Francisco, CA 94109.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; Msc 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Reviewer Conflicts.

Date: December 5, 2008.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joann McConnell, PhD., Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 17, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–27798 Filed 11–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Dietary Supplements 2010–2014 Strategic Plan

ACTION: Notice of Opportunity for Public Comment and Public Meetings.

SUMMARY: The Office of Dietary Supplements (ODS) at the National Institutes of Health (NIH) has initiated a strategic planning process that will culminate in the ODS Strategic Plan for 2010–2014. To assist with this process, the ODS requests input from research communities—academic, government, and industry—and from other interested parties. The overall purpose of the strategic planning effort is to identify both new opportunities and emerging needs for incorporation in the programmatic efforts of the Office. A background paper has been prepared, *A Report to the Public,* that summarizes progress in four key areas of ODS activity. The background paper and related information are available on the ODS Web site at *http://ods.od.nih.gov/strategicplan.*

Public comment can be sent directly to ODS or through the public Webinars ODS will hold on January 29, 2009, February 3, 2009, February 11, 2009, and February 19, 2009. The section on Public Participation (below) gives details for the Webinars.

DATES: In order to ensure full consideration, all responses must be submitted by midnight, March 31, 2009.

ADDRESSES: Interested individuals and organizations should submit their responses to *ODSplan@od.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Julia B. Freeman, Ph.D., Office of Dietary Supplements, National Institutes of Health, 6100 Executive Boulevard, Room 3B01, Bethesda, MD 20892–7517, *Phone:* 301–496–0187, *Fax:* 301–480–1845, *E-mail: ODSplan@od.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

The mission of the Office of Dietary Supplements (ODS) is to strengthen knowledge and understanding of dietary supplements by evaluating scientific information, stimulating and supporting research, disseminating research results, and educating the public to foster an enhanced quality of life and health for the U.S. population. The ODS was established in the Office of the Director, NIH, in 1995 as a major provision of the Dietary Supplement Health and Education Act of 1994 (DSHEA). A key early activity was the development of the Strategic Plan for 1998–2003 to set out goals for program development. The Strategic Plan was prepared with considerable input from NIH Institutes and Centers, other Federal Agencies, consumers, and other interested parties. The original five-year plan was revised for 2004–2009.

The five strategic goals for ODS have been:

1. Expand the evaluation of the role of dietary supplements in disease prevention and in reduction of risk factors associated with disease.

2. Foster research that evaluates the role of dietary supplements in maintaining and improving optimal

physical and mental health and performance.

3. Stimulate and support research to further understanding of the biochemical and cellular effects of dietary supplements on biological systems and their physiological impact across the life cycle.

4. Promote and support the development and improvement of methodologies appropriate to the scientific study of dietary supplement ingredients.

5. Expand and conduct outreach efforts that inform and educate the public, health care providers, and scientists about the benefits and risks of dietary supplements.

ODS is re-examining its Strategic Plan and desires public comment on the progress of its programs and on future needs and opportunities for program activities. A background paper, *A Report to the Public,* has been prepared that summarizes progress in four key areas of ODS activities. ODS solicits comments on and suggestions for its future activities. The background paper and related information are available on the ODS Web site at *http://ods.od.nih.gov/strategicplan.* Guidance is being requested from all interested parties on these important issues.

- Are the current strategic goals adequate?
- Is ODS meeting its stakeholders' needs?
- In the future, should some of ODS's current programs or activities be given higher (or lower) priority?
- How can ODS more effectively provide useful information to the ODS user community, including consumers, investigators, practitioners, industry, media, policy makers, government, and other interested parties?

Public Participation

ODS will hold a series of four Webinars at the times and topics listed below to hear comments on and suggestions for ODS initiatives for possible inclusion in the 2010–2014 ODS Strategic Plan. The topic is taken from the four areas described in the background paper, *A Report to the Public.* Each Webinar will begin with brief comments by a Federal partner and a stakeholder on the topic of that Webinar. The remainder of each Webinar will be devoted to hearing public comments.

Research Support—Thursday, January 29, 2009, 1–2 p.m. EST.

Research support is through cofunding of NIH grants, including botanical research centers, individual research grants, training, and conferences.

Research Tools—Tuesday, February 3, 2009, 2–3 p.m. EST.

Research tools refers to the promotion and support for the development and improvement of methodologies appropriate to the scientific study of dietary supplement ingredients, including analytic methodologies and reference materials, surveys of dietary supplement use, databases to analyze survey results, and evidence-based reviews of key dietary supplements.

Science-Policy—Wednesday, February 11, 2009, 1–2 p.m. EST.

Science-policy covers current ODS collaborations to collect information on scientific issues that is needed for policy discussions. Three current collaborations include the vitamin D initiative, the use of dietary supplements by military personnel, and nutrient reference intake values.

Communications—Thursday, February 19, 2009, 2–3 p.m. EST.

Communications includes outreach and education on dietary supplements through the ODS Web site and information developed by fact sheets, newsletters, and through databases on scientific literature and research on dietary supplements.

The Webinars are open to the public with attendance limited by individual access to the Internet and a phone and by the availability of open teleconference phone lines. Members of the public who wish to make an oral comment should indicate this when registering for the meeting. Instructions for registering can be found on the ODS Web site: *http://ods.od.nih.gov/strategicplan.*

Oral comments will be limited to three minutes and may be accompanied by a PowerPoint presentation provided that the presentation is submitted no later than 2 days before the scheduled Webinar. Individuals who register to speak will be assigned in the order in which they registered. Due to time constraints, only one representative from each organization will be allotted time for oral presentation. If time permits, those who wish to make a brief oral statement and have not pre-registered to make a comment, will be able to do so.

Archives of the Webinars will be posted on the ODS Web site and may be viewed at any time. We encourage individuals unable to participate in a live Webinar and all interested parties to send written comments by mail, fax, or electronically (*see* **CONTACT INFORMATION**, above.) When mailing or faxing written comments, please provide, if possible, an electronic version via e-mail.

Dated: November 10, 2008.

Paul M. Coates,

Director, Office of Dietary Supplements, Office of the Director, National Institutes of Health.

[FR Doc. E8–27791 Filed 11–21–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

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

Proposed Project: GPRA Client Outcomes for the Substance Abuse and Mental Health Services Administration (SAMHSA)—(OMB No. 0930–0208)—Revision

SAMHSA's Center for Substance Abuse Treatment (CSAT) is responsible for collecting data from discretionary services grants and contracts where client outcomes are to be assessed at three points (intake, discharge, and post-intake). SAMHSA's CSAT-funded projects are required to submit these data as a contingency of their award. The analysis of the data also will help determine whether the goal of reducing health and social costs of drug use to the public is being achieved.

The primary purpose of this data collection activity is to meet the

reporting requirements of the Government Performance and Results Act (GPRA) by allowing SAMHSA to quantify the effects and accomplishments of SAMHSA's CSAT programs.

CSAT requests approval to increase the number of questions in the instrument due to the agency's need for additional information from its programs to satisfy reporting needs. The additional information needed is the following:

• *Co-Occurring disorders screening*—Over the years, CSAT has focused attention on co-occurring disorders and has established programs designed specifically for persons with both mental health and substance abuse problems. CSAT wants to make sure that all clients are screened regardless of the types of program they enter in order to get the treatment they need. CSAT has not had a formal way of assessing whether all programs screen clients for co-occurring disorders and consequently, these mental health problems potentially go untreated. CSAT will be able to monitor if clients are screened and for those who screen positive, monitor their outcomes and activities per the NOMS.

• *Veteran Status*—Collection of these data will allow CSAT to identify the number of veterans served and the types of services they may receive. Identifying a client's veteran status allows CSAT and the grantees to monitor these clients and explore whether special services or programs are needed to treat them for substance abuse and other related issues. Identification of veteran status will also allow coordination between SAMHSA and other Federal agencies in order to provide a full range of services to veterans. CSAT will also be able to monitor their outcomes and activities per the NOMS.

• *HIV Test Status*—SAMHSA is committed to addressing the twin epidemics of HIV and substance abuse; the agency has received funding to augment the HIV testing program and hopes to reduce the number of new cases. The goal is for at least 80 percent of the clients to be tested for HIV. The test results give clients and programs an important piece of information needed for their substance abuse treatment plans. With the testing information, CSAT will monitor the numbers of treatment clients who have been tested.

In addition, we will add a response option to an existing item:

• *Housing for College Students*—Housing stability is one of the NOMs and should be calculated as accurately as possible, particularly for programs that target college students such as Campus SBIRT. There currently is no way to distinguish the housing status of students living on campus from those housed elsewhere. This additional information can be captured by adding a new response option for the existing housing question.

CSAT requests approval to add a grant program to this data collection:

• CSAT will add the Access to Recovery (ATR) grant program to this data collection for the CSAT Government Performance and Results Act (GPRA) Client Outcome Measures for Discretionary Programs instrument. The Voucher Information Form and Voucher Transaction Form (OMB 0930–0266, Expiration Date 5/31/11) will remain under separate data collections. ATR requires the integration of evidence-based practices and a systematic federal scrutiny of outcomes through GPRA. The GPRA focuses on results or outcomes in evaluating the effectiveness of Federal activities and on measuring progress toward achieving national goals and objectives.

The estimated annual response burden for this data collection is provided in the table below:

ESTIMATES OF ANNUALIZED HOUR BURDEN [1]

[CSAT GPRA Client Outcome Measures for Discretionary Programs]

Center form respondent type	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Added burden proportion [2]	Total annual burden hours
Clients							
Adolescents	3,900	4	15,600	.35	5,460	.37	2,020
Adults:							
General (non ATR or SBIRT).	28,000	3	84,000	.35	29,400	.37	10,878
ATR	53,333	3	159,999	.35	56,000	.37	20,720
SBIRT3 Screening Only	150,618	1	150,618	.13	19,580	0	0
SBIRT Brief Intervention	27,679	3	83,037	.20	16,607	0	0
SBIRT Brief Tx & Refer to Tx.	9,200	3	27,600	.35	9,660	.37	3,574
Client Subtotal	272,730		520,854		136,707		37,192
Data Extract [4] and Upload							
Adolescent Records	73 grants	53 × 4	212	.18	38		38
Adult Records:							
General (non ATR or SBIRT).	400 grants	70 × 3	210	.18	38		38
ATR Data Extract	53,333	3	160,000	.16	25,600		25,600
ATR Upload [5]	24 grants	3	160,000	1 hr. per 6,000 records.	27		27
SBIRT Screening Only Data Extract.	7 grants	21,517 × 1	21,517	.07	1,506		1,506
SBIRT Brief Intervention Data Extract.	7 grants	3,954 × 3	11,862	.10	1,186		1,186
SBIRT Brief Tx&Refer to Tx Data Extract.	7 grants	1,314 × 3	3,942	.18	710		710

ESTIMATES OF ANNUALIZED HOUR BURDEN [1]—Continued

[CSAT GPRA Client Outcome Measures for Discretionary Programs]

Center form respondent type	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden	Added burden proportion [2]	Total annual burden hours
SBIRT Upload [6]	5 grants		171,639	1 hr. per 6,000 records.	29		29
Data Extract and Upload Subtotal.	53,856		529,382		29,134		29,134
Total	326,586		1,050,236		165,841		66,326

Notes:

1. This table represents the maximum additional burden if adult respondents, for the discretionary services programs including ATR, provide three sets of responses/data and if CSAT adolescent respondents, provide four sets of responses/data.
2. Added burden proportion is an adjustment reflecting customary and usual business practices programs engage in (e.g., they already collect the data items).
3. Screening, Brief Intervention, Treatment and Referral (SBIRT) grant program:
   * 150,618 Screening Only (SO) respondents complete section A of the GPRA instrument, all of these items are asked during a customary and usual intake process resulting in zero burden; and
   * 27,679 Brief Intervention (BI) respondents complete sections A & B of the GPRA instrument, all of these items are asked during a customary and usual intake process resulting in zero burden; and
   * 9,200 Brief Treatment (BT) & Referral to Treatment (RT) respondents complete all sections of the GPRA instrument.
4. Data Extract by Grants: Grant burden for capturing customary and usual data.
5. Upload: All 24 ATR grants upload data.
6. Upload: 5 of the 7 SBIRT grants upload data; the other 2 grants conduct direct data entry.

The estimates in this table reflect the maximum annual burden for currently funded discretionary services programs. The number of clients/participants served in following years is estimated to be the same assuming level funding of the discretionary programs, resulting in the same annual burden estimate for those years.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *AND* e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: November 17, 2008.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E8–27838 Filed 11–21–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0333]

Delaware River and Bay Oil Spill Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of inaugural meeting and announcement of membership.

SUMMARY: The Delaware River and Bay Oil Spill Advisory Committee (DRBOSAC) will hold its inaugural meeting in Philadelphia, PA to discuss various issues to improve oil spill prevention and response strategies for the Delaware River and Bay. During the inaugural meeting, the items concerning the Committee's organization and administration will be discussed. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, December 17, 2008, from 9 a.m. to 4 p.m. This meeting may close early if all business is finished. Written material should reach the Coast Guard on or before December 11, 2008.

ADDRESSES: The Committee will meet at Coast Guard Sector Delaware Bay, 1 Washington Ave., Philadelphia, PA 19147. Send written material to Gerald Conrad, liaison to the Designated Federal Officer (DFO) of the DRBOSAC, at the address above. This notice and any documents identified in the **SUPPLEMENTARY INFORMATION** section as being available in the docket may be viewed online, at *http://www.regulations.gov*, using docket number USCG–2008–0333.

FOR FURTHER INFORMATION CONTACT: Gerald Conrad, liaison to the DFO of the DRBOSAC, telephone 215–271–4824.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of the Meeting

The agenda for the inaugural meeting will be as follows:

(1) Opening comments.

(2) Introduction and swearing in of the new members.

(3) Election of the Chair and Vice-Chair.

(4) Indoctrination into Federal Advisory Committee Procedures.

(5) Membership Administration issues.

(6) Establishment and purpose of subcommittees (if applicable).

(7) Indoctrination into technical terminology, and basic oil spill response and removal procedures.

(8) Future Committee business.

(9) Closing.

Procedural

This meeting will be open to the public. All persons entering the building will have to present identification and may be subject to screening. Please note that the meeting may close early if all business is finished.

The public will not be able to make oral presentations during the meeting. The public may file written statements with the committee; written material should reach the Coast Guard no later than December 11, 2008. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 35 copies to the liaison to the DFO no later than December 11, 2008.

Information on Services for Individuals With Disabilities

For information on facilities, or services for individuals with disabilities, or to request special assistance at the meeting, contact the Liaison to the DFO as soon as possible.

Dated: November 7, 2008.

David L. Scott,

Captain, U.S. Coast Guard, Commander, Sector Delaware Bay Designated Federal Officer.

[FR Doc. E8–27847 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Forms G–325, G–325A, G–325B, and G–325C, Extension of an Existing Information Collection Request; Comment Request

ACTION: 60 Day Notice of Information Collection Under Review: Forms G–325, G–325A, G–325B, and G–325C, Biographic Information. OMB Control No. 1615–0008.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 23, 2009.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please add the OMB Control Number 1615–0008 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise these forms. Should USCIS decide to revise these forms it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to these forms.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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:* Biographic Information.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms G–325, G–325A, G–325B, and G–325C. 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. These forms are used when it is necessary to check other agency records on applications or petitions submitted by applicants for certain benefits under the Immigration and Nationality Act (Act).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form G–325–200,000 responses at 15 minutes (.25) per response; Form G–325A–583,921 responses at 15 minutes (.25) per response; Form G–325B–500,000 responses at 25 minutes (.416) per response; and Form G–325C–140,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 438,980 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 19, 2008.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E8–27866 Filed 11–21–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2455–08; DHS Docket No. USCIS–2008–0033]

RIN 1615–ZA78

Extension of the Re-Registration Period and Automatic Extension of Employment Authorization Documentation for Honduran Temporary Protected Status Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: On October 1, 2008, the Department of Homeland Security (DHS) published a Notice in the **Federal Register** extending the designation of Honduras for Temporary Protected Status (TPS) through July 5, 2010. USCIS has decided to extend the re-registration period through December 30, 2008. Beneficiaries of TPS for Honduras are required to re-register and obtain new Employment Authorization Documents (EADs), when an EAD is requested by the beneficiary. Since USCIS will not be able to process and re-issue new EADs for all such beneficiaries by the January 5, 2009 expiration date, USCIS has decided to automatically extend the validity of EADs issued to Honduran nationals (or aliens having no nationality who last habitually resided in Honduras) until July 5, 2009. This Notice announces that extension and also explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

DATES: This notice is effective November 24, 2008. The re-registration period will be extended through December 30, 2008. The automatic extension of EADs will begin on January 6, 2009, and will remain in effect until July 5, 2009.

FOR FURTHER INFORMATION CONTACT: TPS Operations Program Manager, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and

Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529, telephone (202) 272–1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov.* **Note:** The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual case can check Case Status Online available at the USCIS Web site listed above, or applicants may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

SUPPLEMENTARY INFORMATION:

Why is USCIS extending the re-registration period for Honduran TPS beneficiaries?

Due to the effects of a tropical depression in Honduras and in order to provide greater uniformity and avoid potential confusion between the re-registration periods for the three Central American countries currently designated for TPS, USCIS has decided to extend the re-registration period through December 30, 2008.

Why is USCIS automatically extending the validity of EADs for Honduran TPS beneficiaries?

Considering the large number of applications, it is likely that many re-registrants will receive their new EADs after the expiration date of their current EADs. In order to prevent a gap in employment authorization for qualified re-registrants, DHS will extend the validity of applicable EADs for Honduran TPS beneficiaries until July 5, 2009.

Who is eligible to receive an automatic six-month EAD extension from January 6, 2009, to July 5, 2009?

You are eligible to receive an automatic six-month extension of an EAD if you:

- Are a national of Honduras (or an alien having no nationality who last habitually resided in Honduras);
- Applied for and received an EAD under the designation of Honduras for TPS; and
- Have not had TPS withdrawn or denied.

This automatic extension is limited to EADs issued on Form I–766, Employment Authorization Document, bearing an expiration date of January 5, 2009. These EADs must also bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

How may employers determine whether an EAD has been automatically extended for six months, through July 5, 2009, and is therefore acceptable for completion of the Form I–9, Employment Eligibility Verification?

An EAD that has been automatically extended for six months by this Notice through July 5, 2009, will bear the notation ''A–12'' or ''C–19'' on the face of the Form I–766 under ''Category,'' and have an expiration date of January 5, 2009, on the face of the card. New EADs or extension stickers showing the July 5, 2009, expiration date of the six-month automatic extension will not be issued. Employers should not request proof of Honduran citizenship.

Employers should accept an EAD as a valid ''List A'' document and not ask for additional Form I–9 documentation if presented with an EAD that has been extended pursuant to this **Federal Register** Notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. This extension does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. Employers may also call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

How may employers determine an employee's eligibility for employment once the automatic six-month extension expires on July 5, 2009?

Eligible TPS aliens will possess an EAD on Form I–766 with an expiration date of July 5, 2010. The EAD will bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' and should be accepted for the purposes of verifying identity and employment authorization.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I–9?

Qualified individuals who have received a six-month automatic extension of their EADs by virtue of this **Federal Register** Notice may present their TPS-based EADs to their employers, as described above, as proof of identity and employment authorization through July 5, 2009. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation through July 5, 2009. After July 5, 2009, a qualified individual may present a new EAD valid through July 5, 2010.

In the alternative, any legally acceptable document or combination of documents as listed on the Form I–9 may be presented as proof of identity and employment eligibility.

Dated: November 11, 2008.

Jonathan R. Scharfen,

Acting Director, U.S. Citizenship and Immigration Services.

[FR Doc. E8–27702 Filed 11–21–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2454–08; DHS Docket No. USCIS–2008–0032]

RIN 1615–ZA77

Extension of the Re-Registration Period and Automatic Extension of Employment Authorization Documentation for Nicaraguan Temporary Protected Status Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: On October 1, 2008, the Department of Homeland Security (DHS) published a Notice in the **Federal Register** extending the designation of Nicaragua for Temporary Protected Status (TPS) through July 5, 2010. USCIS has decided to extend the re-registration period through December 30, 2008. Beneficiaries of TPS for Nicaragua are required to re-register and obtain new Employment Authorization Documents (EADs), when an EAD is

requested by the beneficiary. Since, USCIS will not be able to process and re-issue new EADs for all such beneficiaries by the January 5, 2009, expiration date, USCIS has decided to automatically extend the validity of EADs issued to Nicaraguan nationals (or aliens having no nationality who last habitually resided in Nicaragua) until July 5, 2009. This Notice announces that extension and also explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

DATES: This notice is effective November 24, 2008. The re-registration period will be extended through December 30, 2008. The automatic extension of EADs will begin on January 6, 2009, and will remain in effect until July 5, 2009.

FOR FURTHER INFORMATION CONTACT: TPS Operations Program Manager, Status and Family Branch, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529, telephone (202) 272–1533. This is not a toll-free call. Further information will also be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov.* **Note:** The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual case can check Case Status Online available at the USCIS Web site listed above, or applicants may call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

SUPPLEMENTARY INFORMATION:

Why is USCIS extending the re-registration period for Nicaraguan TPS beneficiaries?

In order to provide greater uniformity and avoid potential confusion between the re-registration periods for the three Central American countries currently designated for TPS, USCIS has decided to extend the re-registration period through December 30, 2008.

Why is USCIS automatically extending the validity of EADs for Nicaraguan TPS beneficiaries?

Considering the large number of applications, it is likely that many re-registrants will not receive their new EAD until after the expiration date of their current EAD. In order to prevent a gap in employment authorization for qualified re-registrants, DHS will automatically extend the validity of applicable EADs for Nicaraguan TPS beneficiaries until July 5, 2009.

Who is eligible to receive an automatic six-month EAD extension from January 6, 2009, to July 5, 2009?

You are eligible to receive an automatic six-month extension of an EAD if you:

- Are a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua);
- Applied for and received an EAD under the designation of Nicaragua for TPS; and
- Have not had TPS withdrawn or denied.

This automatic extension is limited to EADs issued on Form I–766, Employment Authorization Document, bearing an expiration date of January 5, 2009. These EADs must also bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category.''

How may employers determine whether an EAD has been automatically extended for six months, through July 5, 2009, and is therefore acceptable for completion of the Form I–9, Employment Eligibility Verification?

An EAD that has been automatically extended for six months by this Notice through July 5, 2009, will bear the notation ''A–12'' or ''C–19'' on the face of the Form I–766 under ''Category,'' and have an expiration date of January 5, 2009, on the face of the card. New EADs or extension stickers showing the July 5, 2009, expiration date of the six-month automatic extension will not be issued. Employers should not request proof of Nicaraguan citizenship.

Employers should accept an EAD as a valid ''List A'' document and not ask for additional Form I–9 documentation if presented with an EAD that has been extended pursuant to this **Federal Register** Notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. This extension does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. Employers may also call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

How may employers determine an employee's eligibility for employment once the automatic six-month extension expires on July 5, 2009?

Eligible TPS aliens will possess an EAD on Form I–766 with an expiration date of July 5, 2010. The EAD will bear the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' and should be accepted for the purposes of verifying identity and employment authorization.

What documents may a qualified individual show to his or her employer as proof of employment authorization and identity when completing Form I–9?

Qualified individuals who have received a six-month automatic extension of their EADs by virtue of this **Federal Register** Notice may present their TPS-based EADs to their employers, as described above, as proof of identity and employment authorization through July 5, 2009. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation through July 5, 2009. After July 5, 2009, a qualified individual may present a new EAD valid through July 5, 2010.

In the alternative, any legally acceptable document or combination of documents as listed on the Form I–9 may be presented as proof of identity and employment eligibility.

Dated: November 11, 2008.

Jonathan R. Scharfen,

Acting Director, U.S. Citizenship and Immigration Services.

[FR Doc. E8–27703 Filed 11–21–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Customs Brokers User Fee Payment for 2009

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General Notice.

SUMMARY: This document provides notice to customs brokers that the annual fee of $138 that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by January 23, 2009. Customs and Border Protection (CBP) announces this date of payment for 2009 in accordance with the Tax Reform Act of 1986.

DATES: Payment of the 2009 Customs Broker User Fee is due January 23, 2009.

FOR FURTHER INFORMATION CONTACT: Bruce Raine, Broker Compliance Branch, Trade Policy and Programs, (202) 863–6544.

SUPPLEMENTARY INFORMATION:

Background

CBP Dec. 07–01 amended § 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96) pursuant to the amendment of section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by section 892 of the American Jobs Creation Act of 2004, to establish that effective April 1, 2007, an annual user fee of $138 is to be assessed for each customs broker permit and national permit held by an individual, partnership, association, or corporation.

The Customs and Border Protection (CBP) regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which is published in the **Federal Register** annually. *See* 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled ''Geographical Boundaries of Customs Brokerage, Cartage and Lighterage Districts'' published in the **Federal Register** on September 27, 1995 (60 FR 49971).

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date. Please note that section 403 of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.* (Pub. L. 107–296), and Treasury Department Order No. 100–16 (*see* Appendix to 19 CFR Part 0) delegated general authority vested in the Secretary of the Treasury over customs revenue functions (with certain specified exceptions) to the Secretary of Homeland Security.

This document notifies customs brokers that for calendar year 2009, the due date for payment of the user fee is January 23, 2009. It is anticipated that for subsequent years, the annual user fee for customs brokers will be due on or about the twentieth of January of each year.

Dated: November 18, 2008.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E8–27823 Filed 11–21–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5262–N–01]

Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly: Notice of Funding Availability

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces the availability of approximately $9.5 million in grant funds to make emergency capital repairs to eligible multifamily projects owned by private nonprofit entities that are designated for occupancy by elderly tenants. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants. The intent of these grants is to provide one-time assistance for emergency items that could not be absorbed within the project's operating budget and other project resources, and where the tenants' continued occupancy in the immediate near future would be jeopardized by a delay in initiating the proposed cure. The notice provides instructions for owners of multifamily projects to request funding and instructions for the HUD field offices to process requests.

FOR FURTHER INFORMATION CONTACT: G. DeWayne Kimbrough, Director, Grant and Housing Assistance Field Support Division, Office of Multifamily Housing, Room 6146, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

Overview Information

A. *Federal Agency Name:* Department of Housing and Urban Development, Office of the Assistant Secretary for Housing-Federal Housing Commissioner.

B. *Funding Opportunity Title:* The Emergency Capital Repair Grants (ECRP) for Multifamily Housing Projects Designated for Occupancy by the Elderly.

C. Announcement: Type: Initial announcement.

D. *Funding Opportunity Number:* FR–5262–N–01; the OMB Approval Number is 2502–0542.

E. *Catalog of Federal Domestic Assistance (CFDA) Number:* 14.315; Emergency Capital Repair Grants for Multifamily Housing Projects Designated for Occupancy by the Elderly.

F. *Dates:* HUD will accept applications on a first-come, first-serve basis and will award emergency capital repair grants until available amounts are obligated or funds expire, whichever comes first.

G. *Additional Overview Information:*

1. Program Description. The purpose of this program is to provide grants to make emergency capital repairs to eligible multifamily projects owned by private nonprofit entities that are designated for occupancy by elderly tenants. Private nonprofit owners of eligible developments interested in applying for funding under this grant program should carefully review the detailed information listed in this NOFA. Funding will only be provided for those eligible emergency items.

2. Required Electronic Application Submission via Grants.gov. Applications must be submitted electronically via the Federal portal, *http://www.Grants.gov*, unless a waiver has been granted. Applications may be submitted to Grants.gov starting 15 days after the publication of this Notice. This time frame allows applicants to complete the Grants.gov registration process before applications are accepted by HUD. Applications received prior to the fifteen day period will not be accepted for review and processing. Applicants not familiar with Grants.gov are instructed to see the General Section of the SuperNOFA published on March 19, 2008 (72 FR 14882) (General Section), and the FY2008 SuperNOFA published on May 12, 2008 (72 FR 27032) (SuperNOFA), for further information about application, submission, and timely receipt requirements. Applicants should carefully read HUD's **Federal Register** Notice on Early Registration published on March 10, 2008 (73 FR 12751) (Early Registration Notice), and start the Grants.gov registration process immediately upon publication of this NOFA. Applicants should take

particular note of the Grants.gov registration and application submission and validation procedures. Validation can take up to 48 hours to process. A copy of the General Section is available in the instructions download to the application posted to Grants.gov. HUD also has online training archived on HUD's Web cast page at *http://www.hud.gov/webcasts/archives/supernofa08.cfm*. Scroll down until you come to the broadcast labeled ''SuperNOFA'' Adobe Forms Update, March 26, 2008. The broadcast is available with or without closed captioning.

Please note that HUD strongly encourages potential applicants to this program, even if not facing an immediate need for program funds, to complete the Grants.gov registration process following release of this NOFA, so that you are fully prepared to submit an application for funding should the need arise.

Full Text of Announcement

I. Funding Opportunity Description

A. Program Description. HUD provides grant funds to make emergency capital repairs to eligible multifamily projects owned by private nonprofit entities that are designated for occupancy by elderly tenants. The capital repair needs must relate to items that present an immediate threat to the health, safety, and quality of life of the tenants. The intent of these grants is to provide one-time assistance for emergency items that cannot be absorbed within the project's operating budget and other project resources, and where the tenants' continued occupancy in the immediate near future is jeopardized by a delay in initiating the proposed cure.

B. Authority. The Emergency Capital Repair Grant Program is authorized by Section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) and the Consolidated Appropriations Act, 2008 (Pub. L. 110–161), which provides up to $24,750,000 for the conversion of eligible projects to assisted-living or related use and for emergency repairs.

C. Definition. For purposes of this NOFA, ''emergency capital repairs'' are repairs at a project to correct a situation that presents an immediate threat to the life, health and safety of project tenants. Assistance is limited to those projects with emergency problems that are of such a magnitude that:

1. The problem poses an immediate threat to the quality of life of the elderly tenants; and

2. The problem would, if left untreated, result in an evacuation of the elderly tenants or long-term tenant displacement unless the repairs are made.

II. Award Information

A. Available Funds. This NOFA makes available approximately $9.5 million including carryover funds. The funds will be used to make emergency capital repairs for eligible multifamily assisted housing projects for the elderly located within the 18 HUD Multifamily Hubs.

B. Amount of Funding Per Award. The maximum amount an individual project owner may apply for is $500,000. (The grant, along with funds from other sources, must remove the emergency conditions.) HUD retains the right to adjust the amount of the grant up (to a maximum grant of $500,000) or down, based on review of the reasonableness of the costs for completing the repairs.

C. Type of Assistance Instrument. The type of assistance awarded will be a grant.

D. Submission Information. Applications are to be received via grants.gov, the federal portal for applying for competitive funding applications, unless a waiver to the electronic application submission requirement is granted. To apply via grants.gov applicants must follow the grants.gov registration process which requires having a DUNS number, registering in the Central Contractor Registration (CCR), obtaining electronic signature credential from a credential provider, registering the user ID and password obtained from the credential provider at grants.gov, and then having the applicant organization eBusiness Point of Contact noted on the CCR, authorize the applicant to submit the application on behalf of the organization. A step-by-step instruction to the registration process is found in the General Section on page 14889 (FR 73 14889). A step by step guide to registration is available in HUD's 2008 Early Registration Notice and available on HUD's Web site at *http://www.hud.gov/utilities/intercept.cfm?/offices/adm/grants/nofa08/08earlyreg.pdf*.

E. Anticipated Start Dates and Periods of Performance. Applications will be funded on a first come, first serve basis. HUD will start accepting applications for funding starting 15 days following publication of this Notice. This time frame allows all applicants to complete the registration process. Applications submitted and received by HUD prior to the 15 day registration period will not be evaluated. Applicants can track the status of their applications by logging into grants.gov as an applicant using their User ID and password. Following the registration period, funds will be awarded on a first come, first serve basis until all allocated funding is obligated or funds expire, whichever comes first. All grant requests will be funded based on the date and time of validation by grants.gov. See the General Section for specific instructions regarding application submission, the grants.gov validation process and e-mail notifications, use of Adobe forms, and types of files that can be attached and reviewed by HUD.

F. The program operates as a performance based program with the period of performance based on the scope of work, but shall not exceed 12 months.

III. Eligibility Information

A. Eligible Applicants. Eligibility for emergency capital repair grants under this notice is restricted to: Private nonprofit owners of eligible multifamily assisted housing developments designated for occupancy by elderly tenants, as specified in sections 683(2)(B), (C), (D), (E), (F), or (G) of the Housing and Community Development act of 1992 (Pub. L. 102–550, approved October 28, 1992). Unless a project is located in a presidentially declared disaster area, it must have had final closing on or before January 1, 1999. The eligible projects are:

1. Section 202 direct loan projects with or without Section 8 rental assistance;

2. Section 202 capital advance projects receiving rental assistance under their Project Rental Assistance Contract (PRAC);

3. Section 515 rural housing projects receiving Section 8 rental assistance;

4. Projects subsidized with Section 221(d)(3) below-market interest mortgage;

5. Projects assisted under Section 236 of the National Housing Act; and

6. Other projects receiving Section 8 project-based rental assistance.

B. Eligible Uses of Funds. Grant funds are available only for emergency capital repairs that relate to immediate health/safety needs that impact upon the quality of life of the elderly tenants if the repairs are not made. The repair item must have existed prior to submission of the application in order to obtain grant funds. The award is a one-time opportunity for correction of the threat to the elderly tenants. Funds may be used to repair or replace systems including, but not limited to:

1. Existing major building and structural components that are in critical condition; and

2. Repairs or replacements to existing mechanical equipment to the extent that they are necessary for health and safety reasons. The purchase of high efficiency heating and cooling systems (Energy Star) for the approved replacement equipment is encouraged to promote energy conservation.

C. Ineligible Uses of Funds. Emergency capital repair grant funds may not be used for the following repairs:

1. Deferred maintenance items.
2. Lead-based paint abatement.
3. Demolition and reconstruction activities, e.g., conversion of bedroom units.
4. Security systems.
5. Improvements, i.e., installation of sprinkler systems, air conditioning, additional lighting in parking lots, new backup generators or new elevators, etc.
6. Clearing of mold or mildew unless it is related to a repair of an existing emergency item that poses an immediate threat to the residents.
7. Consultant fees.

D. Cost Sharing or Matching. No cost sharing or match is required.

E. Threshold Requirements.

1. Be an eligible applicant and meet all requirements in this NOFA.
2. You cannot request more than $500,000 in grant funding.
3. Requests signed and submitted by a consultant or management agent on behalf of the owner will not be considered for funding.
4. The final closing for projects funded under this grant must be on or before January 1, 1999, except for those in presidentially declared disaster areas.
5. The project owner's most recent management review rating must be ''satisfactory'' or above.
6. The project owner must be in compliance with its Loan Agreement, Capital Advance Agreement, Regulatory Agreement, Housing Assistance Payment contract, Project Rental Assistance contract, Rent Supplement or Loan Management Set Aside (LMSA) contract, or any other HUD grant or contract document.
7. The request for funding must clearly identify the existing emergency and must contain a detailed justification in support of the emergency designation.
8. The repair and/or replacement items are to be written in a manner that specifically describes the scope of work to be performed, provides an estimate of the cost of the work to be performed, and provides an explanation of the basis for the estimate. The estimate provided for the cost of each action item must be reasonable and current (within 6 months of the application submission).
9. The owner must describe all previous grants or loans received by the project during the past three years and any unsuccessful efforts to find other sources of funding.
10. The current Real Estate Assessment Center (REAC) physical inspection report for the project must have a score of 60 or above. Developments scoring less than 60 are ineligible.
11. If the project is a section 236, the owner must be in compliance with the Excess Income requirements.
12. Tenants must be notified of the request for the grant and must be informed of the overall plan and timetable to complete the capital repairs.
13. The project is well maintained except for the current emergency capital repair needs.
14. The project does not have a recent history of mortgage defaults.
15. The project owner does not have any material-adverse financial or managerial actions or omissions with regard to any project that is federally assisted or financed with a loan or capital advance from, or mortgage insured by, an agency of the federal government.
16. The owner's Affirmative Fair Housing Marketing Plan (AFHMP) must meet all applicable HUD requirements. A copy of the approved AFHMP that is less than five years old should be attached with the request for funding. If the owner does not have an approved AFHMP the application will be considered incomplete and thus ineligible.
17. The project owner must demonstrate that: (i) the project accounts have been maintained in accordance with all HUD requirements; and (ii) there are insufficient funds in the operating budget and other project resources.
18. The owner must be current with filing of the audited financial statements and all findings, if any, resolved within 30 days.
19. HUD will not fund incomplete applications. If an application is missing mandatory exhibits the application will be considered non-responsive to the NOFA, thus leaving your application ineligible for review. If an application needs revisions to meet requirements, the application shall be deemed incomplete and therefore ineligible for funding. Applicants notified of incomplete or nonresponsive applications must resubmit the application. Resubmissions shall be placed in the funding queue based upon the validation date and time for receipt of the resubmission for electronic applications or by HUD in the case of applicants granted a waiver to the electronic application requirement. Please refer to section IV.B., Content and Form of Application Submission for further information.
20. *DUNS Requirement.* All ECRP applicants must have a Dun and Bradstreet Universal Data Numbering Systems (DUNS) number. The DUNS number must be included in the data entry field labeled ''organizational DUNS'' on the form SF–424. Instructions for obtaining a DUNS number can be found at either *http://www.hud.gov/offices/adm/grants/duns.cfm* or *http://www.grants.gov/applicants/request_duns_number.jsp*. When registering with Dun and Bradstreet, please be sure to use the organization's legal name that is used when filing a return with or making payments to the Internal Revenue Service. Organizations should also provide the zip code using the zip code plus the four additional digits.
21. *Compliance With Fair Housing and Civil Rights Laws.*

a. With the exception of federally recognized Indian tribes and their instrumentalities, applicants must comply with all applicable fair housing and civil rights requirements in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the nondiscrimination provisions enumerated at 24 CFR 1000.12, as applicable. In addition to these requirements, there may be program-specific threshold requirements identified in the individual program NOFAs.

b. If you, the applicant:

(1) Have been charged with an ongoing systemic violation of the Fair Housing Act; or

(2) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(3) Have received a letter of findings identifying ongoing systemic noncompliance under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, and the charge, lawsuit, or letter of findings referenced in subparagraphs (1), (2), or (3) above has not been resolved to HUD's satisfaction before the application deadline, then you are ineligible and HUD will not rate and rank your application. HUD will determine if actions to resolve the charge, lawsuit, or letter of findings taken before the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include, but are not limited to:

(a) A voluntary compliance agreement signed by all parties in response to a letter of findings;

(b) A HUD-approved conciliation agreement signed by all parties;

(c) A consent order or consent decree; or

(d) An issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

22. *Conducting Business in Accordance With Core Values and Ethical Standards/Code of Conduct.* Applicants subject to 24 CFR parts 84 or 85 (most nonprofit organizations and State, local, and tribal governments or government agencies or instrumentalities that receive Federal awards of financial assistance) are required to develop and maintain a written code of conduct (see 24 CFR 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, or agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. Before entering into an agreement with HUD, an applicant awarded assistance under a HUD program NOFA announced in FY2008 will be required to submit a copy of its code of conduct and describe the methods it will use to ensure that all officers, employees, and agents of its organization are aware of its code of conduct. An applicant is prohibited from receiving an award of funds from HUD if it fails to meet this requirement for a code of conduct. An applicant who previously submitted an application and included a copy of its code of conduct will not be required to submit another copy if the applicant is listed on HUD's Web site *http://www.hud.gov/offices/adm/grants/codeofconduct/cconduct.cfm,* and if the information has not been revised. An applicant not listed on the Web site must submit a copy of its code of conduct with its FY2008 application for assistance. An applicant must also include a copy of its code of conduct if the information listed on the above Web site has changed (e.g., the person who submitted the previous application is no longer your authorized organization representative, the organization has changed its legal name or merged with another organization, or the address of the organization has changed, etc.). Any applicant that needs to may submit its code of conduct to HUD via facsimile using the form HUD–96011, ''Facsimile Transmittal'' (''Third Party Documentation Facsimile Transmittal'' on Grants.gov) at the time of application submission. When using the facsimile transmittal form, please type the requested information. Use the form HUD–96011 as the cover page for the submission and include the following header in the top line of the form under *Name of Document Being Requested:* ''Code of Conduct for (insert your organization's name, city, and State).'' Fax the information to HUD's toll-free number at 800–894–4047. If you cannot access the 800 number or have problems, you may use 215–825–8796 (this is not a toll-free number).

23. *Judgment Liens for Federal Debts.* Applicants with a judgment lien against the applicant's property for a debt to the United States are not eligible to receive this grant unless the judgment is paid in full, otherwise satisfied or HUD has allowed the waiver of the judgment lien disqualification. See, 28 U.S.C. section 3201(e).

24. *Delinquent Federal Debts.* Although the existence of delinquent federal debts will not disqualify an applicant, the Department considers the existence of such delinquency a significant negative factor when assessing an application. HUD encourages applicants to resolve delinquent federal debts prior to application.

25. *Name Check Review.* Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, including if any key individual has been convicted or is presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the applicant or any key individual, HUD reserves the right to: (1) Deny funding or consider suspension or termination of an award immediately for cause, (2) require the removal of any key individual from association with management or implementation of the award, and (3) make appropriate provisions or revisions with respect to the method of payment or financial reporting requirements.

26. *False Statements.* A false statement in an application is grounds for denial or termination of an award and possible criminal, civil or administrative sanctions.

27. *Prohibition Against Lobbying Activities.* Applicants are subject to the provisions of Section 319 of Public Law 101–121 (approved October 23, 1989) (31 U.S.C. 1352) (the Byrd Amendment), which prohibits recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant, or loan. In addition, applicants must disclose, using Standard Form LLL (SF–LLL), ''Disclosure of Lobbying Activities,'' any funds, other than federally appropriated funds, that will be or have been used to influence federal employees, members of Congress, or congressional staff regarding specific grants or contracts. Federally recognized Indian tribes and tribally designated housing entities (TDHEs) established by federally recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but state-recognized Indian tribes and TDHEs established only under state law must comply with this requirement. Applicants must submit the SF–LLL if they have used or intend to use federal funds for lobbying activities.

28. *Debarment and Suspension.* In accordance with Departmental regulations, debarred or suspended parties, or parties proposed for debarment under the Federal Acquisition Regulations, are not eligible to participate in this grant program. For further information see 2 CFR Parts 180 and 2424 as well as 48 CFR Parts 9 and 2409.

F. Other Requirements.

1. *Economic Opportunities for Low- and Very Low-Income Persons (Section 3).* Section 3 of the Housing and Urban Development Act of 1986 (Section 3), 12 U.S.C. 1701u (Economic Opportunities for Low- and Very Low-Income Persons in Connection With Assisted Projects), and the HUD regulations at 24 CFR Part 135 apply to HUD-funded Housing Projects in excess of $200,000 involving housing rehabilitation or housing construction activities. Accordingly, if the applicant's expenditure of section 3 covered financial assistance for housing rehabilitation or construction will result in new hiring or contracting opportunities, said opportunities shall be directed to low- and very low-income persons within the local community and/or the businesses that employ these individuals. Recipients of section 3 covered financial assistance are required to comply with the responsibilities at 24 CFR Part 135.32, to the greatest extent feasible. In addition, recipients are required to submit the section 3 Summary Report, annually to the Office of Fair Housing and Equal Opportunity

in Washington, DC, in accordance with 24 CFR Part 135.90. Section 3 annual reports are to be submitted on form HUD–60002—Section 3 Summary Report or via HUD's online system at *http://www.hud.gov/offices/fheo/section3/section3.cfm.*

2. *Additional Nondiscrimination and Other Requirements.* Applicants and their sub recipients must comply with Civil Rights Laws and Affirmatively Furthering Fair Housing. For further information refer to section III.C.4a. and b. of the General Section of the SuperNOFA.

3. *Participation in HUD-Sponsored Program Evaluation.* As a condition of the receipt of financial assistance under a HUD program NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors who perform HUD-funded research or evaluation studies.

4. *Drug-Free Workplace.* Applicants awarded funds from HUD are required to provide a drug-free workplace. Compliance with this requirement means that the applicant will: a. Publish a statement notifying employees that it is unlawful to manufacture, distribute, dispense, possess, or use a controlled substance in the applicant's workplace and that such activities are prohibited. The statement must specify the actions that will be taken against employees for violation of this prohibition. The statement must also notify employees that, as a condition of employment under the federal award, they are required to abide by the terms of the statement and that each employee must agree to notify the employer in writing of any violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after such violation;

b. Establish an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, or employee maintenance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c. Notify the federal agency in writing within 10 calendar days after receiving notice from an employee of a drug abuse conviction or otherwise receiving actual notice of a drug abuse conviction. The notification must be provided in writing to HUD's Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 3156, Washington DC 20410–3000, along with the following information:

(1) The program title and award number for each HUD award covered;

(2) The HUD staff contact name, telephone, and fax numbers; and

(3) A grantee contact name, telephone, and fax numbers; and

d. Require that each employee engaged in the performance of the federally funded award be given a copy of the drug-free workplace statement required in item (a) above and notify the employee that one of the following actions will be taken against the employee within 30 calendar days of receiving notice of any drug abuse conviction:

(1) Institution of a personnel action against the employee, up to and including termination consistent with requirements of the Rehabilitation Act of 1973, as amended; or

(2) Imposition of a requirement that the employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

5. *Compliance with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109–282) (Transparency Act).* Applicants receiving an award from HUD should be aware of the requirements of the Transparency Act. The Transparency Act requires the establishment of a central website that makes information available to the public regarding entities receiving federal financial assistance, by not later than January 1, 2008. In fulfillment of the requirements of the Act, OMB launched *http://www.USAspending.gov* in December 2007. The website makes information available to the public on the direct awards made by the federal government. The Transparency Act also requires, beginning not later than January 2009, that data on subawards be made available on the same website. In anticipation of the implementation of this requirement, HUD is placing awardees of its FY2008 competitive funding on notice of these requirements and notes that once implemented, grantees will be required to report their subaward data to HUD or a central federal database. The only exceptions to this requirement under the Act are: (i) Federal transactions below $25,000, (ii) credit card transactions prior to October 1, 2008, (iii) awards to entities that demonstrate to the Director of OMB that the gross income of such entity from all sources did not exceed $300,000 in the previous tax year of such entity, and (iv) awards to individuals. Guidance for receiving an exception under item (iii) above has not been finalized by OMB.

HUD is responsible for placing award information for direct grantees on the government Web site. The reporting of subaward data is the responsibility of the grantee. Grantees should be aware that the law requires the information provided on the federal Web site to include the following elements related to all subaward transactions, except as noted above:

(1) The name of the entity receiving the award;

(2) The amount of the award;

(3) Information on the award including the transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance (CFDA) number (where applicable), program source, and an award title descriptive of the purpose of each funding action;

(4) The location of the entity receiving the award and primary location of performance under the award, including the city, state, congressional district, and country;

(5) A unique identifier of the entity receiving the award and of the parent entity of the recipient (the DUNS number), should the entity be owned by another entity; and

(6) Any other relevant information specified by OMB.

HUD expects OMB to issue further guidance on subaward reporting during FY2008. Based on preliminary input from the various federal agencies, applicants should be aware that consideration is being given to requiring the disclosure of additional data elements to help track the flow of funding from the original federal award. Such data elements under consideration include the tier at which the subaward was made, the federal award number issued to the direct awardee, the dollar amount of the federal award emanating from the direct award going to the subawardee, as well as the total subaward amount, which could include funds from other sources. Additional information regarding these requirements will be issued by OMB and will be provided when available.

G. Performance-Based Requirements.

1. Funds awarded must be expended only for approved uses.

2. Repairs must be initiated immediately upon receiving the grant award and must be substantially completed within 6 months of the initial start, with final repairs completed no later than 12 months after receipt of funding. Tenants must be able to remain in their units while the repairs are being made.

3. If there are less than 10 years remaining on the existing mortgage, owners must enter into a Rental Use Agreement to extend the remaining affordability of the project for up to 10 years. For example, if the maturity date of the mortgage is 3 years from the execution of the Grant Agreement, the owner must enter into a Rental Use agreement for 7 years beyond the term of the mortgage. If the maturity date of the mortgage is 15 years, the owner will not need to execute a Rental Use Agreement unless the mortgage is prepaid. All Rental Use Agreements must be recorded.

4. All excess Residual Receipts and any Reserve for Replacement funds over $1000/unit in Project Accounts that are not approved for another use at the time of application to HUD under this NOFA are considered available funds and must be applied toward the cost of the emergency repair(s).

5. Tenants must be able to remain in their units while the repairs are being made.

6. Environmental Requirements. If the grant assistance is for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety, including those resulting from physical deterioration, then no environmental review is required. However, if the grant assistance will alter environmental conditions, then HUD must perform an environmental review pursuant to 24 CR part 50. HUD may require the owner to submit the information necessary for HUD to perform its environmental review. Also, if any of the project structures are in FEMA designated special flood hazard areas, flood insurance is required for the life of the proposed project.

7. Davis-Bacon prevailing wage rate requirements do not apply to emergency capital repair grants. Davis-Bacon requirements may apply to emergency repairs if the repairs will also be assisted by another federal program that requires Davis-Bacon wage rates.

H. Request for Waiver of Electronic Application Submission Requirement. Applicants may request a waiver of the electronic application submission requirement. Waiver requests must be submitted in writing following the publication of this Notice. HUD will make every effort to respond to a waiver request within 15 days of receipt. Applicants should take the time for consideration of the waiver request and how it will impact the placement of the application in the funding queue. HUD's waiver policy, found in 24 CFR 5.1005, allows waivers for cause. The request must be addressed to the Assistant Secretary for Housing at the following address: Brian D. Montgomery, Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9100, Washington, DC 20410–8000. Waiver requests submitted by fax must be sent to (202) 708–3104. Waiver requests must provide the basis upon which the request is made, specifically addressing why electronic submission is not possible. The basis for waivers for cause may include, but is not limited to, (a) lack of available Internet access in the geographic location in which the applicant's business office is located; or (b) physical disability of the applicant that prevents the applicant from accessing or responding to the application electronically. The waiver request must include an e-mail or name and mailing address where responses can be directed. HUD will not consider a waiver request that does not conform to the above requirements. To avoid delays, waiver requests should be sent by United States Postal Service Express Mail. You, the applicant, should retain a receipt for the mailing showing the date submitted to the Postal Service. HUD will acknowledge receipt of the waiver request by e-mail, if an e-mail address is provided or by United States Postal Service Express Mail or other available means. HUD will not make determinations or respond to waiver requests via telephone. If an applicant intends to file multiple funding requests, each request for waiver to the application submission process must be filed separately. HUD will inform applicants whether or not their waiver request has been granted. In the event a waiver is granted, the date and time the application is received by HUD in the office or offices designated in the response granting the waiver, will be the basis upon which placement in the funding queue is made. Paper applications will be placed in the same funding queue as applications received electronically. Applicants should be aware that due to security restrictions, HUD no longer accepts applications by hand delivery.

IV. Application and Submission Information

A. Addresses to Request Application Package. All application information is available from *http://www.grants.gov* at *http://www.grants.gov/applicants/apply_for_grants.jsp*. If you have difficulty accessing the information, you can receive customer support from Grants.gov by calling the help line at 800–518–Grants or by sending an e-mail to *support@grants.gov*. If you do not have access, you may obtain an ECRP application by calling the NOFA Information Center at (voice): 800–HUD–8929 (800–483–8929). Persons with a hearing or speech impairment may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Please be sure to provide your name, address (including zip code), and telephone number (including area code).

1. *Multiple Applications.* Owners may not submit multiple applications for the same elderly housing development. HUD will only accept one ECRP application per project under this NOFA.

2. *For Technical Assistance.* Before the ECRP funding expiration, HUD staff will be available to provide you with general guidance and technical assistance. However, HUD staff is not permitted to assist in preparing your application. For technical support for downloading the ECRP application or submitting the application, call the toll free Grants.gov Customer Support line at 1–800–518–Grants or send an e-mail message to *support@grants.gov*.

B. Content and Form of Application Submission. There are 9 required exhibits under the ECRP, including prescribed forms. Your application must include all of the information, materials, forms, and exhibits listed below (Please see the General Section for instructions on how to submit third party and other documents such as bank statements, project plan and construction schedule, etc.):

1. *Exhibit I.* A request in letter form and signed by the owner. Requests signed by a consultant or management agent on behalf of the owner are not acceptable. The letter must identify the basis for the emergency declaration and how it impacts the health and safety of the tenants, as well as what would happen if the emergency repairs were not made immediately. The request must also identify the repairs proposed and cost to correct the emergency for which funding is requested. **Note:** Repair items identified on the REAC physical inspection report are not sufficient to be classified as emergency in nature. Include brief narratives explaining how all of the eligibility (Section III, A. and B.) and other requirements (Section III. E., F. and G.) in this NOFA have been met.

2. *Exhibit II.* The estimate for the cost is to be written in a manner that specifically describes the scope of work to be performed, provides an estimate of the cost of the work to be performed,

and provides an explanation of the basis for the estimate. The estimate provided for the cost of each action item must be reasonable and current (within 6 months prior to application submission).

3. *Exhibit III.* Evidence that demonstrates the repairs cannot be corrected at a cost that can be absorbed within the operating budget or by use of the reserve for replacement funds in excess of $1,000 per unit and all available residual receipts funds. Include bank statements, Reserve for Replacement analysis, project budget analysis, etc. If the total cost to eliminate the emergency repair exceeds $500,000, identification of other sources that will be used is needed.

4. *Exhibit IV.* Provide a project plan and construction schedule for substantially completing the repairs within 6 months, but no longer than 12 months from the date of the grant award.

5. *Exhibit V.* Provide evidence that the owner notified the tenants of the plans to apply for this grant.

6. *Exhibit VI.* Provide the current approved Affirmative Fair Housing Marketing Plan that is less than 5 years old.

7. *Exhibit VII.* Provide a description of any unsuccessful attempts the owner has made to acquire funding from other sources, including letters of denial from funding sources, to complete the outstanding emergency capital repairs.

8. *Exhibit VIII.* Provide a description of any previous grants or loans received by the project during the past 3 years from the effective date of the NOFA.

9. *Exhibit IX.* Forms and Certifications:

1. Form SF–424 Application for Federal Assistance.

2. HUD–2880 Applicant/Recipient/Update/Disclosure Report.

3. HUD–96011 ''Third Party Documentation Facsimile Transmittal''.

4. SF–LLL, Disclosure of Lobbying activities, if applicable.

5. Code of Conduct, if applicable.

Application Submission: (Refer to Section IV. of the General Section for further instructions on the delivery and receipt of applications.) If an applicant does not follow the faxing instructions, HUD will not be able to match faxes to an electronic application submission. Faxed documents will only be accepted as part of an electronic application submission. HUD will not accept applications for review sent in entirely by fax nor accept applications by fax from applicants granted a waiver to the electronic application submission requirement.

C. Other Submission Requirements.

1. Application Submission and Receipt Procedures. Unless you received a waiver to the electronic application submission requirements, your completed ECRP application must be submitted via *http://www.grants.gov/applicants/applyfor_grants.jsp* and must be received and validated by Grants.gov. Refer to Section IV.F. of the General Section for additional information on application submission requirements.

2. Electronic Delivery. The Grants.gov Web site offers a simple, unified application process. There are several registration steps applicants need to complete. Further information is contained in the General Section. ECRP applicants should also read HUD's **Federal Register** Notice on Early Registration which can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.*

3. Instructions on how to submit electronically are outlined in HUD's ''Desktop User's Guide'' located on HUD's Grants Web site at: *http://www.hud.gov/grants/index.dfm.*

4. Waiver of Electronic Submission Requirement. See Section III.H. of this notice for information regarding waivers of the electronic submission requirement.

5. Hubs and Field Offices Addresses. If you are granted a waiver to the electronic application submission requirement, your waiver approval will provide the information on the number of copies of the application you are required to submit and where to submit the application. If you send your application to the wrong Hub Office, it will be rejected.

V. Application Review

A. Applications with deficiencies will not be processed. HUD will require that owners revise and resubmit an application to meet review requirements. Applications not meeting requirements will be taken out of queue when the applicant is notified of deficiencies and the applicant asked to resubmit the application again as a new application with the noted weaknesses cured. The resubmitted application will be processed as a new request in the order in which it is received and validated by Grants.gov if filed electronically, or received by the appropriate HUD office.

B. Only those ECRP applications that meet all threshold requirements will be eligible to receive an award. Applications that do not pass the requirements will be rejected.

C. Review Process. HUD staff teams will review ECRP applications. All applications will be either approved or disapproved. If your application meets all program eligibility requirements it may be awarded the requested grant funds.

VI. Award Administration Information

A. Award Notices

1. The Grant Agreement, and the Form HUD–1044, signed by both the Recipient and Grant Officer, shall serve as the obligating documents. Unsuccessful applicants will be notified, by mail, within 30 days of the announcement of the awards.

2. Adjustments to Funding. HUD will not fund any portion of your application that is not eligible for funding under specific program statutory or regulatory requirements; does not meet the requirements of this notice; or may be duplicative of other funded programs or activities. Only the eligible portion of your application will be funded.

B. Reporting

1. Progress Report. Recipients of funding under this program NOFA shall submit a progress report every six months after the effective date of the Grant Agreement. HUD is requiring performance-based management and therefore, every six months owners must report their progress in attaining the goals and objectives they proposed in their application. Each semi-annual report must identify and explain any deviations (positive or negative) from outputs and outcomes proposed and approved by HUD, including budgetary and scheduling deviations.

2. *Racial and Ethnic Data.* HUD requires that funded recipients collect racial and ethnic beneficiary data. HUD has adopted the Office of Management and Budget's Standards for the Collection of Racial and Ethnic Data. In view of these requirements, you should use HUD–27061—Racial and Ethnic Data Reporting Form (instructions for its use) found on *http://www.HUDclips.org.*

VII. Agency Contact(s)

A. For Further Information and Technical Assistance. You should contact the HUD Multifamily Hub in your geographical area. For a list of HUD Multifamily Hub Offices, see HUD's Web site at *http://www.hud.gov/offices/adm/grants/fundavail.cfm.* You may also contact G. Dewayne Kimbrough, Director, Grant and Housing Assistance Field Support Division, Office of Multifamily Housing, Room 6146, at (202) 708–3000, extension 4160 for questions regarding the ECRP grant award process. This is not a toll-free number. Mr. Kimbrough can be reached by e-mail at *G.DeWayne.Kimbrough@hud.gov.* If you have a hearing or speech impairment, you may access the telephone number

via TTY by calling the Federal Information Relay Service at 800–877–8339.

VIII. Other Information

A. Paperwork Reduction Act. The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0542. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 80 hours per respondent for the application. This includes the time for collecting, reviewing, and reporting the data for the application. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

B. Environmental Review. A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. Eastern Time, Monday through Friday, except federal holidays, in the Office of the General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Dated: November 12, 2008.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing.

[FR Doc. E8–27663 Filed 11–21–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5233–N–01]

Notice of Funding Availability for Fiscal Year (FY) 2008 Family Unification Program (FUP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of approximately $20 million for incremental voucher assistance to provide adequate housing as a means to promote family unification through the FUP. This NOFA is governed by the information and instructions found in the Notice of HUD's FY2008 Notice of Funding Availability; Policy Requirements and General Section (General Section) to HUD's FY2008 NOFAS for Discretionary Programs that HUD published in the **Federal Register** on March 19, 2008 (73 FR 14882), the SuperNOFA Introduction published on May 12, 2008 (73 FR 27032), and the correction published on June 12, 2008 (73 FR 33446).

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to the agency contact identified in this program NOFA. Questions regarding the March 10, 2008 (73 FR 12751), Notice of FY2008 Opportunity to Register Early and Other Important Information for Electronic Application Submission Via Grants.gov, the General Section of March 19, 2008, the SuperNOFA Introduction of May 12, 2008, or the correction of June 12, 2008, should be directed to the Office of Departmental Grants Management and Oversight at (202) 708–0667 (this is not a toll-free number) or the NOFA Information Center at (800) HUD–8929 (toll-free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339. The NOFA Information Center is open between the hours of 10:00 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

Overview Information

A. Federal Agency Name: Office of Public and Indian Housing, Office of Public Housing and Voucher Programs, HUD.

B. Funding Opportunity Title: Family Unification Program (FUP).

C. Announcement Type: Initial Announcement.

D. Funding Opportunity Number: The **Federal Register** number for this NOFA is FR–5233–N–01. The Office of Management and Budget (OMB) paperwork approval number is pending.

E. Catalog of Federal Domestic Assistance (CFDA) Number: 14.880, Family Unification Program.

F. Application Deadline: The application deadline date is January 28, 2009. Applications must be received and validated by Grants.gov by the deadline date. Validation may take up to 72 hours. Please see section I.V.C of the FY 2008 General Section published March 19, 2008 (73 FR 14882), for electronic submission and receipt requirements.

G. Additional Information: The purpose of the FUP is to promote family unification by providing Housing Choice Vouchers (HCVs) to families for whom the lack of adequate housing is a primary factor in the separation, or the threat of imminent separation, of children from their families and to youths 18 to 21 years old who left foster care at age 16 or older and lack adequate housing.

Public Housing Agencies (PHAs) interested in applying for funding under this announcement should carefully review the FY 2008 General Section published March 19, 2008 (73 FR 14882): The URL for the HUD FY 2008 General Section is *http://www.hud.gov/utilities/intercept.cfm?/offices/adm/grants/nofa08/gensec.pdf.*

Full Text of Announcement

I. Funding Opportunity Description

A. Authority and Program Description: FUP is authorized by section 8(x) of the United States Housing Act of 1937 {42 U.S.C. 1437(X)}. Title II of Division K of the Consolidated Appropriations Act, 2008 (Pub. L. 110–161, December 26, 2008), provided $20 million for incremental voucher assistance through the FUP.

FUP is a program under which vouchers are provided to families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care; or the delay in the discharge of the child, or children, to the family from out-of-home care. Youths at least 18 years old and not more than 21 years old (have not reached 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing are also eligible to receive housing assistance under the FUP. *A FUP voucher issued to such a youth may only be used to provide housing assistance for the youth for a maximum of 18 months.*

Vouchers awarded under the FUP are administered by PHAs under HUD's regulations for the HCV program (24 CFR part 982). Further, PHAs must modify their selection preference system to permit the selection of FUP-eligible families and/or FUP-eligible youths to which the PHA intends to issue FUP vouchers with available funding provided by HUD for this purpose. Additionally, funding under this NOFA may only be used to provide tenant-based housing assistance, as prescribed by section 8(x) of the U.S. Housing Act of 1937, so as to allow FUP-eligible families and youths a choice in their selection of decent, safe, and affordable units on the private market.

B. Definitions: The following definitions apply to the funding authority available under this funding announcement.

1. The terms ''FUP-eligible family'' and ''FUP-eligible youth''

a. *Are defined as:*

(1) A FUP-eligible family is a family that the public child welfare agency (PCWA) has certified as a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child, or children, in out-of-home care, or in the delay of discharge of a child, or children, to the family from out-of-home care, and that the PHA has determined is eligible for a HCV.

(2) A FUP-eligible youth is a youth that the PCWA has certified to be at least 18 years old and not more than 21 years old (has not reached his/her 22nd birthday) who left foster care at age 16 or older and who does not have adequate housing, and that the PHA has determined is eligible for a HCV.

2. Lack of Adequate Housing

a. *The lack of adequate housing means:*

(1) A family or youth is living in substandard or dilapidated housing; or

(2) A family or youth is homeless; or

(3) A family or youth is displaced by domestic violence; or

(4) A family or youth is living in an overcrowded unit; or

(5) A family or youth is living in housing not accessible to its disabled child or children due to the nature of the disability.

3. Substandard Housing

a. *A family or youth is living in substandard housing if the unit where the family or youth lives:*

(1) Is dilapidated;

(2) Does not have operable indoor plumbing;

(3) Does not have a usable flush toilet inside the unit for the exclusive use of a family or youth;

(4) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family or youth;

(5) Does not have electricity, or has inadequate or unsafe electrical service;

(6) Does not have a safe or adequate source of heat;

(7) Should, but does not, have a kitchen; or

(8) Has been declared unfit for habitation by an agency or unit of government.

4. Dilapidated Housing

a. *Dilapidated housing means:*

(1) A family or youth is living in a housing unit that is dilapidated if the unit where the family or youth lives does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family or youth, or the unit has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may result from original construction, from continued neglect or lack of repair or from serious damage to the structure.

5. Homeless

a. *A homeless family includes any person (including a youth) or family that:*

(1) Lacks a fixed, regular, and adequate nighttime residence; and

(2) Has a primary nighttime residence that is:

(a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);

(b) An institution that provides a temporary residence for persons intended to be institutionalized; or

(c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

6. Displaced by Domestic Violence

a. *A family or youth is displaced by domestic violence if:*

(1) The applicant has vacated a housing unit because of domestic violence; or

(2) The applicant lives in a housing unit with a person who engages in domestic violence.

(3) ''Domestic violence'' means felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

7. Living in Overcrowded Housing

a. *A family or youth is considered to be living in an overcrowded unit if it meets the following separate criteria for a family or youth as follows:*

(1) The family is separated from its child (or children) and the parent(s) are living in an otherwise standard housing unit, but, after the family is re-united, the parents' housing unit would be overcrowded for the entire family and would be considered substandard; or

(2) The family is living with its child (or children) in a unit that is overcrowded for the entire family and this overcrowded condition may result in the imminent placement of its child (or children) in out-of-home care.

(3) The youth is living in a unit that is overcrowded.

For purposes of the above paragraph, the PHA may determine whether the unit is ''overcrowded'' in accordance with PHA subsidy standards.

8. Detained Family Member

a. *FUP-eligible family or FUP-eligible youth's family may not include:*

(1) Person imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

9. Public Child Welfare Agency (PCWA)

a. *The PCWA means:*

(1) The public agency that is responsible under applicable State law for determining that a child is at imminent risk of placement in out-of-home care or that a child in out-of-home care under the supervision of the public agency may be returned to his or her family, or that a youth left foster care at age 16 or older and is at least 18 years old and not more than 21 years old.

II. Award Information

A. Available Funds: This NOFA announces the availability of $20 million for applications for the FY 2008 FUP which will provide voucher assistance to approximately 2,840 FUP eligible families and youths. The $20 million will be used to fund applications submitted by PHA's for HCVs to be issued to families for whom the lack of adequate housing is a primary factor in the separation, or the

threat of imminent separation, of children from their families; and/or youths 18 to 21 years old who left foster care at age 16 or older and who lack adequate housing.

B. Maximum Voucher Request: The total number of vouchers that a PHA may apply for will be based upon the size of the PHA. PHAs with a HCV program of 2000 or more units under an ACC may apply for funding that will support approximately 100 units. PHAs with a HCV program of 500 units to 1999 units may apply for funding that will support approximately 50 units. PHAs with a HCV program of less than 500 units under an ACC may apply for funding that will support approximately 25 units.

C. Lottery: If more approvable applications are submitted in FY 2008 than funding available under this NOFA, a national lottery will be conducted to select approvable applications. See section V.B. of this NOFA regarding the lottery procedures to be followed.

D. Unfunded Approvable Applications: PHAs with approvable applications that are not funded, in whole or in part, due to insufficient funds available under this FUP NOFA or HUD error, shall be funded first in FY 2009 provided HUD receives additional appropriations for the FUP in FY 2009.

III. Eligibility Information

A. Eligible Applicants: PHAs are the eligible applicants and may submit only one application under this NOFA. This one application per PHA limit applies regardless of whether the PHA is a State or regional PHA, except in those instances where such a PHA has more than one PHA code number due to its operating under the jurisdiction of more than one HUD Field Office. In such instance, a separate application under each code shall be considered for funding with the cumulative total of vouchers applied for under the applications not to exceed the maximum number of vouchers the PHA is eligible to apply for under section II.B. of this NOFA; *i.e.*, no more than the number of vouchers the same PHA would be eligible to apply for if it had only one PHA code number. Please note that a contract administrator that does not have an annual contributions contract (ACC) with HUD for HCVs, but constitutes a PHA under 24 CFR 791.102 by reason of its administering HCVs on behalf of another PHA, shall not be eligible to submit an application under this NOFA.

B. Cost Sharing or Matching: None required.

C. Other

1. Threshold Requirements.

a. *All applicants must meet the threshold requirements under Section III.C. of the FY 2008 General Section with the following exceptions:*

(1) Section III.C.2.d. (Conducting Business in Accordance with Core Values and Ethical Standards). To reflect core values, all applicant PHAs shall develop and maintain a written code of conduct in the PHA's administrative plan that: (a) Requires compliance with the conflict of interest requirements of the HCV program cited in 24 CFR 982.161; and (b) Prohibits the solicitation or acceptance of gifts or gratuities in excess of a nominal value by an officer or employee of the PHA or any contractor, subcontractor, or agent of the PHA. The PHA's administrative plan shall state the PHA's policies concerning PHA administrative and disciplinary remedies for violation of the PHA's code of conduct. The PHA shall inform all officers, employees and agents of its organization, of the PHA's code of conduct.

(2) Section III.C.4.b. (1) through (3) (Specific Steps to Affirmatively Furthering Fair Housing). The PHA must comply with Section III.C.4.b. of the General Section; the exceptions only apply to providing specific steps in the application. In addition, prior to the application due date under this NOFA, each applicant must submit to the public housing director in the applicant's local HUD field office an addendum to the applicant's HCV administrative plan that outlines reasonable steps the applicant will take to affirmatively further fair housing in regards to the vouchers awarded under this NOFA. Reasonable steps must include:

(a) Identifying and ensuring certification of FUP eligible families and youth that may be on the PHA's waiting list and ensuring that the family or youth maintain their original position on the waiting list after certification.

(b) Appropriately placing all FUP eligible families and youth referred from the PCWA on the HCV waiting list in order of first come, first served.

(c) Informing applicants on how to file a fair housing complaint including the provision of the toll free number for the Housing Discrimination Hotline: 1–800–669–9777.

Further, an applicant must comply with the affirmatively furthering fair housing requirements of 24 CFR Section 903.7(o) by: (1) Examining its programs or proposed programs; (2) identifying any impediments to fair housing choice within those programs; (3) addressing those impediments in a reasonable fashion in view of the resources available; (4) working with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and (5) maintaining records reflecting these analyses and actions. Further, applicant PHAs are encouraged to take the following proactive steps in addressing accessibility problems for persons with disabilities: (1) Where requested by an individual, assist program applicants and participants to gain access to supportive services available within the community, but not require eligible applicants or participants to accept supportive services as a condition of continued participation in the program; (2) Identify public and private funding sources to assist participants with disabilities in covering the costs of structural alterations and other accessibility features that are needed as accommodations for their disabilities; (3) Not deny persons who qualify for a HCV under this program other housing opportunities, or otherwise restrict access to PHA programs to eligible applicants who choose not to participate; (4) Provide housing search assistance; (5) In accordance with rent reasonableness requirements, approve higher rents to owners that provide accessible units with structural modifications for persons with disabilities; and (6) Provide technical assistance, through referrals to local fair housing and equal opportunity offices, to owners interested in making reasonable accommodations or units accessible to persons with disabilities.

b. The PHA must not have any major unresolved program management findings from an Inspector General's audit, HUD management review or Independent Public Accountant (IPA) audit for the PHA's HCV program or other significant program compliance problems that were not resolved prior to this NOFA's application deadline. Major program management findings, or significant program compliance problems, are those that would cast doubt on the capacity of the applicant to effectively administer any new HCV funding in accordance with applicable HUD regulatory and statutory requirements.

c. The PHA must not be involved in litigation where HUD determines that the litigation may seriously impede the ability of the applicant to administer the vouchers.

d. Program Threshold Requirements. To be eligible for funding in response to this NOFA, the applicant must meet the following program threshold

requirements and receive at least 50 points of the maximum 100 total points that could be received for Threshold Criterion 2, Efforts of PHA to Provide Area-Wide Housing Opportunities for Families.

(1) *Threshold Criterion 1: Unmet Housing Needs.*

(a) This criterion requires the PHA to demonstrate the need for an equal or greater number of HCVs than it is requesting under this NOFA. The PHA must assess and document the unmet housing need for its geographic jurisdiction of:

(i) Families for whom the lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care, or in a delay of discharge of a child or children to the family from out-of-home care, and/or;

(ii) Youths at least 18 years old and not more than 21 years old (have not reached his/her 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing. The results of the assessment must include a comparison of the estimated unmet housing needs of such families and youths to the Consolidated Plan covering the PHA's jurisdiction. The demonstration of need and comparison to the Consolidated Plan should be based on those FUP-eligible families, and/or FUP-eligible youths that the PHA is basing its voucher request upon and to which it intends to issue FUP vouchers.

(2) *Threshold Criterion 2: Efforts of PHA To Provide Area-Wide Housing Opportunities for Families (100 points).* Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this criterion must be beyond those required by federal law or regulation such as the portability provisions of the HCV program. (See section V.A. of this NOFA for points assigned for this Threshold Criterion).

(3) *Threshold Criterion 3: Memorandum of Understanding (Mou) Coordination Between PHA and Public Child Welfare Agency To Identify and Assist FUP-Eligible Families and FUP-Eligible Youths.*

The application must include an MOU, executed by the chief executive officer of the PHA and the PCWA, identifying the actions that the PHA and the PCWA will take to identify and assist FUP-eligible families and/or FUP-eligible youths, and the resources that each organization will commit to the FUP.

(a) The MOU must clearly address, at a minimum, the following:

(i) PHA responsibilities as outlined in section VI.B.3. of this NOFA.

(ii) PCWA responsibilities as outlined in section VI.B.4. of this NOFA.

(iii) The assistance the PCWA will provide to families and youths, as appropriate, in locating housing units and working with landlords to secure appropriate eligible units.

(iv) The PCWA's past experience in administering a similar program.

(v) Past PCWA and PHA cooperation in administering a similar program.

(vi) If the PHA intends to issue FUP vouchers to FUP-eligible youths, the services to be provided to such youths by the PCWA, or by another agency/organization under agreement/contract to the PCWA to provide the services, which at a minimum must include the following for a period of not less than the 18 months a FUP-eligible youth is receiving rental assistance through the use of a FUP voucher.

(A) Basic life skills information/counseling on money management, use of credit, housekeeping, proper nutrition/meal preparation; and access to health care (*e.g.*, doctors, medication, and mental and behavioral health services).

(B) Counseling on compliance with rental lease requirements and with HCV program participant requirements, including assistance/referrals for assistance on security deposits, utility hook-up fees, and utility deposits.

(C) Providing such assurances to owners of rental property as are reasonable and necessary to assist a FUP-eligible youth to rent a unit with a FUP voucher.

(D) Job preparation and attainment counseling (where to look/how to apply, dress, grooming, relationships with supervisory personnel, etc.).

(E) Educational and career advancement counseling regarding attainment of general equivalency diploma (GED); attendance/financing of education at technical school, trade school or college; including successful work ethic and attitude models.

(F) Participation of FUP-eligible youths in the assessment and implementation of actions to address their needs, including the development of an individual case plan on each youth for services to be received and the youth's commitment to the plan (youth required to sign a service plan agreeing to attend counseling/training sessions and to take other actions as deemed appropriate to the youth's successful transition from foster care.

The MOU shall be considered by HUD and the signatories (the PCWA and the PHA) as a complete statement of the responsibilities of both parties and evidence a commitment of resources to the FUP. As such, the document should be very specific. For instance, the PCWA must clearly indicate the amount of time and staff resources the PCWA will commit on a continuing basis to identifying the FUP-eligible families and/or FUP-eligible youths to which FUP vouchers are intended to be issued; the length of time it will provide follow-up support services to these FUP-eligible families and/or FUP-eligible youths after they receive their vouchers; etc. *A MOU that does not contain the information required in this Threshold Criterion 3 will be deemed unacceptable and thereby the PHA's application for the FUP shall be determined to be unacceptable for funding.*

(4) *Threshold Criterion 4: Public Child Welfare Agency Statement of Need for Family Unification Program.*

The application must include a statement by the PCWA describing the need in the area to be served for a program providing assistance to families for whom lack of adequate housing is a primary factor in the placement of the family's children in out-of-home care or in the delay of discharge of the children to the family from out-of-home care, and/or youths age 18 to 21 who left foster care at age 16 or older and who lack adequate housing, as evidenced by the caseload of the PCWA. The PCWA must adequately demonstrate that there is a need in the PHA's jurisdiction for the FUP that is not being met through existing programs by indicating the number of FUP-eligible families who currently have children in danger of being placed in out-of-home care or who cannot be returned from out-of-home care due to inadequate housing, and/or the number of youths at least 18 years old but not more than 21 years old (have not yet reached their 22nd birthday) who left foster care at age 16 or older and who do not have adequate housing. The narrative must include specific information relevant to the area to be served, about homelessness, family violence resulting in involuntary displacement, number and characteristics of families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as the result of inadequate housing, and/or the number and characteristics of youths age 18 through 21 released from foster care at age 16 or older who do not have adequate housing, and the PCWA's past experience in obtaining housing through HUD assisted programs and other sources for families and youths lacking adequate housing. The PCWA's statement of need should be based solely on those types of eligible FUP

voucher participants; *i.e.*, FUP-eligible families and/or FUP-eligible youths to which the PHA may issue FUP vouchers.

d. Each applicant must meet the PIC reporting requirements under PIH Notice 2007–29 (HA) that will be assessed for the month immediately preceding the month in which the applications under this NOFA are due. This threshold requirement will not apply to MTW agencies.

e. Each applicant must have achieved points (15 or 20) under the Section 8 Management Assessment Program (SEMAP) leasing indicator (24 CFR Section 985.3(n)) and not be designated as troubled for its most recent assessed fiscal year. MTW agencies that are not required to report under SEMAP shall be held to the 95 percent lease-up and budget authority utilization requirements referenced above. These MTW agencies are required to submit a certification with their application certifying that they are not required to report under SEMAP, and that they meet the 95 percent lease-up or budget authority utilization requirements.

f. Each applicant must have their PHA plans approved for its current FY by the submission date of this NOFA.

g. The PHA applicant must not have any major unresolved program management findings from an Inspector General Audit, HUD management review or Independent Public Accountant (IPA) audit for the PHA's HCV program or other significant program compliance problems that were not resolved prior to this NOFA's application deadline. Major program management findings, or significant program compliance problems, are those that would cast doubt on the capacity of the applicant to effectively administer any new HCV funding in accordance with applicable HUD regulatory and statutory requirements.

h. The PHA must not be involved in litigation where HUD determines that the litigation may seriously impede the ability of the applicant to administer the vouchers.

IV. Application and Submission Information

A. Address to Request Application Package. Applicants may download the instructions to the application found on the Grants.gov Web site at *http://www.Grants.gov./applicants/apply_for_grants.jsp*. If you have difficulty accessing the information you may call the Grants.gov Support Desk toll free at 1–800–518–GRANTS or e-mail your questions to *Support@Grants.gov*. See the General Section for information regarding the registration process or ask for registration information from the Grants.gov Support Desk.

B. Content and Form of Application Submission

Applicants submitting electronic copies should follow the procedures in Sections IV.B. and F. of the General Section. The following list is provided as a guide to help ensure that you submit all the required elements of the application. All applicants should enter the applicant name, DUNS number, and page numbers on the narrative pages of the application. All forms are available when you download the application and instructions from *http://www.grants.gov/applicants/apply_for_grants.jsphttps://apply.grants.gov/forms_apps_idx.html*.

1. *SF–424, Application for Federal Assistance.*

2. *SF–LLL, Disclosure of Lobbying Activities.*

3. *HUD–2880, Applicant/Recipient Disclosure/Update Report (''HUD Applicant Recipient Disclosure Report'' on Grants.gov).*

4. *Form HUD–52515–Funding Application,* must be completed and submitted. This form includes all the necessary certifications for Fair Housing, Drug-Free Workplace and Lobbying Activities. PHAs are requested to enter their housing authority code number (for example, CT002) as well as their electronic mail address, telephone number, and facsimile telephone number in the same place at the top of the form where they are also to enter the PHA's name and mailing address. Section C of the form should be left blank. PHAs may obtain a copy of form HUD–52515 by downloading the form from the following HUD Web site: *http://www.hud.gov/offices/adm/hudclips/forms/index.cfm.* In addition, the form HUD–52515 will also be posted with the FUP NOFA at the following HUD Web site: *www.hud.gov/offices/adm/grants/otherhud.cfm.* The form must be completed in its entirety, with the exception of Section C, signed and dated.

5. *Letter of Intent and Narrative.* Funding is limited, and HUD may only have enough funds to approve a smaller amount than the number of vouchers requested. The PHA must state in its cover letter the number of vouchers it is requesting and the minimum number of vouchers it will accept if selected under a lottery system. The cover letter must also include a statement by the PHA certifying that the PHA has consulted with the agency or agencies in the State responsible for the administration of welfare reform to provide for the successful implementation of the State's welfare reform for families and youths receiving rental assistance under the FUP. The application must also include an explanation of how the applicant meets the requirements for Threshold Criterion 1 through 4 in section III.C.1.b. of this NOFA. The PCWA serving the jurisdiction of the PHA is responsible for providing the information for Threshold Criteria 4, to the PHA for submission with its application. This should include a discussion (as appropriate to whether the PHA intends to issue FUP voucher to eligible families and/or youths) of the case-load of the PCWA and information about homelessness, family violence resulting in involuntary displacement, number and characteristics for families who are experiencing the placement of children in out-of-home care or the delayed discharge of children from out-of-home care as a result of inadequate housing, the number and characteristics of youths age 18 to 21 years old who left foster care at age 16 or older and who lack adequate housing, and the PCWA's experience in obtaining housing through HUD assisted housing programs and other sources for families and youths lacking adequate housing. A State-wide PCWA must provide information on Threshold Criteria 4 to all PHAs that request such information; otherwise, HUD will not consider applications from any PHA with the State-wide PCWA as a participant in its program.

6. *Evaluation Certifications.* The PHA and the PCWA, in separate certifications, must state that the PHA and PCWA agree to cooperate with HUD and provide requested data to the HUD office or HUD-approved contractor delegated the responsibility for the program evaluation. No specific language for this certification is prescribed by HUD.

7. *Form HUD–2993.* All PHAs must complete and submit form HUD–2993, Acknowledgement of Application Receipt. In addition to the PHA entering its name and address on the form, the full title of the program under which the PHA is seeking funding must also be entered. This form is available at the following HUD Web site: *http://www.hud.gov/offices/adm/hudclips/forms/index.cfm.* In addition the form HUD–2993 will also be posted with the FUP NOFA at the following HUD Web site: *www.hud.gov/offices/adm/grants/otherhud.cfm.*

8. *Form HUD–2994–A.* You Are Our Client! Grant Applicant Survey, Optional.

9. *Form HUD–96011.* Third Party Documentation Facsimile Transmittal (''Facsimile Transmittal Form'' on

Grants.gov). Used as the cover page to transmit third party documents and other information designed for each specific application for tracking purposes. HUD will not be able to match faxes to an application if the application does not contain the HUD–96011 fax cover page, and each fax submitted does not use the HUD–96011 as the cover page to the facsimile transmission.

C. Submission Dates and Times: Your completed application must be received and validated electronically by Grants.gov no later than 11:59:59 p.m. Eastern time on the deadline date. The validation process can take 24–48 hours following receipt of the application by Grants.gov. Applicants are advised to submit the application 72 hours prior to the deadline date so that if the application is rejected by Grants.gov, the applicant has enough time to correct the noted problem and resubmit the application in time to meet the deadline requirements. (See General Section for further information on the Grants.gov validation process.)

HUD has found that the most common error made by grantees which causes their application to fail validation is that the applicant ID and password do not match the DUNS number under which they are applying, or the applicant is not authorized by the organization to submit the application on behalf of the organization. Please make sure when submitting your application that you are using the correct DUNS number, user ID and password, that you have registered at Grants.gov and that you have been authorized by the organization to submit the application on behalf of the applicant. To check your registration status, follow the directions provided in the General Section.

D. Intergovernmental Review: Intergovernmental review is not applicable to this program.

E. Funding Restrictions:

2. *Voucher Funding.* HUD's Housing Voucher Financial Management Division will determine the amount of funding that a PHA will be awarded under this NOFA based upon the PHA's per unit cost for FY 2008 renewal funding or 2009 renewal funding if those costs are available. Administrative fees are not included in this funding and will be determined in accordance with section 10 of the Public and Indian Housing (PIH) Notice 2008–15 (HA) or a subsequent administrative fee notice (a copy of all PIH notices referenced in the NOFA may be downloaded at *http://www.hudclip.org*). PIH Moving to Work (MTW) agencies will be funded under this NOFA in accordance with their MTW agreements.

F. Other Submission Requirements

1. *Application Submission and Receipt Procedures.* The General Section describes application submission procedures and how applicants may obtain proof of timely submission.

2. *Waiver of Electronic Submission Requirements.* Applicants interested in applying for funding under this NOFA must submit their applications electronically via Grants.gov or request a waiver from the electronic submission requirement. Applicants should submit their waiver request in writing using e-mail. Waiver requests must be submitted no later than 15 days prior to the application deadline date and should be submitted to *Danielle.L.Bastarache@hud.gov* and *Stephanie.Y.McQueen@hud.gov.* If an applicant is granted a waiver, the approval will provide instructions for submitting paper copies to the appropriate HUD office. All paper applications must be received by the application deadline to meet the requirements for timely submission.

3. *Acceptable Applications.* An acceptable application is one which meets all of the application submission requirements in Section IV.B. of the NOFA and does not fall into any of the categories listed in section V.B.3. of this NOFA. The Grants Management Center (GMC) will initially screen all applications and notify PHAs of technical deficiencies by letter.

V. Application Review Information

A. Criteria

HUD's GMC is responsible for rating the applications under the selection criteria in this NOFA, and is responsible for the selection of FY 2008 applications that will receive consideration for assistance under the FUP.

1. *Rating and Assessment for Threshold Criteria 2.* Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this criterion must be beyond those required by federal law or regulation such as the portability provisions of the HCV program. The GMC will assign 25 points for any of the following assessments and add the points for all the assessments to determine the total points for this criterion.

a. Assign 25 points if the PHA documents that PHA staff will provide housing counseling for families that want to move to low-poverty or non-minority areas, or if the PHA has established a contractual relationship with a nonprofit agency or a local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas.

b. Assign 25 points if the PHA documents that it participates with other PHAs in using a metropolitan wide or combined waiting list for selecting participants for the HCV program.

c. Assign 25 points if the PHA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.

d. Assign 25 points if the PHA is using HCVs (not part of a previously. HUD-approved FUP) to create a FUP like program or to expand upon its existing FUP.

B. Review and Selection Process

1. *GMC Screening.* After the GMC has screened all applications and disapproved any applications unacceptable for further processing, the GMC will review and rate all approvable applications.

All FY 2008 applications identified by the GMC as meeting the requirement of this NOFA, will be eligible for the lottery selection process. The GMC will select eligible PHAs to be funded based on a lottery in an event the cost of funding all approvable applications exceeds funding made available under this NOFA.

HUD may limit the number of FY 2008 approvable applications selected for any State to no more than 10 percent of the budget authority made available under this NOFA in order to achieve geographic diversity. If establishing this geographic limit results in unspent budget authority, HUD may modify this limit to assure that all available funds are used.

Applications will be funded in full for the number of vouchers requested by the PHA in accordance with the NOFA. If the remaining voucher funds are insufficient to fund the last PHA application in full, the GMC may recommend funding that application to the extent of the funding available and the applicant's willingness to accept a reduced number of vouchers. Applicants that do not wish to have the size of their programs reduced may indicate in their application that they do not wish to be considered for a reduced award of funds. The GMC will skip over these applicants if assigning the remaining funding would result in a reduced funding level.

2. *Technical Deficiencies.* The General Section provides the procedures for

corrections to deficient applications. Please note that clarifications for corrections of technical deficiencies in accordance with the information provided by HUD to the applicant must be submitted within 14 calendar days of receipt of the date of the HUD notification.

3. *Unacceptable Applications.* After the 14-day technical deficiency correction period, the GMC will disapprove all PHA applications that the GMC determines are not acceptable for processing. The GMC's notification of rejection will state the basis for the decision which may include one of the following:

a. Any PHA application that does not meet the threshold requirements of the General Section and/or this NOFA.

b. A PHA's application that does not comply with the requirements of 24 CFR 982.102 and the requirements of this NOFA after the expiration of the 14-calendar day technical deficiency correction period.

c. The PHA's application was submitted after the application deadline date.

C. Anticipated Announcement and Award Dates: It is anticipated that award announcements will take place during either the month of June or July, 2009.

VI. Award Administration Information

A. Award Notices: Successful applicants will receive an award letter from HUD. Funding will be provided to successful applicants as an amendment to the ACC of the applicant PHA.

Unsuccessful applicants will receive a notification of rejection letter from the GMC that will state the basis for the decision. For a period of at least 120 days, beginning 30 days after the awards for assistance are publicly announced, HUD will provide to a requesting applicant a debriefing related to its application. (See the General Section for additional information regarding debriefing). Applicants requesting to be debriefed must send the written request to: Keia Neal, Acting Director, GMC, U.S. Department of Housing and Urban Development, 501 School Street, SW., Suite 800, Washington, DC 20024.

B. Administrative and National Policy Requirements

1. *HCV Program Regulations.* Applicants must administer the Family Unification Program in accordance with HUD's regulations governing the HCV Program (24 CFR 982). MTW agencies may administer these vouchers in accordance with their MTW agreements unless they are inconsistent with Appropriations Act requirements or the requirements of this NOFA.

2. *Turnover.* If a voucher issued to a FUP-eligible family or FUP-eligible youth under this program is terminated, the voucher must be reissued to the extent practicable, to either another FUP-eligible family or FUP-eligible youth. If the award on turnover to FUP eligible families or youth is not practicable, FUP vouchers may be used by PHAs for such families and youths based upon local needs and consistent with the PHA's administrative plan and MOU.

A FUP voucher issued to a youth age 18 to 21 may not be used to provide housing assistance for that youth for a period of more than 18 months, as per the statutory requirements of Section 8(x)(2) of the U.S. Housing Act of 1937, as amended.

3. PHA Responsibilities.

a. Accept families and youths certified by the PCWA as eligible for the FUP. The PHA, upon receipt of the PCWA list of families and youths currently in the PCWA caseload, must compare the names with those of families and youths already on the PHA's HCV waiting list. Any family or youth on the PHA's HCV waiting list that matches with the PCWA's list must be assisted in order of their position on the waiting list in accordance with PHA admission policies. Any family or youth certified by the PCWA as eligible and not on the HCV waiting list must be placed on the waiting list. If the PHA has a closed HCV waiting list, it must reopen the waiting list to accept a FUP applicant family or youth who is not currently on the PHA's HCV waiting list;

b. Determine if any families with children, or youths age 18 through 21 on its HCV waiting list are living in temporary shelters or on the street and may qualify for the Family Unification Program, and refer such applicants to the PCWA;

c. Determine if families with children, or youths age 18 through 21 referred by the PCWA are eligible for HCV assistance and place eligible families/youths on the HCV waiting list;

d. Amend the administrative plan in accordance with applicable program regulations and requirements;

e. Administer the vouchers in accordance with applicable program regulations and requirements;

f. Assure the quality of the evaluation that HUD intends to conduct on the FUP and cooperate with and provide requested data to the HUD office or HUD-approved contractor responsible for program evaluation; and

g. Comply with the actions to be taken by the PHA as specified in the MOU executed by the PHA and the PCWA. {See Section III.C.1.b.3. regarding the MOU}.

4. PCWA Responsibilities

a. Establish and implement a system to identify FUP-eligible families and FUP-eligible youths within the agency's caseload and to review referrals from the PHA;

b. Provide written certification to the PHA that a family qualifies as a FUP-eligible family, or that a youth qualifies as a FUP-eligible youth, based upon the criteria established in section 8(x) of the United States Housing Act of 1937, and this notice;

c. Commit sufficient staff resources to ensure that eligible families and youths are identified and determined eligible in a timely manner and to provide follow-up supportive services after these families and youths lease units;

d. Cooperate with the evaluation that HUD intends to conduct on the FUP, and submit a certification with the PHA's application for FUP indicating that the PCWA will agree to cooperate with and provide requested data to the HUD office or HUD-approved contractor having responsibility for program evaluation; and

e. Comply with the actions to be taken by the PCWA as specified in the MOU executed between the PCWA and the PHA. {See Section III.C.1.b.3. regarding the MOU.}

5. Environmental Impact

In accordance with 24 CFR 50.19(b)(11) and 58.35(b)(1) of the HUD regulations, tenant-based rental activities under this program are categorically excluded from the requirements of the National Environmental Policy Act of 1969 (NEPA) and are not subject to environmental review under the related laws and authorities. Activities under the homeownership option of this program are categorically excluded from NEPA requirements and excluded from other environmental requirements under 24 CFR 58.5 in accordance with 24 CFR 58.35(b)(5), but PHAs are responsible for the environmental requirements in 24 CFR 982.626(c). With regard to activities under the homeownership option for units not yet under construction at the time the families enter into the contract for sale, the additional environmental review requirements referenced in 24 CFR Sections 982.628(e), 982.631(c)(3) and 982.637(b) also apply in addition to Section 982.626(c), and the PHA shall submit all relevant environmental

information to the responsible entity or to HUD to assist in the completion of those requirements.

6. *HUD's Strategic Goals.* HUD is committed to ensuring that programs result in the achievement of HUD's strategic mission. HCVs awarded under this NOFA support the Department's strategic goals of expanding access to and the availability of decent, affordable rental housing. For more information about HUD's Strategic Plan and Annual Performance Plan, you may visit HUD's Web site at *http://www.hud.gov/offices/cfo/reports/cforept.cfm.* Also, see Section V.B. of the FY 2008 General Section for information on ''HUD's Strategic Goals to Implement HUD's Strategic Framework and Demonstrate Results''.

7. *HUD Policy Priorities.* HCVs awarded under this NOFA supports HUD's policy of providing increased homeownership and rental opportunities for low- and moderate-income persons.

C. Reporting

1. Family Report. All successful applicants including MTW agencies) must report the usage of voucher funds under this NOFA through required submissions of the form HUD–50058, Family Report. PHAs must enter the program code ''FUP'' on line 2n of the Family Report for families who are assisted with vouchers under this NOFA. PHAs must maintain this code on the form HUD–50058 for the duration of the family's participation in the HCV program.

2. Racial and Ethnic Data. *HUD requires that funded recipients collect race and ethnic beneficiary data. HUD has adopted the Office of Management and Budget Standards for the Collection of Race and Ethnic Data. In view of these requirements, you should use form HUD–27061, Racial and Ethic Data Reporting Form (instruction for its use), found on www.HUDclips.org for this purpose.*

VII. Agency Contacts

1. *Technical Assistance.* Before the application deadline date, you can contact the Public and Indian Housing Resource Center (PIHRC) for answers to your questions. However, staff is not permitted to assist in preparing your application. Also, following selection of applicants, but before awards are announced, staff may assist in clarifying or confirming information that is a prerequisite to the offer of an award. The PIHRC can be reached by calling 1–800–955–2232 (this is a toll free number). Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number). For technical support for registering to apply using *www.grants.gov*, downloading an application, or electronically submitting an application, please call Grants.gov Customer Support at 800–518–GRANTS (472687) (This is a toll-free number) or e-mail *support@grants.gov.*

2. *Satellite Broadcast.* HUD will not have a satellite broadcast on the FUP.

VIII. Other Information

A. Public Access, Documentation and Disclosure: For information, please review section VIII.G. of the *FY 2008 General Section.*

B. Paperwork Reduction Act: The information collection requirements contained in this document have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and approval is pending. Once approved, HUD will publish a notice in the **Federal Register** notifying the public regarding the OMB approval number. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB number.

Dated: November 10, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E8–27873 Filed 11–21–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5242–N–01]

The Housing and Economic Recovery Act of 2008 Applicability to HUD Public Housing, Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides information about the applicability to HUD's public housing and Section 8 tenant-based and project-based voucher programs of certain provisions of the Housing and Economic Recovery Act of 2008. This notice provides an overview of key provisions that affect HUD's public housing programs, identifies those provisions that are self-implementing and require no action on the part of HUD for participants to commence taking action to be in compliance, those provisions that require implementing regulations on the part of HUD, and advises of efforts underway within HUD to further facilitate compliance with this new law, including rules and guidance that as may be necessary or appropriate. Provisions of this new law that affect project-based assisted housing programs administered by HUD's Office of Housing are also identified. This notice also solicits comments, questions, or proposals that HUD should take into consideration in developing more detailed guidance or rules to implement those provisions of the new law that require more detailed guidance or rulemaking.

DATES: *Comment Due Date*: December 24, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For information about HUD's Public Housing and Voucher programs, contact David Vargas, Associate Deputy Assistant Secretary for Public Housing and Voucher Programs, Office of Public and Indian Housing, Room 4206, telephone number 202–708–2815. For information about the HUD's Capital Fund program, please contact Jeffrey Riddel, Director, Capital Program Division, Office of Public and Indian Housing, Room 4130, telephone number 202–401–8812. The address for both offices is the Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. The listed telephone numbers are not toll-free numbers. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Overview

The Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, 122 Stat. 2654, approved July 30, 2008) (HERA) made a number of changes to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq*.) (1937 Act) that affect PIH programs, including changes to the definition of income, which also affect the Office of Housing's project-based assistance programs; the public housing agency (PHA) plan; the voucher program; the capital and operating funds with respect to emergency funds; and establishing a collection of information on tenants in tax credit projects. This notice identifies those changes and provides information to program participants on how those changes affect HUD's public housing programs.

II. HERA Amendments to the 1937 Act

Under the 1937 Act, HUD promotes the goal of providing decent and affordable housing for all citizens by providing funds for housing assistance. These funds directly assist PHAs to provide affordable publicly owned housing and also subsidize affordable privately owned housing. HERA makes changes that affect both public and private affordable housing, as described in this notice.

A. Definition of Annual Income

Section 2608 of Title VI of Division B of HERA amends the definition of ''annual income'' in section 3(b)(4) of the 1937 Act to exclude any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts from the definition of income. Accordingly, as of the effective date of HERA, July, 30, 2008, such benefits are not to be included for purposes of determining the annual income of an applicant for or recipient of benefits under the 1937 Act. This income exclusion is similar to the existing exclusion for deferred periodic amounts from supplemental security income and Social Security benefits under 24 CFR 5.609(c)(14). Although the full amount of periodic Social Security payments is included in annual income pursuant to 24 CFR 5.609(b)(4), the deferred amount resulting from the delayed start of the periodic payment is not included in annual income. In the same way, the full amount of periodic VA disability benefit payments will continue to be included in annual income pursuant to 24 CFR 5.609(b)(4), but the deferred amount resulting from the delayed start of the disability payments will not be included in annual income. A payment qualifies as a VA disability benefit if it is identified as a disability benefit in the VA benefit award letter, regardless of whether or not the family member that is the beneficiary of the award would qualify as a person with disabilities under HUD's regulations. For existing residents or tenants, including those residing in project-based assisted housing administered by HUD's Office of Housing, the new exclusion for deferred payments will be made applicable at the time of annual recertification of income, or at interim examination. This provision is self-implementing without further regulatory action by HUD. HUD will later publish a conforming rule to include this item with the exclusion from income for deferred Social Security benefits at 24 CFR 5.609(c)(14).

B. Qualified Public Housing Agencies

Section 2702 of Title VII of Division B of HERA amends section 5A(b) of the 1937 Act by establishing ''qualified public housing agencies,'' a category of PHAs that are provided substantial paperwork relief, primarily with respect to the PHA Annual Plan requirements in section 5(A)(b) of the 1937 Act. The requirement for preparation and submission of a 5-year plan pursuant to section 5A(a) of the 1937 Act is not affected.

A PHA is a ''qualified public housing agency'' if the PHA is not designated as a troubled PHA, does not have a failing score under the Section 8 Management Assessment Program during the prior 12 months, and if the sum of the public housing units administered by the agency and the section 8(o) vouchers authorized under the PHA's Consolidated Annual Contributions Contract, is 550 or less. The paperwork relief to qualified PHAs, as provided in section 2702, is effective as of the effective date of HERA, July 30, 2008, and will be made applicable to such PHAs commencing with the next date of Annual Plan submission.

HUD will make conforming changes to its regulations at 24 CFR part 903 and issue guidance, as may be determined necessary, to further address qualified PHAs, including the following statutory provisions that are applicable to qualified PHAs. The statutory provisions applicable to qualified PHAs are self-implementing.

1. *Public Housing Agency (PHA) Plans*. New section 5A(b)(3)(A) of the 1937Act excludes qualified PHAs from the requirement to prepare and submit an annual PHA plan.

2. *Civil Rights Certification*. Even though an annual PHA plan is not required of a qualified PHA, section 5A(b)(3)(B) maintains the requirement for such agencies to prepare and submit the annual civil rights certification provided for in section 5A(d)(16) of the 1937 Act. Accordingly, qualified PHAs must continue to submit their civil rights certifications to HUD for review.

3. *Resident Advisory Board*. A new section 5A(d)(4) is added to affirm that qualified PHAs are still subject to the requirement to establish one or more resident advisory boards. A requirement is also added to consult with, and consider the recommendations of, the resident advisory board at the annual public hearing required under new section 5A(f)(5), regarding any changes to the goals, objectives, and policies of the PHA.

4. *Annual Public Meeting*. As noted in paragraph B.3. of this notice, new

section 5A(f)(5) of the 1937 Act requires a qualified PHA to conduct annually a public hearing to discuss any changes to the goals, objectives, and policies of the agency; and to invite public comment regarding such changes. The PHA must publish a notice of the hearing and relevant information, and make such information available for inspection at its principal office, at least 45 days before the date that the hearing is held.

C. Section 9 Emergency Set-Aside

Section 2804 of Title VIII of Division B of HERA strikes section 9(k) of the 1937 Act, which is entitled ''Emergency Reserve and Use of Amounts.'' The removal of section 9(k) eliminates the requirement imposed on HUD to set aside, in each fiscal year, not more than two percent of the total amount of public housing operating funds and capital funds made available each fiscal year through appropriations acts for emergencies and other disasters and housing needs resulting from any settlement of litigation. Section 9(k) was applicable to and imposed an obligation on HUD.

D. Section 8 Tenant Based Assistance: Housing Choice Voucher Program—Rent for Tax Credit Units

Subtitle B of Title VIII of HERA (sections 2831 through 2835) makes a number of changes to coordinate tax incentives for private housing and federal housing programs, including the Section 8 voucher program. As one of these changes, the procedure for determining the rent reasonableness standard applicable to dwelling units receiving low-income housing tax credits (LIHTC) or assistance under the HOME Investments Partnership (HOME) program is streamlined by section 2835(a)(2) of HERA, which adds section 8(o)(10)(F) to the 1937 Act.

A rent comparison with unassisted local market units is not required for such dwelling units if the rent does not exceed the rent for other LIHTC or HOME assisted units in the project that are not occupied by families with tenant based assistance. The rent shall be considered reasonable if it does not exceed the greater of (1) the rent for other LIHTC or HOME assisted units in the project not occupied by families with tenant based assistance, or (2) the payment standard established by a PHA for a unit of the size involved. This provision is effective and may be used commencing with the date of enactment of HERA, July 30, 2008. Accordingly, this provision is self-implementing. HUD will make conforming changes to its regulations at 24 CFR 982.507 to reflect this statutory provision.

E. Section 8 Project Based Voucher Program

Section 2835(a)(1) of HERA makes several changes to the Section 8 project-based voucher (PBV) program under section 8(o)(13) of the 1937 Act (42 U.S.C. 1437f(o)(13)) and 24 CFR part 983 of HUD's regulations, as follows:

1. *Applicability of 25 Percent Cap on Number of PBV Units*. Prior to amendment by section 2835(a)(1)(A) of HERA, PBV assistance was limited to 25 percent of the units in a building. This cap in section 8(o)(13)(D)(i) of the 1937 Act is amended by replacing the term ''building'' with the term ''project,'' defined to mean a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. HUD will make conforming changes to its regulations at 24 CFR 983.56 to reflect this statutory provision. Accordingly, this provision is self-implementing. HUD specifically requests comments on the impact on deconcentration efforts concerning the change in terms from ''building'' to ''project'' as discussed in this Section II.E.1 of this notice.

2. *Term of Initial Housing Assistance Payment (HAP) Contract*. The maximum term of the initial HAP contract provided in section 8(o)(13)(F) of the 1937 Act is extended from 10 to 15 years by section 2835(a)(1)(B) of HERA. HUD considers this provision to be available for use commencing with the date of enactment of HERA, July 30, 2008. Accordingly, this provision is self-implementing. Conforming changes will be made to HUD's regulations to reflect the longer permissible term of the initial HAP contract.

3. *Extension of initial term*. Section 8(o)(13)(G) of the 1937 Act is amended by HERA section 2835(a)(1)(C) to specify the maximum term for an extension of the HAP contract as 15 years, at the election of the PHA and owner. A PHA may agree to enter into an extension at the time of the initial HAP contract or any time before expiration of the contract. This provision may be utilized commencing with the date of enactment of HERA, July 30, 2008. Although this provision is self-implementing, such contract or contract extension may not exceed 15 years cumulatively. Additionally, a PHA must still determine that the extension of the contract is appropriate to achieve long-term affordability of the housing or to expand housing opportunities.

HUD will make conforming changes to its regulations, as well as any additional changes related to contract extensions that may be necessary for the orderly administration of the PBV program.

4. *Rent calculation*. Language is added by section 2835(a)(1)(D) of HERA to section 8(o)(13)(H) of the 1937 Act to permit a PHA to use the higher section 8 rent for a tax credit unit if the LIHTC rent is less than the amount that would be permitted under section 8. The rent reasonableness of section 8(o)(10)(A) must also continue to be met.

This provision may be utilized commencing with the date of enactment of HERA, July 30, 2008. Accordingly, this provision is self-implementing. A conforming change to HUD's regulations will follow.

5. *Rent adjustments*. Section 2835(a)(1)(E) of HERA amends section 8(o)(13)(I) of the 1937 Act to make permissive a HAP contract provision that the maximum rent on a unit shall not be less than the initial rent. Because this provision is permissive, and not mandatory, HUD is considering parameters for when its use would be appropriate. Accordingly, this provision is not self-implementing. HUD will finalize its policy on this provision through rulemaking.

6. *Use of PBV in Cooperative Housing and Elevator Buildings*. A new section 8(o)(13)(L) is added by section 2835(a)(1)(F) of HERA to allow PHAs to enter into HAP contracts with respect to units in cooperative housing and in high-rise elevator projects. The authority for units in high-rise elevator projects specifically states it may be exercised without review and approval by HUD. HUD considers section 8(o)(13)(L) to be effective commencing with the date of enactment of HERA, July 30, 2008. Accordingly, this provision is self-implementing. HUD will make any necessary conforming changes to its regulations.

7. *Reviews*. Section 2835(a)(1)(F) of HERA also provides relief from certain review requirements by adding section 8(o)(13)(M) to the 1937 Act. New section 8(o)(13)(M)(i) removes the requirement to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if such a review has been conducted by the applicable state or local agency. This provision is self-implementing for existing housing. The provision, however, is not self-implementing for newly constructed or rehabilitated housing, HUD will be issuing guidance on how such reviews must be conducted for newly constructed or rehabilitated housing.

Section 8(o)(13)(M)(ii) relieves a PHA from undertaking an environmental review for an existing structure, except to the extent such a review is otherwise required by law or regulation. Under 24

CFR part 58, federal environmental reviews are undertaken by a Responsible Entities (usually units of general local governments), not PHAs. In addition, any federally required environmental review is ''required by law or regulation,'' so there do not appear to be any federally required environmental reviews that would be eliminated by this provision.

F. Collection of Information on Tenants in Tax Credit Projects

HERA section 2835(d) adds a new section 36 to the 1937 Act to require state agencies administering LIHTC projects to furnish HUD with information on tenants residing in such projects. This provision is also applicable to project-based assisted housing programs administered by HUD's Office of Housing. HUD must also establish standards and definitions for the information to be collected. HUD will implement this provision through a notice prepared in accordance with the Paperwork Reduction Act and to be published in the **Federal Register**.

Dated: November 18, 2008.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E8–27871 Filed 11–21–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–63]

Subterranean Termite Treatment Builder's Certification and Guarantee, and the New Construction Subterranean Termite Soil Treatment Record

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The collection of the requested information requires that the sites for HUD insured structures must be free of termite hazards. Builders certify and guarantee that all required treatment for termites are performed and there is no infestation of treated areas for a year. Also, pest control companies are required to provide a record of any soil treatment methods used to prevent subterranean termite infestation. The respondents for this collection are builders, pest control companies, mortgage lenders and home buyers.

DATES: *Comments Due Date:* December 24, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0525) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Subterranean Termite Treatment Builder's Certification and Guarantee, and the New Construction subterranean Termite Soil Treatment Record.

OMB Approval Number: 2502–0525.

Form Numbers: HUD–NPCA–99 and HUD–NPCA–99–B.

Description of the Need for the Information and its Proposed Use:

The collection of the requested information requires that the sites for HUD insured structures must be free of termite hazards. Builders certify and guarantee that all required treatment for termites are performed and there is no infestation of treated areas for a year. Also, pest control companies are required to provide a record of any soil treatment methods used to prevent subterranean termite infestation. The respondents for this collection are builders, pest control companies, mortgage lenders and home buyers.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	63,123	126,246		0.166		21,019

Total Estimated Burden Hours: 21,019.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 17, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–27806 Filed 11–21–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-ES-2008-N0308] [92210-1111-0000-B3]

Proposed Information Collection; OMB Control Number 1018-0119; Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on January 31, 2009. We 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.

DATES: Your comments must be received on or before January 23, 2009.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 4 of the Endangered Species Act (ESA) specifies the process by which we can list species as threatened or endangered. When we consider whether or not to list a species, the ESA requires us to take into account the efforts being made by any State or any political subdivision of a State to protect such species. We also take into account the efforts being made by other entities. States or other entities often formalize conservation efforts in conservation agreements, conservation plans, management plans, or similar documents. The conservation efforts recommended or called for in such documents could prevent some species from becoming so imperiled that they meet the definition of a threatened or endangered species under the ESA.

The Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) encourages the development of conservation agreements/plans and provides certainty about the standard that an individual conservation effort must meet for us to consider whether it contributes to forming a basis for making a decision about the listing of a species. PECE applies to ''formalized conservation efforts'' that have not been implemented or have been implemented but have not yet demonstrated if they are effective at the time of a listing decision.

Under PECE, formalized conservation efforts are defined as conservation efforts (specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species) identified in a conservation agreement, conservation plan, management plan, or similar document (68 FR 15100). The development of such agreements/plans is voluntary. There is no requirement that the individual conservation efforts included in such documents be designed to meet the standard in PECE.

PECE specifies that to consider if a formalized conservation effort(s) contributes to forming a basis for making a listing decision, we must find that the effort is sufficiently certain to be implemented and effective so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through our analysis of listing factors specified in section 4(a)(1) of the ESA. To gauge whether or not this standard has been met, PECE includes criteria for evaluating the certainty of implementation and the certainty of effectiveness of individual conservation efforts.

One criterion is whether provisions for monitoring and reporting progress on implementation and effectiveness of the effort are included in the plan or agreement. Also, if we use a conservation effort(s) that satisfies the PECE standard as part of the basis for a decision not to list a species or to list the species as threatened rather than endangered, we must:

(1) Track the status of the effort(s), including the progress of its implementation and effectiveness and

(2) If necessary, reevaluate the status of the species and consider whether or not initiating the listing process is necessary.

The nature and frequency of the monitoring and reporting will vary according to the species addressed, land ownership, specific conservation efforts, expertise of participants, and other factors. Generally, monitoring and reporting occurs annually for several years as the conservation efforts are implemented and their effectiveness is evaluated. The information collected through monitoring is invaluable to the Service, the States, and other entities involved in agreements and plans, and to others concerned about the welfare of the species covered by the agreements/plans.

Agreements/plans developed with the intent of influencing a listing decision and with involvement of the Service constitute an information collection that requires OMB approval under the Paperwork Reduction Act. Estimating the hours associated with developing a conservation agreement or plan is difficult because:

(1) Development and associated monitoring of conservation efforts are completely voluntary, and we cannot predict who will decide to develop these efforts, how many entities they might involve, or the type and extent of the planning, monitoring, and reporting processes they might use.

(2) We cannot predict which species are certain to become the subjects of conservation efforts, and, therefore, we cannot predict the number, nature, and extent of conservation efforts and monitoring that might be included in conservation agreements/plans designed with the intent of influencing a decision regarding listing a species.

(3) Many agreements/plans are developed to satisfy requirements of other laws or for other purposes. We cannot predict whether or the extent to which some of these plans may be expanded to attempt to make listing unnecessary.

II. Data

OMB Control Number: 1018-0119.

Title: Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE).

Service Form Number(s): None.

Type of Request: Extension of currently approved collection.

Affected Public: Individuals; States, tribes, local governments; and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Original Agreement	4	4	2,000 hours	8,000
Monitoring	7	7	600 hours	4,200
Reporting	7	7	120 hours	840
Totals	18	18		13,040

III. Request for Comments

We invite comments concerning this IC on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC. 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.

Dated: October 9, 2008.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E8–27831 Filed 11–21–08; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request on Extension of Existing Information Collection

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Geological Survey) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on November 14, 2008. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATE: You must submit comments on or before December 24, 2008.

ADDRESSES: Send your comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via OMB e-mail: (*OIRA_DOCKET@omb.eop.gov*); or by fax (202) 395–6566; and identify your submission with #1028–0048.

Please submit a copy of your comments to the Phadrea Ponds, Information Collections, U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or FAX: *pponds@usgs.gov* (e-mail). Use Information Collection Number 1028–0048 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Jim Dewey at (303) 274–8419.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1028–0048.

Title: USGS Earthquake Report.

Type of Request: Revision of a currently approved collection.

Affected Public: General Public.

Respondent Obligation: Voluntary.

Frequency of Collection: On occasion, after an earthquake.

Estimated Completion Time: 6 minutes.

Estimated Annual Number of Respondents: 200,000.

Note: We have recalculated our estimated number of responses requested in our 60 day FR notice (73 FR 53267) from 100,000 to 200,000 responses. This recalculation is based on our experience with the data compiled over the three year period (2005–2008), during which we had many more responses than we anticipated in 2005.

Estimated Annual Burden Hours: 20,000 hours.

Note: We have recalculated our estimated number of responses requested in our 60 day FR notice (73 FR 53267) from 10,000 to 20,000 hours. Assuming that 200,000 respondents will each spend 6 minutes responding to the proposed information collection the total adjusted hour burden will be 20,000 hours.

Abstract: The collection of information applies to a World-Wide Web site questionnaire that permits individuals to report on the effects of the shaking from an earthquake—on themselves personally, buildings, other man-made structures, and ground effects such as faulting or landslides. The USGS may use the information to provide qualitative, quantitative, or graphical descriptions of earthquake damage.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We will release data collected on these forms only in a summary format that is not company-specific.

Comments: To comply with the public consultation process, on September 14, 2008, we published a **Federal Register** notice (73 FR 53267) announcing our intent to submit this information collection to OMB for approval. In that notice we solicited public comments for 60 days, ending on November 14, 2008. We did not receive any comments concerning the notice.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

USGS Information Collection Clearance Contact: Phadrea Ponds, 970–226–9445.

Dated: November 17, 2008.

Suzette M. Kimball,

Associate Director for Geology.

[FR Doc. E8–27825 Filed 11–21–08; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–ET; WYW 167436]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw 40 acres of public land from surface entry and mining on behalf of the Bureau of Land Management to protect the Parting of the Ways Historic Site in Sweetwater County. This notice segregates the land for up to 2 years from surface entry and mining while various studies and analyses are made to support a final decision on the withdrawal application. The land will remain open to the mineral leasing laws.

DATES: Comments and requests for a public meeting must be received by February 23, 2009.

ADDRESSES: Comments and meeting requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janelle Wrigley, BLM Wyoming State Office, by calling 307–775–6257, or at the above address, or Teri Deakins, BLM Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901 or by calling 307–352–0211.

SUPPLEMENTARY INFORMATION: The applicant is the Bureau of Land Management at the address above and its petition/application requests the Secretary of the Interior to withdraw, subject to valid existing rights, the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, but not the mineral leasing laws:

Sixth Principal Meridian

T. 26 N., R. 104 W.,

sec. 4, W½SW¼NE¼ and E½SE¼NW¼.

The area described contains 40 acres in Sweetwater County.

The Bureau of Land Management's petition/application has been approved by the Assistant Secretary, Land and Minerals Management; therefore, it constitutes a withdrawal proposal of the Secretary of the Interior.

The purpose of the proposed withdrawal is to protect the archeological, historical, geological, and recreational values of the Parting of the Ways Historic Site for a 20-year period.

The use of a right-of-way, interagency, or cooperative agreement, or surface management under 43 CFR 3809 regulations would not adequately constrain nondiscretionary uses which could result in permanent loss of significant values and irreplaceable resources at the site.

There are no suitable alternative sites since the land described herein contains the resource values that need protection.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

Records relating to the application may be examined by contacting Janelle Wrigley at the above address or by calling 307–775–6257 or Teri Deakins, BLM Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901 or by calling 307–352–0211.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal application may present their views in writing to the BLM Wyoming State Director at the address noted above.

Comments including names and street addresses of respondents, will be available for public review at the BLM Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Wyoming State Director no later than February 23, 2009. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR 2310.1–2.

For a period of 2 years from the date of publication of this notice in the **Federal Register** , the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact the site may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Authority: 43 CFR 2310.3–1.

Dated: November 17, 2008.

Michael Madrid,

Chief, Branch of Fluid Mineral, Operations, Lands and Appraisal.

[FR Doc. E8–27804 Filed 11–21–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan/Environmental Impact Statement for Mount Rushmore National Memorial, South Dakota

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent To Prepare a General Management Plan/Environmental Impact Statement for Mount Rushmore National Memorial, South Dakota.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), the National Park Service (NPS) is announcing its intent to prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Mount Rushmore National Memorial (Memorial), South Dakota.

This effort will update the 1980 GMP.

The GMP/EIS will establish the overall direction for the Memorial, setting broad management goals for managing the area over the next 15 to 20 years. The GMP/EIS will prescribe desired resource conditions and visitor experiences that are to be achieved and maintained throughout the Memorial based on such factors as the Memorial's purpose, significance, special mandates, the body of laws and policies directing Memorial management, resource analysis, and the range of public expectations and concerns. The GMP/EIS also will outline the kinds of resource management activities, visitor activities, and developments that would be appropriate in the Memorial in the future.

A range of reasonable alternatives for managing the Memorial will be developed through this planning process and will include, at a minimum, a no-action and a preferred alternative. Major issues the GMP/EIS will address include changes in visitor use patterns and special events, adequacy and sustainability of existing facilities for visitor opportunities and activities and for Memorial operations, and partnership roles and opportunities. The need for new facilities such as maintenance, museum curation and storage, and interpretation will be examined. The GMP/EIS will evaluate the potential environmental effects of the alternative management approaches.

As the first phase of the planning process, the NPS is beginning to scope the issues to be addressed in the GMP/EIS. All interested persons, organizations, Agencies, and Tribes are encouraged to submit comments and suggestions on issues and concerns that should be addressed in the GMP/EIS, and the range of appropriate alternatives that should be examined.

DATES: The NPS will begin public scoping soon. Public scoping meetings regarding the GMP, including specific dates, times, and locations, will be announced in the local media, at the Web site *http://parkplanning.nps.gov/,* or by contacting the Superintendent.

ADDRESSES: General park information requests or requests to be added to the project mailing list should be directed to: Gerard Baker, Superintendent, Mount Rushmore National Memorial 13000 Highway 244, Building 31, Suite 1, Keystone, South Dakota 57751–0268; telephone: 605–574–2523; e-mail: *morugmp@nps.gov.* If you wish to comment on any issues associated with the GMP/EIS, you may submit your comments by any one of several methods. You may mail comments to Mount Rushmore National Memorial, 13000 Highway 244, Building 31, Suite 1, Keystone, South Dakota 57751–0268. Once the public comment period commences, you may comment via the Internet at *http://www.planning.nps.gov/;* simply select Mount Rushmore National Memorial from the list of parks, and then select the GMP/EIS. Finally, you may hand-deliver comments to the Memorial at the address above. Before including your address, telephone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials, or organizations or businesses available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Greg Jarvis, Project Manager, Planning Division, Denver Service Center, National Park Service, 12795 West Alameda Parkway, P.0. Box 25287, Denver, Colorado 80225–0287; telephone: 303–969–2263; or e-mail: *greg jarvis@nps.gov.* General information about Mount Rushmore National Memorial is available on the Internet at *http://www.nps.gov/moru.*

Dated: November 4, 2008.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. E8–27705 Filed 11–21–08; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–648]

In the Matter of: Certain Semiconductor Integration Circuits Using Tungsten Metallization and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting, In-Part, a Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 17) of the presiding administrative law judge (''ALJ'') granting, in-part, complainants' motion to amend the complaint and the notice of investigation in the above-captioned investigation to add two patent claims.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 21, 2008 based on a complaint filed on April 18, 2008 by LSI

Corporation of Milpitas, California and Agere Systems Inc. of Allentown, Pennsylvania (collectively ''complainants''). 73 FR 29534–35 (May 21, 2008). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor integrated circuits using tungsten metallization and products containing same by reason of infringement of claim 1 of U.S. Patent No. 5,227,335 (''the '335 patent''). The complaint named numerous respondents including NXP B.V. of the Netherlands and Micronas Semiconductor Holding AG (''Micronas AG'') of Switzerland. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On September 2, 2008, the Commission issued notice of its determination not to review an ID granting the motion of complainants, NXP B.V., and proposed respondent NXP Semiconductors USA, Inc. (''NXP Semiconductors'') of San Jose, California to amend the complaint and notice of investigation to substitute NXP Semiconductors for NXP B.V. 73 FR 52064–65 (Sept. 9, 2008). On October 8, 2008, the Commission issued notice of its determination not to review an ID granting a joint motion to amend the complaint and notice of investigation to substitute Micronas GmbH for Micronas AG. 73 FR 61168–69 (Oct. 15, 2008). On October 17, 2008, the Commission issued notice of its determination not to review an ID granting complainants' motion to amend the complaint to add five additional respondents. 73 FR 63195 (Oct. 23, 2008).

On September 19, 2008, complainants moved to amend the complaint and notice of investigation to add dependent claims 3 and 4 of the '335 patent to the investigation and new infringement allegations against the following respondents: (1) United Microelectronics Corp. (''UMC''); (2) Integrated Device Technology, Inc. (''IDT''); (3) AMIC Technology Corp. (''AMIC''); (4) Cypress Semiconductor Corp. (''Cypress''); (5) Freescale Semiconductor, Inc. (''Freescale''); (6) Grace Semiconductor Manufacturing Corp. (''Grace''); (7) Microchip Technology, Inc. (''Microchip''); (8) Micronas GmbH (''Micronas''); (9) Nanya Technology Corp. (''Nanya''); (10) NXP Semiconductors; (11) Powerchip Semiconductor (''Powerchip''); (12) ProMOS Technologies, Inc. (''ProMOS''); (13) Spansion, Inc. (''Spansion''); and (14) Vanguard International Semiconductor Corp. (''Vanguard'').

On October 30, 2008, the ALJ issued the subject ID (Order No. 17) granting, in-part, complainants' motion to add the two patent claims. The ALJ denied the motion as to respondents UMC, AMIC, Microchip, Micronas, Nanya, NXP Semiconductors, Powerchip, ProMOS, and Spansion regarding claim 3, and as to respondents UMC, IDT, AMIC, Cypress, Freescale, Grace, Microchip, Micronas, NXP Semiconductors, Powerchip, ProMOS, Spansion, and Vanguard regarding claim 4. No party petitioned for review.

The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.14 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(h).

By order of the Commission.

Issued: November 19, 2008.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E8–27860 Filed 11–21–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–033]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 2, 2008 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, *Telephone:* (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–745 (Second Review)(Steel Concrete Reinforcing Bar from Turkey)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 15, 2008.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 19, 2008.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–27865 Filed 11–21–08; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 24, 2008. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: *request.schedule@nara.gov.*

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which

submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, National Security Agency (N1–457–08–1, 7 items, 3 temporary items). Records relating to signals intelligence activities, including raw signals data, administrative collection records, and records relating to the control, exchange, and distribution of signals intelligence material. Proposed for permanent retention are finished products, including raw source data used in its production; operational analysis records, including requirements, directives, tasking messages, handbooks, and other related records; cryptanalysis methodologies; and signals intelligence program and policy records.

2. Department of Health and Human Services, Centers for Medicare and Medicaid Services (N1–440–08–1, 2 items, 2 temporary items). Records relating to the approval of accreditation organizations for laboratories and customer satisfaction surveys completed by evaluated laboratories.

3. Department of Homeland Security, Headquarters (N1–563–08–11, 3 items, 3 temporary items). Records associated with agency training programs, including records documenting attendance at agency-sponsored training activities, instructional materials such as training course plans, manuals, textbooks, and syllabuses, and other training aids.

4. Department of Homeland Security, Office of Operations Coordination (N1–563–08–19, 1 item, 1 temporary item). Master files associated with an electronic information system containing suspicious activity and incident reports used to identify pre-operational planning for terrorism or other threats.

5. Department of Homeland Security, Office of Operations Coordination (N1–563–08–23, 3 items, 2 temporary items). Situational awareness reports and associated background material regarding possible and confirmed threats, events, and incidents as maintained by the National Operations Center in the Senior Watch Officer Log and the Incident Tracking Index. Proposed for permanent retention are records of the Incident Tracking Index associated with events of national or global significance.

6. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–08–19, 1 item, 1 temporary item). Master file associated with an electronic information system that schedules appointments for individuals to submit biometric information in order to apply for immigration benefits.

7. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–08–20, 1 item, 1 temporary item). Master file associated with an electronic database containing information collected on individuals for the production and distribution of employee credential cards.

8. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–09–1, 1 item, 1 temporary item). Master file associated with an electronic information system that provides for the transmittal and printing of approved applications to create secure identity cards of immigrants seeking various actions and benefits.

9. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–09–2, 2 items, 2 temporary items). Inputs and master file associated with an electronic information system that tracks migrant information to respond to requests from family members, transmitted through a member of Congress, regarding the status of a relative who may have been interdicted at sea.

10. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–09–4, 1 item, 1 temporary item). Master file associated with an electronic information system that monitors the initial adjudication process for individuals applying for immigration benefits.

11. Department of Homeland Security, United States Coast Guard (N1–26–05–15, 6 items, 2 temporary items). Notifications of potential law enforcement incidents that are not acted upon and routine law enforcement boardings. Proposed for permanent retention are such records as notifications, case files, and incident-related records associated with law enforcement, search and rescue, and environmental protection activities. The proposed disposition instructions are limited to electronic records.

12. Department of Homeland Security, Transportation Security Administration

(N1–560–08–1, 6 items, 6 temporary items). Various administrative records including motor vehicle case files, field office buildings space design and construction standards records, headquarters buildings specifications, plans, drawings, and leases, fitness center membership records, and records relating to the adjudication of contract performance disputes.

13. Department of the Interior, Office of the Secretary (N1 48–08–15, 1 items, 1 temporary item). Master files of an electronic information system used to monitor the progress and performance of agency programs.

14. Department of the Interior, Office of the Secretary (N1 48–08–18, 2 items, 2 temporary items). Electronic records of the Quarters Management Information System, which relates to rental rate setting, including such matters as rental rates for government owned or leased housing and utilities rates.

15. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–08–8, 1 item, 1 temporary item). Master files of the National Integrated Ballistic Information Network Case System which consists of summaries of police reports of criminal incidents linked together by a specific firearm which was identified by the National Integrated Ballistic Information Network.

16. Central Intelligence Agency, Office of Public Affairs (N1–263–08–1, 1 item, 1 temporary item). Press clippings from open sources distributed to agency staff for reference purposes.

17. Federal Energy Regulatory Commission, Agency-wide (N1–138–09–2, 4 items, 4 temporary items). Records relating to enforcement activities, including investigations, audits, contested audits and final audit reports. Paper versions of these files were previously approved for disposal.

18. Nuclear Regulatory Commission, Agency-wide (N1–431–08–18, 3 items, 3 temporary items). Master files and outputs of an electronic information system that maintains information on licensing and inspection of facilities.

19. Social Security Administration, Deputy Commissioner for Systems (N1–47–08–2, 1 item, 1 temporary item). Global reference tables providing standard code structures used by agency electronic information systems.

Dated: November 19, 2008.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E8–27915 Filed 11–21–08; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board ad hoc Committee for the Vannevar Bush Award; Sunshine Act Meetings; Notice

The National Science Board's *ad hoc* Committee for the Vannevar Bush Award, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

Date and Time: Wednesday, December 3, 2008 at 1 p.m.

Subject Matter: Discussion of candidates for the 2009 Vannevar Bush Award.

Status: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for information or schedule updates, or contact: Jennifer Richards, National Science Board Office, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Ferrante,

Writer-Editor.

[FR Doc. E8–27876 Filed 11–21–08; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Membership of the National Science Board's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Performance Review Board for the Office of Inspector General and the National Science Board Office Senior Executive Service positions.

SUMMARY: This announcement of the membership of the National Science Foundation's Office of Inspector General and National Science Board Office Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph F. Burt at the above address or (703) 292–8180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Board's Senior Executive Service Performance Review Board is as follows: Dan E. Arvizu, Chairman, Audit and Oversight Committee, National Science Board. Anthony A. Arnolie, Chief Human Capital Officer and Director, Office of Information and Resource Management. Plus two members to be selected from the IG community.

Dated: November 17, 2008.

Joseph F. Burt,

Director, Division of Human Resource Management.

[FR Doc. E8–27731 Filed 11–21–08; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Performance Review Board Membership

AGENCY: Office of Navajo and Hopi Indian Relocation.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointments of members to a performance review board for the Office of Navajo and Hopi Indian Relocation.

FOR FURTHER INFORMATION CONTACT: Christopher J. Bavasi, Executive Director, Office of Navajo and Hopi Indian Relocation, 201 E. Birch Ave., Room 11, Flagstaff, AZ 86001, Telephone (928) 779–2721.

SUPPLEMENTARY INFORMATION: Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service (SES) performance review boards. The function of the boards is to review and evaluate the initial appraisal of senior executives' performance and make recommendations to the appointing authority relative to the performance of these executives. Because of its small size, the Office of Navajo and Hopi Indian Relocation has appointed SES appointees from other Federal agencies to serve on its performance review board. The members of the performance review board for the Office of Navajo and Hopi Indian Relocation are: John Farrell, Executive Director, U.S. Arctic Research Commission; Ernest Garcia, Deputy Director, Selective Service System; Candace Katz, Deputy Director, National Endowment for the Humanities.

Dated: November 12, 2008.

Christopher J. Bavasi,

Executive Director, Office of Navajo and Hopi Indian Relocation.

[FR Doc. E8–27667 Filed 11–21–08; 8:45 am]

BILLING CODE 7560–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 12d2–2, SEC File No. 270–86, OMB Control No. 3235–0080, Form 25.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for the following rule: Rule 12d2–2 (17 CFR 240.12d2–2) and Form 25 (17 CFR 249.25).

On February 12, 1935, the Commission adopted Rule 12d2–2,[1] and Form 25 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Act''), which sets forth the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act.[2] The Commission adopted amendments to Rule 12d2–2 and Form 25 in 2005.[3] Under the adopted Rule 12d2–2, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange must file the adopted version of Form 25 with the Commission. The Commission also adopted amendments to Rule 19d–1 under the Act to require exchanges to file the adopted version of Form 25 as notice to the Commission under Section 19(d) of the Act. Finally, the Commission adopted amendments to exempt options and security futures from Section 12(d) of the Act. These amendments are intended to simplify the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting. Without Rule 12d2–2 and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

There are ten national securities exchanges that trade equity securities that will be respondents subject to Rule 12d2–2 and Form 25.[4] The burden of complying with Rule 12d2–2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, the NASDAQ Stock Exchange, and the American Stock Exchange LLC than on the other exchanges. However, for purposes of this filing, the Commission staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 994 responses under Rule 12d2–2 and Form 25 for the purpose of delisting equity securities are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 994 annual burden hours for all exchanges. In addition, since approximately 371 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average one reporting hour per response, 371 annual burden hours for all issuers. Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2–2 is 1,365 hours. The related costs associated with these burden hours are $76,177.50.

The collection of information obligations imposed by Rule 12d2–2 and Form 25 are mandatory. The response will be available to the public and 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.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *nfraser@omb.eop.gov*; and (ii) Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: November 17, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27884 Filed 11–21–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing 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 19d–2; OMB Control No. 3235–0205; SEC File No. 270–204.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19d–2—Applications for Stays of Final Disciplinary Sanction (17 CFR 240.19d–2) under the Securities Exchange Act of 1943 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 19d–2 under the Exchange Act prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency.

It is estimated that approximately eight respondents will utilize this application procedure annually, with a total burden of 24 hours, based upon past submissions. The staff estimates that the average number of hours

[1] *See* Securities Exchange Act Release No. 98 (February 12, 1935).

[2] *See* Securities Exchange Act Release No. 7011 (February 5, 1963), 28 FR 1506 (February 16, 1963).

[3] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[4] The staff notes that there are two additional national securities exchanges that only trade standardized options which, as noted above, are exempt from Rule 12d2–2.

necessary to comply with the requirements of Rule 19d–2 is 3 hours.

Written 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov* .

Dated: November 17, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27886 Filed 11–21–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; 2TheMart.com, Inc., and The 3DO Co., Respondents

November 20, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of 2TheMart.com, Inc. because it has not filed any periodic reports since it filed a Form 10–Q for the period ended March 21, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of The 3DO Co. because it has not filed any periodic reports since it filed a Form 10–Q for the period ended December 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies, is suspended for the period from 9:30 a.m. EST on November 20, 2008, through 11:59 p.m. EST on December 4, 2008.

By the Commission.

Jill M. Peterson

Assistant Secretary.

[FR Doc. E8–27939 Filed 11–20–08; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58966; File No. SR–CHX–2008–15]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participant Fees and Assessments

November 17, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 7, 2008, the Chicago Stock Exchange, Inc. (''CHX'' 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 CHX. 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 CHX proposes to amend its Schedule of Participant Fees and Assessments (the ''Fee Schedule'') to alter the take/provide charges for Tape B securities. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm*, at the principal office of the Exchange, and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

Through this filing, the Exchange would amend its Fee Schedule to discontinue the existing program setting forth a higher provide credit of $0.0036/share for transactions in Tape B securities if certain volume thresholds had been met. Moreover, the transaction fee for liquidity takers in Tape B securities is being raised to $0.0030/share from the current level of $0.0029/share. All liquidity providers in Tape B securities would qualify for a credit of $0.0032/share, regardless of its average daily trading volume. The Exchange believes that these proposed fee changes are more consistent with its long-term goals of incenting firms to trade using our facilities at rates which do not expose the Exchange to potential losses or capital outlays.

2. Statutory Basis

The Exchange believes that the rule changes proposed in this submission are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b). The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Participants. The proposed increase in the liquidity takers fee in Tape B securities is of $0.0001/share, which is a relatively modest amount. The increased revenue will be used to fund the Exchange's existing operations, which may in turn benefit its Participants. Finally, the discontinuance of the two-tiered fee structure for liquidity providers in Tape B securities fee streamlines the Exchange's Fee Schedule and related billing structure, as well as eliminates a program which potentially exposed the Exchange to large and costly rebates to Participant firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Changes and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(B)(3)(A) of the Act [3] and subparagraph (f)(2) of Rule 19b–4 thereunder.[4] At any time within 60 days of the filing of such 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 purpose 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–CHX–2008–15 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–CHX–2008–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2008–15 and should be submitted on or before December 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27881 Filed 11–21–08; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58969; File No. SR–NYSE–2008–119]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC To Establish the New York Block Exchange

November 17, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 13, 2008, New York Stock Exchange LLC (''NYSE'' 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 adopt Exchange Rule 1600 to establish the New York Block Exchange (''NYBX Facility'' or the ''Facility''). NYBX will be an electronic facility of the Exchange to provide for the continuous matching and execution of securities listed on the NYSE of all non-displayed orders with the aggregate of all displayed and non-displayed orders of the NYSE Display Book ® (''Display Book'' or ''DBK'') while also considering protected quotations of all automated trading centers.

The text of the proposed rule change is available at *http://www.nyse.com*, NYSE's principal office, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to establish the NYBX Facility to provide its customers with the ability to aggregate multiple sources of liquidity and to facilitate trading in block-sized orders. This electronic, anonymous trading facility will also allow customers to execute smaller orders and have quick access to multiple price points of displayed liquidity to meet size and price execution requirements. The Facility allows for the interaction of non-displayed orders with the aggregate of displayed and non-displayed orders of the NYSE Display Book and the National Best Bid and Best Offer and considers protected quotations of all automated trading centers in compliance with Regulation NMS. The Facility will trade only securities listed on the NYSE (Tape A eligible securities).

NYBX orders will not effect an execution except as permitted by Rule 611 (Regulation NMS).[3] Thus, NYBX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005). When NYBX orders are calculated to be the midpoint of the NBBO, no trade-through executions will occur

orders will not trade-through a Protected Bid or Protected Offer except as allowed in Regulation NMS. If the execution of an NYBX order would trade through an automated trading center, the NYBX Facility will send routing instructions to the NYSE Routing Broker[4] (''Routing Broker'') and the Routing Broker will route the applicable volume (*e.g.*, the price and size of the displayed quotation) to the automated trading centers to attempt to execute with applicable protected quotations. The Routing Broker will also send applicable marketable orders from the NYBX Facility to the DBK to attempt to execute with contra side interest in the DBK's depth of book. The routing of orders from the NYBX Facility to automated trading centers, via the Routing Broker, occurs almost simultaneously with the sending of orders from the NYBX Facility to the DBK.

Trading in the Facility will occur during regular trading hours of the Exchange (9:30 a.m. Eastern Time (''ET'') to 4 p.m. ET). On those days that the Exchange closes for business at times other than 4 p.m., the NYBX will close at those times as announced by the Exchange. NYBX orders to buy or sell securities will not be available for trading until such securities have opened on the Exchange.

Orders that originate in the NYBX Facility and execute on the DBK will print regular way as NYSE prints (''N'') pursuant to the Consolidated Tape Association Plan (''CTA Plan'') through the NYSE. Executions that occur solely within the NYBX Facility (''NYBX only trades'') will also be printed pursuant to the CTA Plan, but will print with a modifier that will identify the execution as being outside the Display Book. Such trades will print to Tape A.[5]

Because executions that occur solely within the NYBX Facility will be printed with a different print modifier than those executions that occur in the DBK, such executions will not be counted for certain NYSE order processing purposes. Thus, Exchange systems will not include NYBX only trades when calculating trades that trigger the following DBK executions: (1) Pre-opening indications; (2) last sale trades; (3) odd lot trades;

(4) Designated Market Maker (''DMMs'')[6] obligations to re-enter the market; and (5) stop orders.

For example, in relation to odd lot trades, because the price and size of odd lot limit order trades are determined by certain factors, including NYSE trading volume and the last sale on the NYSE DBK, a trade printed from the NYBX Facility could seriously disadvantage the DMMs who are the contra side for all executions of odd lot orders. In this situation, absent the proposed changes to the NYSE rules, the DMM would be bound as the contra side customer to odd lot orders up to the size of the block print in this dark facility even though they would have no knowledge of the size of the orders that make up the block print. Additionally, because DMMs have market re-entry obligations for stabilization purposes, such obligations will not apply when trading takes place in the dark NYBX Facility as DMMs will have no order information or market data upon which to make their trading decisions. To do otherwise would expose DMMs to unnecessary and undue financial risk. This treatment is similar to the way the Exchange currently handles other special condition trades, including executions on NYSE MatchPoint℠ (Rule 1500) and ''sold'' trades, which are reported to the tape out of sequence.

As a result of the way in which the Exchange will process executions that occur solely within the NYBX Facility, the Exchange is seeking to amend those NYSE Rules that could be impacted by such executions. By amending affected NYSE Rules, the Exchange is alerting market participants to the fact that certain NYSE Rules that apply to trades that occur on the DBK will not apply to trades that occur solely within the NYBX Facility. Therefore, the Exchange is seeking to amend the following NYSE rules:

(1) Rule 13 (Definitions) ''Sell 'Plus'–Buy 'Minus' Order:''

The Exchange is proposing to add to the definition of the Sell Plus–Buy Minus order the following text: ''For purposes of this definition, a transaction that occurs in the NYBX Facility shall not be considered in the operation of sell plus–buy minus orders on the Exchange (See Rule 1600).''

(2) Rule 13 (Definitions) ''Stop Order:''

The Exchange is proposing to add to the definition of the Stop order the following text: ''For purposes of this definition, a transaction that occurs in the NYBX Facility shall not be considered in the operation of stop orders on the Exchange (See Rule 1600).''

(3) Rule 15. ''Pre-Opening Indications:''

The Exchange is proposing to add to section (d) of the rule governing pre-opening indications the following text: ''A transaction that occurs in the NYBX Facility shall not be considered in the operation of this rule (See Rule 1600).''

(4) Rule 15A. ''Order Protection Rule:''

The Exchange is proposing to add .60 to the ''Supplementary Material'' section of the Order Protection rule the following text: ''A transaction that occurs in the NYBX Facility shall not be considered in the operation of this rule (See Rule 1600).''

(5) Rule 79A. ''Miscellaneous Requirements on Stock Market Procedures:''

The Exchange is proposing to add to subsection (8) of the ''Supplementary Material'' section of the Miscellaneous Requirements on Stock Market Procedures rule the following text: ''For purposes of this provision, the ''last sale'' shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

Additionally, the Exchange is proposing to add to section .30(d) of the Supplementary Materials the following text: ''For purposes of Rule 79A.30, a transaction that occurs in the NYBX Facility shall not be considered the ''last sale,'' the ''current sale,'' or the ''last previous sale (See Rule 1600).''

(6) Rule 100. ''Round-Lot Transactions of Odd-Lot Dealer or Broker Affecting Odd-Lot Orders:''

The Exchange is proposing to add to the rule for ''Round-Lot Transactions of Odd-Lot Dealer or Broker Affecting Odd-Lot Orders'' under subsection (a) Transactions of Specialist-Odd Lot Dealer'' subsection (d), which will have the following text: ''For purposes of this rule, the ''last different round lot price'' shall not include prices of transactions that occur in the NYBX Facility (See Rule 1600).''

(7) Rule 104T. ''Dealings by DMMs:''

The Exchange is proposing to add to Rule 104T in the ''Supplementary Material'' section, under (''Functions of DMMs'') subsection .10(5), the following

and, therefore, Rule 611 (''Order Protection Rule'') of Regulation NMS will not be violated.

[4] *See* NYSE Rule 17(c) (''Operation of Routing Broker''). Subsection (1) of Rule 17(c) provides:

The Routing Broker(s) will receive routing instructions from the Exchange, to route orders to other market centers and report such executions back to the Exchange. The Routing Broker(s) cannot change the terms of an order or the routing instructions, nor does the Routing Broker(s) have any discretion about where to route an order.

As per Rule 17(c), the NYBX Facility will use the Routing Broker to send NYBX orders to the DBK and to automated trading centers pursuant to Regulation NMS when attempting to execute such orders.

[5] The print modifier that will be used for trades that occur in the NYBX Facility will be the same print modifier that is used for NYSE MatchPoint ® prints. NYSE MatchPoint is a separate anonymous (undisplayed or dark) trading facility of the NYSE (*See* Rule 1500 NYSE MatchPoint ®).

[6] *See* Securities Exchange Act Release No. 58845 (October 24, 2008) 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

text: ''For purposes of this provision, the ''last trade price'' shall not include the price of any transaction that occurs in the NYBX Facility (See Rule 1600).''

Additionally, the Exchange is proposing to add to Rule 104T in the Supplementary Materials section under subsection (c) (''Prohibited Transactions'') of subsection (5) at subsection (III) the following text: ''As used in (i) and (II) above, the term ''price'' shall not include the price of any transaction that occurs in the NYBX Facility (See Rule 1600).''

Additionally, the Exchange is proposing to add to Rule 104T in the Supplementary Materials section, under subsection .10(6) (''DMM Transactions in Securities that Establish or Increase the DMM's Position'') at subsection (ii)(c) the following text: ''As used in (a) and (b) above, the term ''last differently priced trade'' shall not include the price of any transaction that occurs in the NYBX Facility (See Rule 1600).'' In the same section, the Exchange is proposing to add to subsection (iii)(''Re-entry Obligations for Conditional Transactions'') subparagraph (c) (''Immediate re-entry is required after the following Conditional Transactions'') at subparagraph (d) the following text: ''For purposes of this section (iii), the terms ''price,'' ''trade,'' ''last differently priced trade'' and ''independent trades'' do not include any transaction that occurs in the NYBX Facility (See Rule 1600).'' Further, in subparagraph (iv)(d) the Exchange is proposing to add the following text: ''For purposes of this section (iv), the term ''last differently-priced trade'' shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

Additionally, the Exchange is proposing to add to Rule 104T in the Supplementary Materials section, under section .12 (''DMMs' Investment Accounts'') the following text: ''References to ''plus or zero plus tick'' and the ''Tick Test'' in section .12 shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

Additionally, the Exchange is proposing to add to Rule 104T in the Supplementary Materials section, under section .13 (''Investment Transactions'') in subsection (b) the following text: ''(iii) References to ''minus,'' ''zero minus,'' ''plus'' and ''zero plus'' ticks in section .13 shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

(8) Rule 104. ''Dealings and Responsibilities of DMMs:''

The Exchange is proposing to add to the Supplementary Material section of Rule 104, under section .10, the following text: ''.10 As used in this rule, the terms ''price,'' ''high price,'' ''low price'' and ''last differently-priced trade'' shall not include the price of any transaction that occurs in the NYBX Facility (See Rule 1600).''

(9) Rule 107A. ''Registered Competitive Market-Makers:''

The Exchange is proposing to add to the Supplementary Material section of Rule 107A, under subsection .10 (''Each Registered Competitive Market-maker shall comply with the provisions of paragraphs B. (2), (3), (4) and (5) as follows:''), subsection (ii)(C) the following text: ''References to ''ticks'' in Section (ii)(A), (B) and (C) above shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).'' Additionally, at section .30, the Exchange is proposing to add the following text: ''For purposes of this section .30, the terms ''price'' and ''different price'' shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

(10) Rule 110. ''Competitive Traders:''

The Exchange is proposing to add to Rule 110 in subsection (d) the following text: ''For purposes of this section (d), references to ''ticks'' and ''previous day's closing price'' shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).'' Additionally, in the same Rule at subsection (g)(3) the Exchange is proposing to add the following text: ''For purposes of this section (g), references to ''tick test,'' and ''minus,'' ''zero minus,'' ''plus'' and ''zero plus ticks'' shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

(11) Rule 116. ''Stop'' Constitutes Guarantee:''

The Exchange is proposing to add to the Supplementary Material section of Rule 116, under subsection .40 (''Stopping'' stock on market-at-the-close orders'') subparagraph (C) the following text; ''For purposes of this section .40, the ''price of the last sale'' shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

(12) Rule 123A. ''Miscellaneous Requirements:''

The Exchange is proposing to delete the section entitled ''Short Sales'' at paragraph .71 ''Specialists.'' The Exchange does not believe this section is necessary in light of other changes to short sale regulations.

(13) Rule 123B. ''Exchange Automated Order Routing System:''

The Exchange is proposing to add to Rule 123B in subsection (3)(''Booth Support System'') the following text: ''For purposes of this section (3), the term ''last sale'' shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

(14) Rule 123C. ''Market On The Close Policy And Expiration Procedures:''

The Exchange is proposing to add Supplementary Material .10 with the following text: ''For purposes of Rule 123C, the terms ''last sale'' and ''last sales'' shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

(15) Rule 123D. ''Openings and Halts in Trading:''

The Exchange is proposing to add to Rule 123D in the Supplementary Material section the following text: ''.25 For purposes of this rule, a transaction that occurs in the NYBX Facility shall not affect the calculation of the ''last sale,'' ''prior close,'' ''previous close,'' or any similar term (See Rule 1600).''

(16) Rule 124. ''Odd-Lot Orders:''

The Exchange is proposing to add to Rule 124 in the Supplementary Material section the following text: ''.70 References to ''round-lot transaction,'' ''round-lot Exchange transaction,'' ''opening transaction,'' ''closing transaction,'' ''reopening price,'' ''re-opening transaction,'' ''price'' and ''sale'' shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

(17) Rule 1000. ''Automatic Execution of Limit Orders Against Order Reflected in NYSE Published Quotation:''

The Exchange is proposing to add to Rule 1000 in the Supplementary Material section the text ''.11 The provisions of this rule with respect to ''sale,'' ''sale price,'' ''last sale price,'' ''closing price,'' and similar terms shall not include any transaction that occurs in the NYBX Facility (See Rule 1600).''

New Market Model Filing

On October 24, 2008, the SEC approved the New Market Model [7] 19b–4 rule filing, which established a new market model for the NYSE. In general, the New Market Model provides the following: (i) Market participants have additional abilities to post hidden liquidity on Exchange systems; (ii) Designated Market Makers (''DMMs'') replace the NYSE specialist; and (iii) increase the speed of execution through technological enhancements and a reduction in message traffic between Exchange systems and its DMMs. The Exchange believes there will be no significant impact on the operation of the NYBX Facility as a result of the New Market Model rule. With respect to the additional rules outlined above, the New Market Model rule replaces the term ''specialist'' with the term ''DMM''

[7] Ibid at footnote 4.

and replaces references in certain of those rules to instances where the specialist would have taken action with respect to quoting or execution of orders to a reference to these actions being taken by Exchange systems. This reflects the increased automation of many of the formerly manual procedures on the Exchange.

Anonymity of the Facility

Because the NYBX is an anonymous trading platform, no order information is displayed to the public or to NYSE members. Clearance and settlement of executions occurring within the Facility will be anonymous. Trade reports will be disseminated after each execution.

NYBX Users

As provided in the proposed Rule (see subparagraph (b)(2)(H) (''Applicability and Definitions'') an NYBX ''User'' means ''any member or member organization, Sponsoring Member Organization, Sponsored Participant and Authorized Trader that is authorized to access the NYBX Facility. A member or member organization that accesses the NYBX Facility may enter orders on its own behalf or for the account of a customer.''

All NYSE members, member organizations, Sponsoring Member Organizations and their Sponsored Participants and Authorized Traders of Sponsored Participants are automatically eligible for access to NYBX. But, before access is granted to NYBX Users, all Users must go through a connectivity authorization process.[8] After NYBX Users obtain connectivity authorization they may access the NYBX.

Entry of New York Block Exchange Orders

NYBX Users will transmit their orders by means of an electronic interface. NYBX Users may enter, cancel and replace orders beginning at 3:30 a.m. ET until the close of the regular hours of the Exchange on any day that the Exchange is open for business. All orders must be available for automatic execution.

The NYBX Facility will send orders from the NYBX Facility to the DBK, via the Routing Broker, for execution when there is applicable marketable interest in the DBK.

Cancellation of NYBX Orders

All unexecuted orders shall be cancelled in accordance with the designated order parameters and the time in force conditions designated on each order. Upon cancellation of an order, the NYBX Facility, via the Routing Broker, will send a cancellation report back to the NYBX User with all related order information. This cancellation process is referred to in the Rule as ''cancelling back to the User.'' If not executed or cancelled by the end of the regular trading day, all NYBX orders will be automatically cancelled back to the User at the close of the regular trading day.

New York Block Exchange Orders

The NYBX Facility will accept and execute limit orders and NYBX pegging orders. All orders must be available for automatic execution. All orders when initially submitted must have a minimum size of one round lot of shares of NYBX eligible securities. Market orders will not be accepted in the NYBX Facility. NYBX time in force orders include ''day orders'' and ''Good til Specified Time orders.'' The NYBX Facility order types are described below:

1. A ''New York Block Exchange National Best Bid and Best Offer (''NBBO'')[9] Pegging order'' or ''NBBO pegging order'' is an order with an instruction to peg to the NBBO. The order may include an instruction to peg to the NBBO plus or minus the Exchange's minimum price variation (''MPV'') as defined in Exchange Rule 62. The NBBO pegging order is an umbrella category for other types of pegging orders that may be entered into the Facility, which include the following:

a. A ''New York Block Exchange Midpoint Pegging Order'' or ''midpoint pegging order,'' is an order with an instruction to execute it at the midpoint of the NBBO. This type of pegging order will not provide for an instruction to peg to the midpoint of the NBBO plus or minus the Exchange's MPV, which is available for the other NYBX pegging orders.

b. A ''New York Block Exchange Primary Pegging Order'' or ''primary pegging order'' is an order that is pegged to buy at the national best bid (''NBB'') or sell at the national best offer (''NBO''). The order may include an instruction to peg to the NBB or the NBO plus or minus the Exchange's MPV.

c. A ''New York Block Exchange Market Pegging Order'' or ''market pegging order'' is a market order that is pegged to buy at the *national best offer* (''NBO'') or sell at the national best bid (''NBB'') plus or minus the Exchange's MPV.

2. A ''New York Block Exchange Day Order'' or ''day order'' is an order that if not executed, expires at the end of the regular trading session on the day on which it was entered. If the order is not executed by the end of the regular trading session, the order or the portion thereof not executed will be cancelled back to the User on the same day such order was entered. On any business day the Exchange is scheduled to close at a time other than 4 p.m. ET, a day order will expire on the day it was entered at the specified closing time as determined and announced by the Exchange.

3. A ''New York Block Exchange Good til a Specified Time'' order or ''GTT'' order is an order that is available for trading until the specified time, after which such order or the portion thereof not executed will be cancelled back to the User.

NYBX Order Parameters

Required Order Parameters

All NYBX orders must contain the following User-directed parameters: (1) Symbol; (2) limit price: (3) side of the market (*e.g.*, buy, sell or sell short) and (4) size of the order. If a User fails to enter any of the required order parameters in a NYBX order, the order will be rejected. NYBX optional order parameters are described below.

Optional Order Parameters

Time in Force Condition: A User may designate an optional time in force condition for each NYBX order. If a User fails to designate a time-in-force condition for a NYBX order, the order will be treated as a day order and if not executed, will expire and be cancelled back to the User at the end of the regular trading session on the day on which it was entered.

Minimum Triggering Volume Quantity (''MTV''): The MTV is an optional User-directed order parameter designating a minimum amount of shares of a security against which an order will attempt to execute if there is sufficient contra side liquidity available in the NYBX Facility's depth of book, the DBK's depth of book (all displayed and non-displayed orders) and, if not optionally restricted as described below, the protected quotations of automated trading centers in securities listed on the NYSE at a price better than the order's limit price. No execution of an NYBX order will be attempted if the MTV of the order is not met. However, an NYBX order may attempt to execute if the execution size is less than the MTV provided the MTV was met at the time the order was evaluated for execution.

[8] The NYBX Facility can only be accessed through an electronic FIX application and/or an internet-based password-protected order entry application. Users must fill out an application for connectivity through either of these two electronic connectivity capabilities. Once granted connectivity through the authorization process, eligible users may access the NYBX Facility.

[9] The term ''National Best Bid and Best Offer'' or ''NBBO'' will have the same meaning as defined in Rule 600 of Regulations NMS.

If a User does not enter an MTV designation for an order, the order will be treated as if there is no MTV and will attempt to match and execute with any available contra side liquidity at the order's limit price or better in the NYBX Facility's depth of book, the DBK's depth of book (all displayed and non-displayed orders) and the protected quotations of all automated trading centers in securities listed on the NYSE. It is important to note that an NYBX order will not be routed to an automated trading center for execution with a protected quotation unless the NYBX order would execute against the NYBX Facility's depth of book or the DBK's depth of book at a price that would trade through the protected quotation.

Optional Restriction of MTV Calculation

In addition to choosing the MTV calculation to include the contra side liquidity of the NYBX depth of book, the DBK depth of book and protected quotations of all automated trading centers to determine if the MTV of an order can be met, the User may also opt to restrict the MTV calculation of an order to include only the contra side liquidity of the NYBX Facility's depth of book and the DBK's depth of book. Thus, the restricted MTV calculation will not consider the protected quotations of automated trading centers. Regardless of whether an order has a restricted MTV calculation, the NYBX Facility will always route applicable NYBX orders to automated trading centers to attempt to execute with protected quotations in compliance with Regulation NMS.

Order Processing and Order Execution Sequence

When an order is entered into the NYBX Facility with an MTV designation, the Facility will evaluate the order and the available liquidity in the NYBX Facility's depth of book, the DBK's depth of book and protected quotations of all automated trading centers to determine if the entering order is marketable at the order's limit price or better. As discussed earlier, an NYBX order will not be routed to an automated trading center for execution with a protected quotation unless the NYBX order would execute against the NYBX Facility's depth of book or the DBK's depth of book at a price that would trade through the protected quotation. Thus, in making this determination, the Facility will honor all User-directed parameters, including the optional MTV designation and the MTV restriction, if any, and time in force conditions. After the NYBX Facility evaluates the NYBX order and the NYBX Facility's depth of book, the DBK's depth of book and the protected quotations of all automated trading centers, the Facility will attempt to execute the orders in the sequence described below.

1. An NYBX order, with or without an MTV, will first attempt to execute with available contra side liquidity on the DBK at the order's limit price or better. No execution of any NYBX order will be attempted unless the MTV of the order, if any, can be met. For all NYBX orders, if liquidity is available on the DBK with a price that is equal to or better than the price in the NYBX Facility, the order will be sent from the NYBX Facility to the DBK, via the Routing Broker, and will attempt to execute in the DBK until the order is exhausted, expired or cancelled back to the User pursuant to time in force conditions or until all applicable marketable liquidity in the DBK is exhausted. If, however, the NYBX Facility has available contra side liquidity at a better price than the price quoted on the DBK, the order will attempt to execute in the NYBX Facility until it is exhausted, expired or cancelled back to the User pursuant to time in force conditions or until the marketable liquidity in the NYBX Facility is exhausted.

If the order executes against interest on the DBK, but is not exhausted, the unfilled portion of the order (the ''residual order'') will be sent back to the NYBX Facility where it will attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or is cancelled back to the User pursuant to time in force conditions or until the applicable marketable contra side liquidity is exhausted. As discussed previously, if an NYBX residual order would execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book or the DBK's depth of book at a price worse than one or more protected quotations, the applicable volume will attempt to execute with protected quotations of automated trading centers pursuant to Regulation NMS.

Like all NYBX orders, the NYBX residual order will maintain its original time stamp unless the order is modified by the User. Thus, if an NYBX order is modified in any respect by the User (*i.e.,* price, size, side, MTV or time in force condition) the order will lose its original price/time priority and time stamp and go behind other orders in the queue. If a pegging order is entered into the NYBX Facility, the Facility will automatically re-price the order when the NBBO changes and the pegging order will lose its original price/time priority and time stamp and will go behind other orders in the queue. For example, if a pegging order for $10 is entered into the Facility and the NBBO changes from $10 to $11, the Facility will automatically modify the order to be $11. Thereafter, if a non-pegging order for $10 is entered into the Facility and the NBBO goes down to $10, the non-pegging order will execute before the pegging order. This result occurs because the Facility honored the pegging parameter of the original order which in turn required the Facility to modify the original pegging order causing such order to be treated as a newly entered order thus placing the pegging order behind the non-pegging order in the queue.

If the residual order is of greater size than the original MTV of the order, the original MTV will remain on the order. If the residual order is of lesser size than the original MTV of the order, the Facility will modify the MTV to equal the size of the residual order, and will send the residual order back to the NYBX Facility where it will attempt to execute with marketable incoming contra side liquidity until it is exhausted, expired or cancelled back to the User pursuant to time in force conditions or until all marketable liquidity is exhausted. The residual order will not attempt to execute with other available liquidity at the order's limit price or better unless the modified MTV can be met. The NYBX residual order will continue to attempt to execute with applicable marketable contra side liquidity in the same sequence described above.

2. If there is no available contra side liquidity in the DBK's depth of book, the NYBX order will attempt to execute with available contra side liquidity in the NYBX Facility at the order's limit price or better. If the order has an MTV, the MTV must be met by the contra side interest in the NYBX Facility and, optionally, the protected quotations, before an execution can be attempted. If marketable liquidity is available in the NYBX Facility, the order will attempt to execute in the NYBX Facility until the order is exhausted or until the marketable liquidity in the Facility is exhausted. If the order is not exhausted and the order had an MTV, the Facility will modify the MTV to equal the size of the residual order provided the size of the residual order is less than the size of the original MTV. The order will attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is

exhausted, expired or is cancelled back to the User pursuant to time in force conditions or until all applicable marketable liquidity is exhausted.

3. An NYBX order will only trade against an automated trading center if an execution of that order in the NYBX Facility's depth of book or the DBK's depth of book would trade through a protected quotation. Therefore, if an NYBX order would execute against interest in the DBK's depth of book or against interest in the NYBX Facility's depth of book at a price that would trade through a protected quotation, the NYBX Facility will route the applicable volume to the automated trading center and attempt to execute with such contra side liquidity. The order will be routed to the automated trading center via the Routing Broker, as defined in Rule 17(c). An NYBX order will not be routed to an automated trading center for execution with a protected quotation unless there is marketable contra side interest in the DBK's depth of book or in the NYBX Facility's depth of book.

If the routed NYBX order is not exhausted, the residual order will be sent back to the NYBX Facility where it will attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or is cancelled back to the User pursuant to time in force conditions or until all applicable marketable liquidity is exhausted.

Re-Processing of Residual Orders

NYBX residual orders will attempt to execute with new applicable liquidity in the same sequence as described above. NYBX residual orders will retain their original time stamp throughout the regular trading day unless such orders are modified by the User, exhausted, expired or cancelled back to the User pursuant to time in force conditions. As discussed above, if residual orders are modified in any way by the User, the order will lose its original time/price priority or time stamp and will go behind other orders in the queue. If a residual pegging order is entered into the NYBX Facility, the Facility will automatically re-price the order when the NBBO changes and the residual pegging order will lose its original time stamp and go behind other orders in the queue.

Any new liquidity that enters the NYBX Facility's depth of book, the DBK's depth of book and protected quotations of automated trading centers will be evaluated by the NYBX Facility to determine if such liquidity is eligible to execute with residual orders in the NYBX Facility. A residual order will continue to attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or is cancelled back to the User pursuant to time in force conditions or until all applicable marketable liquidity is exhausted. As previously explained, if an NYBX residual order would execute against an order in the DBK's depth of book or in the NYBX Facility's depth of book, applicable volume will attempt to execute with protected quotations of automated trading centers pursuant to Regulation NMS.

NYBX Market Snapshot of Order Processing

The Facility will act upon market and order information available to it at the time an order is entered into the Facility. At the time an order is entered into the NYBX Facility, the NYBX algorithm will evaluate or take a ''snapshot'' of the market. This market snapshot includes all orders in the NYBX Facility's depth of book, the DBK's depth of book, and the protected quotations of automated trading centers (*i.e.,* ''away markets''). The examples below demonstrate how the NYBX snapshot coordinates order execution and allocation of shares. The example also demonstrates how the Minimum Triggering Volume (''MTV'') of an NYBX order interacts with all liquidity in the NYBX Facility's depth of book, the DBK's depth of book and protected quotations of automated trading centers if applicable.

NBBO is 101.10 to 101.15										
		NYSE Book			Aggregated Prices			Automated Trading Centers TOB		
Reserve	Display	Price	Display	Reserve	Volume	Price	Volume	Price	101.10	101.15
		101.21	2,000	40,000		101.21	96,000	Nasdaq	1500	1000
		101.20	700	20,000		101.20	54,000	ISE	500	500
		101.19	1,000	15,000		101.19	33,300	CHX	800	1000
		101.18	500	7,500		101.18	17,300	NYSE Arca	2000	2000
		101.17	1,000	4,000		101.17	9,300	Amex	200	100
		101.16	800			101.16	4,300		5000	4600
		101.15	1,500	2,000		101.15	3,500			
3,500	500	101.10			4,000	101.10				
4,000	500	101.09			8,500	101.09				
	1,000	101.08			9,500	101.08				
10,000	800	101.07			20,300	101.07				

NYBX Order Processing and Execution

The NYBX Facility will allow executions to occur within, at or through the NBBO, but will protect those bids and offers on the NYSE DBK that are at the same price or better (*i.e.,* all NYSE bids and offers including depth of displayed and non-displayed orders) and protected quotations of other automated trading centers pursuant to Regulation NMS.

All NYBX orders will be evaluated on a price/time priority basis to ascertain whether such orders are eligible to execute against applicable available contra side liquidity based on the price and the MTV of the orders. As described in more detail below, orders with MTV designations may pre-empt the time/price priority.

Order Evaluation

As demonstrated in the ''NYBX Market Snapshot,'' the Facility will act upon market and order information available to it at the time the order is entered into the Facility. Facility orders will execute with all available contra side liquidity in the NYBX Facility's depth of book, the DBK's depth of book and, optionally, the protected quotations of automated trading centers

even if the execution size is less than the MTV designation provided the MTV designation was met at the time the order was entered and evaluated for execution. This functionality takes into consideration the fact that latency may occur when trading facilities evaluate liquidity on other automated trading centers and also route orders to other automated trading centers. See the example below.

Example:

A buy order of 200,000 shares with an MTV of 100,000 and a limit of 101.21 enters the Facility. The Facility evaluates the order and liquidity on the markets.

The Facility reads: (MTV algorithm)

NYSE depth to 101.21: 96,000 shares

Away markets: 4,600 shares at 101.15

Other Facility orders: 0 shares

In this example, the MTV can be met at the time order is evaluated. Therefore, the Facility sends an order to the DBK to buy 200,000 shares at 101.21, and the NYSE sends the applicable volume to the automated trading centers for execution via the Routing Broker.[10] Such orders are routed from the NYSE to the automated market centers as Intermarket Sweep Immediate Or Cancel orders (''ISO IOC'' orders).

The ISO IOC orders are exhausted except for 1000 shares from Nasdaq. However, the trade occurs because the size of the order met the MTV designation at the time the Facility evaluated the order for execution.

Results of the Execution

A total of 99,600 shares execute in the following manner:

The DBK executes 96,000 shares total (3,500 shares at 101.15; 800 shares at 101.16; 5,000 shares at 101.17; 8,000 shares at 101.18; 16,000 shares at 101.19; 20,700 shares at 101.20; 42,000 shares at 101.21);

Automated trading centers execute 3,600 shares at 101.15.

The unfilled portion of the order (*i.e.*, the ''residual order''), which is 100,400 shares with an MTV of 100,000 at 101.21, will attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or is cancelled back to the User pursuant to time in force conditions or until all applicable marketable contra side liquidity is exhausted.

[10] The NYBX Facility, via the Routing Broker (See NYSE Rule 17(c)), will route the applicable volume to automated trading centers in compliance with Regulation NMS.

Residual Orders and the Automatic Reduction of the MTV

When an order with an MTV enters the NYBX Facility, the NYBX algorithm will attempt to execute the order in the DBK's depth of book and the NYBX Facility's depth of book provided the MTV can be met, which may or may not take into consideration the protected quotations of automated trading centers depending upon the particular MTV parameter (*i.e.*, restricted or non-restricted MTV calculation) on the order. If such execution occurs, which exhausts the NYBX order, the trade will be printed to the tape and trade reports will be sent to the User. If a residual order remains, the residual order will be sent back to the NYBX Facility where it will attempt to execute with incoming orders to the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or cancelled back to the User pursuant to time in force conditions or until the applicable marketable contra side liquidity is exhausted. If an execution of an NYBX residual order would occur in the NYBX Facility or in the DBK, applicable volume will attempt to execute with protected quotations of automated trading centers pursuant to Regulation NMS.

If the residual order is less than the original MTV designation of the order, the Facility will automatically modify the MTV to equal the residual order, and the residual order will continue to attempt to execute with available contra side liquidity that subsequently enters the NYBX Facility's depth of book and the DBK's depth of book when and if the modified MTV can be met, which may or may not take into consideration the protected quotations of automated trading centers depending upon the particular MTV parameter (*i.e.*, restricted or non-restricted MTV calculation) on the order. See the example below.

Example:

A buy order for 100,000 shares with an MTV of 50,000 and a limit price of 101.20 enters the NYBX Facility.

The NYBX Facility evaluates the order and reads the MTV:

DBK depth to 101.20: 54,000 shares

Away markets: 4,600 shares at 101.15

Other Facility orders: 0 shares

In this example, the MTV can be met at the time the order is received into the Facility.

The Facility sends an order to the DBK to buy 100,000 shares at 101.20 and the NYSE sends ISO IOC orders, via the Routing Broker, to automated trading centers (''away markets'') for execution of the NYBX order.

Results of the Execution

The DBK executes 54,000 shares in the following manner: 3,500 at 101.15; 800 shares at 101.16; 5,000 shares at 101.17; 8,000 at 101.18; 16,000 shares at 101.19; 20,700 shares at 101.20.

4,600 shares at 101.15 execute on automated trading centers.

41,400 shares remain in the Facility and the MTV is modified by the Facility to be 41,400.

The NYBX residual order will continue to execute with applicable available liquidity that subsequently enters the market when and if the MTV can be met.

Price/Time Priority

All orders entered into the NYBX Facility are placed in price/time priority according to their required order parameters (*e.g.*, price, size, side of market, etc.) and optional order parameters (*e.g.*, MTV, time in force conditions). NYBX orders that execute in the DBK will execute in price/time priority pursuant to the provisions of Rule 72.

NYBX price/time priority sequencing may be pre-empted or bypassed in the execution of orders when such orders have conditions (*i.e.*, MTV designations) that require an exception to the price/time priority basis. For example, an initial order on one side of the market (*i.e.*, buy side order or sell side order) with an MTV designation may lose its place in the NYBX Facility queue to subsequent orders on the same side of the market that have no MTV designations or have less restrictive MTV designations than the initial order. However, this exception to the price/time priority basis is dependent upon the MTV designation, if any, of the contra side liquidity. NYBX orders on both sides of the market (*i.e.*, buy side and sell side) will be evaluated for price/time priority, and the MTV designations for all orders (buy side and sell side) will be honored by the NYBX Facility. See the examples below for exceptions to the NYBX Facility price/time priority basis.

Also, as discussed above, NYBX orders, including residual orders, will retain their original time stamp throughout the regular trading day unless such orders are modified by the User. If orders are modified by the User (*i.e.*, change in price, size, side, MTV or time in force condition) the order will lose its original price/time priority and will go behind other orders in the queue. If a pegging order is entered into the NYBX Facility, the Facility will automatically re-price the order when the NBBO changes and the residual

pegging order will lose its original time stamp and go behind other orders in the queue.

As the examples below demonstrate, the NYBX price/time priority basis will be pre-empted when:

1. the initial order (*i.e.*, buy order or sell order) is marketable against the contra side order(s) (*i.e.*, buy orders vs. sell orders) but cannot execute against the contra side order(s) because the MTV of the initial order is not met; and

2. a same side order is marketable against the contra side order(s) and is not restricted from executing because the MTV of that same side order can be met. In such case, the same side order can execute against the contra side order(s) even though the initial order had price/time priority.

It is important to note that NYBX orders retain their time stamp or ''price/time priority'' with respect to later contra side order(s) that are sufficient to meet the initial order's MTV designation.

Example No. 1

Initial order in NYBX to buy 100,000 @ 20.00 with an MTV of 100,000. An order to sell 5000 @ 20.00 is entered into NYBX. (Assume there are no marketable contra side orders in DBK or protected quotations.) No execution occurs, because the initial order's MTV is not met. Then an order to buy 10,000 @ 20.00 is entered into NYBX with no MTV. 5000 of the 10,000 buy order executes against the order to sell 5000 @ 20.00, even though the buy order for 100,000 had price/time priority.

Now the NYBX book is:

Buy 100,000 @ 20.00 (MTV of 100,000)
Buy 5000 @ 20.00 (no MTV)

Now an order to sell 100,000 @ 20.00 enters the NYBX book. The initial order to buy retains its price/time priority with respect to this sell order, and the two orders for 100,000 execute against each other at 20.00.

Examples Nos. 2, 2(a), 2(b), 2(c) and 2(d)

Order to buy 500,000 @ 20.00 with an MTV of 500,000 enters the NYBX book (B1). Then an order to sell 400,000 @ 20.00 with an MTV of 400,000 enters the NYBX book (S1). (Assume neither order is marketable against any order in DBK nor any protected quotations.) No execution occurs, because the buy order's MTV is not met. Then an order to buy 300,000 @ 20.00 with an MTV of 300,000 enters the NYBX book (B2). No execution occurs, because the MTV of the sell order for 400,000 is not met. Then an order to sell 50,000 @ 20.00 with an MTV of 50,000 enters the NYBX book (S2). The book is as follows:

B1: Buy 500,000 @ 20.00 (MTV of 500,000)
B2: Buy 300,000 @ 20.00 (MTV of 300,000)
S1: Sell 400,000 @ 20.00 (MTV of 400,000)
S2: Sell 50,000 @ 20.00 (MTV of 50,000)

No order executes. B1 cannot execute because its MTV is not met. In the case of B2, S1, and S2, while there is sufficient contra side liquidity to fill these orders, these orders cannot execute because the respective MTVs on the contra side are not met.

Examples 2(a), 2(b), 2(c) and 2(d) below are based on the above details. With each example, assume the book is as it appears above (with two buy orders and two sell orders). Do not carry one example into the next example.

2(a). An order to sell 50,000 @ 20.00 (S3) enters the NYBX book. B1's MTV is now met, therefore, B1 executes against S1, S2, and S3.

2(b). An order to buy 50,000 @ 20.00 (B3) enters the NYBX Facility. B3 executes against S2. B1, B2, and S1 are by-passed in price/time priority because their MTVs prevent them from executing.

2(c). However, assume that B3 is now an order to buy 100,000 @ 20.00. In this case, S1 (and not S2) would execute against B2 and B3. S1 retains its price/time priority over S2 with respect to contra side order(s) that, when combined, meet S1's MTV.

2(d). An order (S3) to sell 100,000 @ 20.00 with an MTV of 100,000 enters the NYBX Facility. In this example the MTV of B1 is now met. Therefore, B1 would execute with S1 leaving a residual order of 100,000 shares. B1 cannot trade with S2 because B1's MTV of 500,000 cannot be met by S2. If B1 attempted to execute with S2 the execution would only be for 450,000 shares which would violate B1's 500,000 MTV. Also, B1 cannot get the additional 50,000 shares needed to meet the 500,000 MTV from S3 because S3 has an MTV of 100,000. Thus, B1's residual order of 100,000 shares will bypass S2 to execute against S3, thereby satisfying the MTVs of both B1 and S3.

Midpoint Executions

The example below will illustrate how midpoint executions occur in the NYBX Facility.

Example:

NBBO = 122.20 ISE—122.26 PHLX 5,000 × 10,000
NYSE DBK 1 = Sell 5,000 shares at 122.26
NYSE DBK 2 = Buy 5,000 shares at 122.20
NYBX 1 = Sell 75,000 shares at 122.22, MTV of 50,000
NYBX 2 = Buy 100,000 shares at 122.26, MTV of 50,000

The NYBX Facility determines that the allocation of the NYBX2 order should be:

○ The MTV of NYBX 1 has been satisfied as there is sufficient contra side liquidity and is eligible for execution
○ The MTV of NYBX 2 has been satisfied as there is sufficient contra side liquidity and is eligible for execution
○ Nothing eligible for protected quotations of automated trading centers
○ 25,000 shares to DBK
○ 75,000 shares to trade within the NYBX Facility

Results of the Executions

—NYBX 2 sends 25,000 shares to buy to DBK at 122.26
—NYBX 2 buys 75,000 shares from NYBX 1 at 122.23 (the midpoint of the NBBO)
—NYBX 2 fills 5,000 shares at 122.26 with DBK 1
—The 20,000-share unfilled balance of NYBX 2 is placed in the NYBX Facility at 122.26 with a new MTV of 20,000 shares.

Compliance With Regulations NMS

NYBX orders will not trade-through a Protected Bid or Protected Offer except as allowed by Regulation NMS. As discussed above, the NYBX Facility will evaluate the NYBX Facility order's parameters, including its MTV, if any, to determine if such order is required to execute with protected quotations on the automated trading centers in compliance with Regulation NMS. The example below will demonstrate how the Facility complies with Regulation NMS.

Example:

NBBO = 122.20 ISE—122.26 PHLX 5,000 × 10,000
NYBX 1 = Sell 5,000 at 122.26 (no MTV designation)
NYSE DBK 1 = Sell 5,000 at 122.27
NYBX 2 = Buy 100,000 at 122.27 (no MTV designation)

The NYBX Facility determines that the allocation of the order should be:

○ 85,000 shares to DBK
○ 10,000 shares to PHLX
○ 5,000 shares to trade within NYBX Facility

Results of the Execution

—NYBX 2 sends a total of 85,000 shares to buy from DBK at 122.27
—NYBX 2 trades with NYBX 1 for 5,000 shares at 122.26
—NYBX 2 trades with DBK 1 for 5,000 shares at 122.27
—NYBX Facility routes, via Routing Broker, 10,000 shares of NYBX2 to

PHLX and NYBX2 executes 10,000 shares on PHLX at 122.26
—NYBX 2 is routed to PHLX, via the Routing Broker, 10,000 shares at 122.26 (ISO IOC) and NYBX 2 executes 10,000 shares on PHLX
—NYBX 2 posts 80,000 shares to buy at 122.27 remaining from the 85,000 shares sent to the DBK in the NYBX Facility

Equal or Better Prices

If the contra side liquidity on the DBK is priced equal to or better than the liquidity in the NYBX Facility, the order will be sent to the DBK for execution. If an NYBX order that is sent to the DBK is not fully executed in the DBK, the Routing Broker will route the unfilled portion of the order—the residual order—back to the NYBX Facility. If the residual order is less than the designated MTV, the Facility will modify the MTV to equal the residual order. The residual order will attempt to execute with marketable incoming contra side liquidity in the NYBX Facility's depth of book and the DBK's depth of book until the order is exhausted, expired or cancelled back to the User pursuant to time in force conditions or until the applicable marketable liquidity is exhausted. See the example below.

Example:

NBBO = 122.20 ISE—122.26 PHLX 5,000 × 10,000
NYSE DBK 1 = Sell 5,000 shares at 122.26
NYBX 1 = Sell 5,000 shares at 122.26
PHLX = Sell 10,000 shares at 122.26
NYBX 2 = Buy 5,000 shares at 122.26

The NYBX Facility determines that the allocation of the order should be: No shares routed to automated trading centers

5,000 shares sent to DBK at 122.26
No shares remain in the NYBX Facility

Results of the Execution:

—NYBX 2 sends 5,000 shares to buy from NYSE DBK at 122.26
— NYBX 2 trades with DBK 1 for 5,000 shares at 122.26
—Nothing trades within the NYBX Facility

NYBX Best Price

If the contra side liquidity in the NYBX Facility is priced better than the price quoted on the DBK, an NYBX order will execute in the NYBX Facility in price/time priority until the order is exhausted.

Additionally, an order may be executed in the NYBX Facility without interacting with the DBK when the price of the NYBX order is within the NBBO and at a price that is better than all other orders in the same security on the DBK. See the example below.

Example:

NBBO = 122.20 ISE—122.26 PHLX 5,000 × 5,000
NYBX 1 = Sell 5,000 shares at 122.25
PHLX = Sell 5,000 shares at 122.26
NYSE DBK = Sell 5,000 shares at 122.27
NYBX 2 = Buy 100,000 shares at 122.25

The NYBX Facility determines that the allocation of the order should be:

- Nothing to protected quotations of automated trading centers
- Nothing to DBK
- 5,000 shares within NYBX Facility

Results of the Execution

NYBX 2 trades with NYBX 1 for 5,000 shares at 122.25
NYBX 2 posts 95,000 shares to buy at 122.25 in NYBX Facility

Orders Crossed in the NYBX Facility

When two NYBX orders in the Facility are marketable against each other and there is no marketable contra side liquidity in the DBK's depth of book at the order's limit price or better, and the prices of the two NYBX orders are crossed, the Facility will calculate the price of the execution to be the price nearest to or at the midpoint of the NBBO. The example below assumes that the execution price is at or between the NBBO, which will have no trade through obligation for protected quotations pursuant to Regulation NMS.

Example:

NBBO = 20.00 PHLX—20.05 ISE
NYBX 1 = Buy 50,000 shares at 20.02 with an MTV of 20,000
NYBX 2 = Sell 100,000 shares at 20.00 with an MTV of 20,000

The execution price would be 20.02 as it is the price closest to the midpoint of the NBBO, which is 20.025.

Round Lot, Partial Round Lot and Odd Lot Orders

The NYBX Facility will accept orders with round lots and partial round lots (''PRLs''), and will reject odd lot orders. However, the execution of NYBX orders may result in round lots, PRLs and odd lots. The odd lot portion of a PRL order will remain in the Facility until it is executed, and if not executed, it will be cancelled back to the User pursuant to the order's time in force conditions or at the end of the regular trading day. If the execution of an NYBX order results in a residual order with an odd lot component, this odd lot component will remain in the Facility until it is executed, and if not executed, it will be cancelled back to the User pursuant to time in force conditions at the end of the regular trading day.

Sub-Penny Orders

The NYBX Facility shall not display, rank, or accept a bid or offer or an order in any NMS stock priced in an increment smaller than $0.01 if that bid or offer or order is priced equal to or greater than $1.00 per share. Such orders will be rejected by the Facility.

The NYBX Facility shall not display, rank, or accept a bid or offer or an order in any NMS stock priced in an increment smaller than $0.001 if that bid or offer or order is priced less than $1.00 per share. Such orders will be rejected by the Facility.

The NYBX Facility will reject any NYBX pegging orders priced below $1.00.

The NYBX Facility's execution price may be calculated to three (3) decimals when the NBBO is an odd penny spread (*i.e.*, one (1) penny, three (3) pennies, five (5) pennies, etc.), and the trade price is greater than $1.00. NYBX executions with midpoint pricing may be priced at increments as low as $0.001.

The NYBX Facility's execution price may be calculated to four (4) decimals when the NBBO is an odd 1/10th penny spread (*i.e.*, one tenth (0.1) penny, three tenths (0.3) pennies, five tenths (0.5) pennies, etc.), and the trade price is less than $1.00. NYBX executions with midpoint pricing may be priced at increments of $0.0001.

Half Penny Increments

Executions on the NYBX Facility may be calculated to three (3) decimals when the NBBO is an odd penny spread (*i.e.*, one (1) penny, three (3) pennies, five (5) pennies, etc.). For example, if the NBBO of Stock XYZ is $23.01 to $23.02, the price is $23.015. As a consequence, executions at the midpoint of the NBBO may be in half penny increments requiring the use of three decimals, as demonstrated in the example.[11]

Trading Ahead of Customer Orders

In the event an NYBX order executes resulting in a member or member organization's trading ahead of a held

[11] The NYBX Facility will not display, rank or execute orders in any NMS stock priced below one dollar ($1.00). In addition, the NYBX Facility will not display, rank or execute orders in increments smaller than a penny. However, when there is an odd penny spread, as described above, NYBX will execute it in a half penny increment. In response to public comments to the Regulation NMS Proposing Release, the Commission wrote the following (*See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) at Page 37589, footnote No. 831):

''Executions occurring at a sub-penny price resulting from a midpoint, VWAP, or similar volume-weighted pricing algorithm are not prohibited by Rule 612.''

customer order at the same price, the Exchange believes that Exchange Rule 92 (Limitations on Member's Trading Because of Customers' Orders) in certain instances may be implicated. Exchange Rule 92(a) generally restricts a member or member organization from entering a proprietary order with knowledge of a customer order that could be executed at the same price. Rule 92(b) through (d) provides several exceptions to the general restrictions of Rule 92(a) including the ''black box'' exemption which, depending on the facts and circumstances, may be applicable to orders entered into the NYBE Facility.[12] When trading on the NYBX Facility, all users will be expected to comply with Rule 92(a) unless such trading falls within an applicable exception in Rule 92(b) through (d).

Halting, Suspending and Closing of NYSE NYBX Trading on the Exchange

Trading on the NYBX Facility will be halted or suspended whenever the NYSE halts or suspends trading in a particular security or in all securities for regulatory and/or non-regulatory reasons pursuant to NYSE Rules 51 and 123D and 80B, including:

(1) In the case of a particular security whenever, for regulatory purposes, trading in the security has been halted, suspended or closed on the Exchange or the listing exchange; or

(2) In the case of a particular security trading on the Exchange, if the authority under which a security trades on the Exchange or its primary market is revoked (*e.g.*, because it is delisted), and

(3) No terms or conditions specified in this subsection shall be interpreted to be inconsistent with any other rules of the Exchange.

Clearance and Settlement of NYBX Executions

Details of each NYBX trade will be automatically matched and compared by the Exchange and will be submitted to a registered clearing agency for clearing and settlement on a locked-in basis.[13] All executions effected by a Member or Member Organization will be cleared and settled using the Member's and Member Organization's account, and all executions effected by a Sponsored Participant will be cleared and settled using the relevant Sponsoring Member Organization's account.

Because the NYBX Facility is an anonymous trading facility, the proposed rule will require NYBX transaction reports to indicate the details of the transaction, but not to reveal contra party and clearing firm identities,[14] except under the following circumstances: (1) In the event the National Securities Clearing Corporation (''NSCC'') [15] ceases to act for a Member or Member Organization, which is the unidentified contra side of any such trade processing, and/or the relevant clearing firm, the NYSE shall have the responsibility to identify to Members or Member Organizations the trades included in reports produced by the NSCC that are with the affected Member or Member Organization, and (2) for regulatory purposes or to comply with an order of a court or arbitrator.

The trade reports that the NSCC will receive from the NYBX Facility for anonymous trades will contain the identities of the parties to the trade. This measure will enable the NSCC to conduct its risk management functions and settle anonymous trades. The trade report sent to the NSCC will contain an indicator noting that the trade is anonymous. On the contract sheets the NSCC issues to its participants, the NSCC will substitute ''ANON'' for the acronym of the contra party. The purpose of this masking is to preserve anonymity through settlement.

The Exchange will be able to maintain anonymity with respect to disputed or erroneous trades because the Exchange resolves disputes through a centralized process and conducts the process on behalf of its Members and Member Organizations.

Dissemination of Trading Information

The NYBX Facility will report trade information to the Securities Information Processors (''SIPs'') for all NYBX eligible securities that execute solely within the NYBX Facility. Such trades will be printed based on which side of the trade (''buy'' or ''sell'') was first entered into the NYBX Facility. Market data for NYBX eligible securities will be disseminated via the consolidated tape pursuant to the Consolidated Tape Association Plan (''CTA Plan''). All executions that occur solely within the NYBX Facility will be printed with an ''N'' for the NYSE and an ''.X'' to identify these executions as NYBX Facility executions (*i.e.* , ''N.X''). The ''N.X'' modifier is also used to identify NYSE MatchPoint® executions. Orders that originate in the NYBX Facility and execute on the DBK will print regular way as NYSE prints (''N'') pursuant to the Consolidated Tape Association Plan (''CTA'' Plan'') through the NYSE. All trades will indicate the market of execution as the NYSE for CTA purposes.

Member Organization and Non-Member Access to the NYBX Facility

Members and member organizations of the Exchange are automatically eligible for access to the NYBX Facility by their membership on the Exchange. A non-member who wishes to trade securities on the NYBX Facility may do so as a ''Sponsored Participant'' pursuant to Rule 123B.[16]

As previously explained, all members, member organizations and Sponsored Participants of Sponsoring Member Organizations must first obtain connectivity authorization before they can access the NYBX Facility.

Limitations on the Use of the NYBX Facility

(A) DMMs on the Floor of the Exchange are not authorized to access the NYBX Facility. The off-Floor operations of DMM units may obtain authorized access to the NYBX Facility provided they have policies and procedures and barriers in place that preclude prohibited information sharing between the DMM unit and such units' DMMs on the Floor of the Exchange as provided in Rule 98 (''Operation of a Specialist Unit''), which was approved by the SEC in August 2008 or ''former'' Rule 98 (''Restrictions on Approved Person Associated with a Specialist's Member Organizations''), whichever Rule 98 applies to the particular DMM unit.[17]

[12] *See* Information Memo 2001–33, October 8, 2001 and Securities Exchange Act Release No. 34–44139 (March 30, 2001), 66 FR 18339 (April 6, 2001) (SR–NYSE–1994–34).

[13] NYBX executions will be compared through the Regional Interface Organization Online process (''RIO Online''). RIO Online is NYSE Arca, Inc.'s internal processing interface that sends order execution information to DTCC. RIO Online gathers the trades that are executed on any given day, places the trades into the appropriate message format and sends them to DTCC. RIO Online provides a record of all trades that were sent to DTCC. RIO Online is also used to manage any approved trade corrections.

[14] Post-trade anonymity described herein has been previously approved by the Securities and Exchange Commission for other exchanges (*See e.g.*, Securities Exchange Act Release No. 48527 (September 23, 2003), 68 FR 56361 (September 30, 2003) (SR–NASD–2003–85), and Securities Exchange Act Release No. 49786 (May 28, 2004), 69 FR 32087 (June 8, 2004) (SR–PCX–2004–40)).

[15] The Exchange will submit completed NYBX trades for clearance and settlement to NSCC, which is a subsidiary of the Depository Trust Clearing Corporation (''DTCC'').

[16] *See* Securities Exchange Act Release No. 58758 (October 8, 2008) 73 FR 62352 (October 20, 2008) (SR–NYSE–2008–100).

[17] Currently, new Rule 98 (''Operation of a Specialist Unit''), which was approved by the SEC in August 2008 (*see* Securities Exchange Act Release No. 58328 (August 7, 2008), 73 FR 48260 (August 18, 2008)(SR–NYSE–2008–45)) and ''former'' Rule 98 (''Restrictions on Approved Person Associated with a Specialist's Member Organizations'') are both in effect. DMM units may

Continued

(B) Members who have authorized access to NYBX are not permitted to enter orders into the NYBX Facility from the Floor of the Exchange when such orders are for their own accounts, the accounts of associated persons, or accounts over which it or an associated person exercises investment discretion. Similarly, members on the Floor may not have such orders entered into the NYBX Facility by sending them to an off-Floor facility for entry. Members with authorized access to the NYBX Facility may only enter customer orders into the NYBX Facility from the Floor of the Exchange. Members that have authorized access to the NYBX Facility may enter proprietary and customer orders into NYBX Facility from off the Floor of the Exchange.

(C) Like DMMs, Registered Competitive Market Makers (''RCMMs'') on the Floor of the Exchange are not authorized to access the NYBX Facility. Off-Floor operations of RCMM units may obtain authorized access to the NYBX Facility provided they have policies, procedures and barriers in place that preclude information sharing between RCMM on-Floor and off-Floor operations.

Applicability of Section 11(a) and (b) of the Act

Section 11(a) of the Act prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion, unless an exception applies. The ''Effect versus Execute Rule,'' as Rule 11a2–2(T) is known, permits an exchange member, subject to certain conditions, to effect a transaction for such accounts, utilizing an unaffiliated member to execute transactions on the exchange floor. The Rule requires that: (1) The order must be transmitted from off-floor; (2) once the order has been transmitted, the member may not participate in the execution; (3) the transmitting member may not be affiliated with the executing member; and (4) neither the member or associated person may retain any compensation in connection with effecting such transaction, respecting accounts over which either has investment discretion, without the express written consent of the person authorized to transact business for the account. The Exchange requests interpretation that NYBX orders entered from off-floor comply with the following provisions of the Rule:

1. Off-Floor Transmissions: Orders are electronically entered into the NYBX Facility from on and off the Floor of the Exchange; however, Members are not permitted to enter orders into the NYBX Facility from the Floor of the Exchange when such orders are for their own accounts, the accounts of associated persons, or accounts over which it or an associated person exercises investment discretion. Also, DMMs are not permitted to enter any orders into the NYBX Facility and they do not have access to the NYBX Facility from the Floor, as described in more detail below. However, ''upstairs'' DMM units will be permitted to be NYBX Users and may enter orders from off the Floor provided such firms have adequate policies, procedures and ''barriers'' in place between the upstairs firm and the Floor DMMs, which will preclude sharing of trading information that is not permitted by this Rule and the Act.

2. Non-Participation in Order Execution: In accordance with Rule 11a2–2(T), once orders are entered into the NYBX Facility, a member may not participate in, guide or influence the execution of such orders. NYBX orders are sent by electronic means (*i.e.*, FIX application or an internet based application) directly into the NYBX Facility. Users may enter and cancel NYBX orders any time during the regular trading day of the Exchange. However, once trading in the Facility commences, the Facility will not permit a user to affect the order or its execution in any way. Thus, when the trading of orders commence, the member relinquishes all control of NYBX orders. Users have no special or unique order handling or trading advantages when trading on the NYBX Facility.

3. Affiliated Executing Members: Rule 11a2–2(T) provides that the transmitting member may not be affiliated with the executing member. The Commission has previously recognized that this requirement may be satisfied when automated exchange facilities are used.[18] NYBX is a fully automated, electronic trading facility. As described above, NYBX orders are sent by electronic means to the NYBX Facility. Matching, trading and routing of orders are effectuated through an algorithm, which does not permit a user to affect the order or its execution in any way. Thus, when the trading of orders commence, the member relinquishes all control of NYBX order. At the completion of each execution, transaction reports, including order cancellation reports for orders that were not executed, are sent back to the user.

The Exchange believes that NYBX Facility complies with the ''Affiliated Executing Member'' provision of Rule 11a2–2(T) because the automatic execution function of the NYBX Facility ensures that all authorized NYBX Users have the same abilities with respect to entering orders, and no Users can effect an order once the order has been entered and the NYBX Facility trading commences. The design of the NYBX Facility ensures that members do not possess any special or unique trading advantages in the handling of orders. Thus, the Rule's provision respecting the use of affiliated members to execute orders is not implicated by the NYBX Facility.

4. Non-Retention of Compensation: The Exchange represents that members that rely on Rule 11a2–2(T) for a managed account transaction must comply with the limitations on compensation set forth in the Rule.

Section 11(b) of the Act and SEC Rule 11b–1 thereunder, which pertains to DMMs in the New Market Model, is not applicable to the operation of the NYBX Facility for several reasons. First, as stated above, DMMs on the Floor of the Exchange are not able to access the NYBX Facility from the Floor. NYBX can only be accessed through an electronic FIX application and/or an Internet based, password-protected order entry applications, which are not available to individual DMMs on the Floor. Although the upstairs firms that employ DMMs will be able to access the NYBX Facility through these two applications, such firms must be authorized to access NYBX, and the firms must have policies and procedures

operate under either Rule 98 (new or former) by meeting the requirements of the applicable Rule. However, when trading in or through the NYBX Facility, DMMs units of the Exchange must comply with subsection (h)(2)(A) (''Limitations on the Use of the NYBX Facility'') of the proposed Rule.

Pursuant to subsection (h)(2)(B) of the proposed Rule, Floor brokers may only enter agency orders into the NYBX Facility from the Floor of the Exchange, and may enter agency and proprietary orders into the NYBX Facility from off the Floor of the Exchange.

Registered Competitive Market Makers (''RCMMs'') are similarly prohibited from entering orders into the NYBX Facility while on the Floor of the Exchange under (h)(2)(C).

[18] In considering the operation of automated execution facilities by an exchange, the Commission has noted in the past that the execution of an order is automatic once it has been transmitted into a system or facility, and therefore satisfies the independent execution requirement of rule 11a2–2(T). *See, e.g.*, Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding New York Stock Exchange's (''NYSE'') Off-Hours Trading Facility) and Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131).

and information barriers in place to preclude the improper sharing of trading information between the DMMS on the Floor and their upstairs firms pursuant to Section (h)(2)(A) (Section (h)(2)(C) applies to RCMMs) of the proposed Rule, which refers to new and former NYSE Rule 98. Further, the DMM firms will be subject to examinations by the Financial Industry Regulatory Authority, Inc. (''FINRA'') as agent for NYSE Regulation, Inc. pursuant to a Regulatory Services Agreement dated July 30, 2007, to ensure that such policies and procedures and information barriers are in place and are adequate to preclude improper sharing of trading information.

Specifically, FINRA examiners will perform an on-site review of the combined DMM firm's written policies and procedures and determine if they are adequate in relation to trading on the NYBX. In addition, FINRA will interview appropriate individuals both within the affected departments as well as other areas of the DMM firm to determine whether firm policies have been appropriately disseminated and appear to be followed in relation to NYBX trading. The examination will also determine whether there have been any apparent breaches of the information barriers.

Second, the individual DMM on the Floor has no NYBX order entry information or NYBX market data of those orders that enter the NYBX Facility as it is a dark trading environment. Without access to NYBX and without access to NYBX order entry information and market data, DMMs will not be able to manipulate NYBX trading.

Third, the Exchange has an internal authorization process that authorizes NYBX Users to access NYBX through the FIX application and Internet by providing an authorized user name and protected password. Individual DMMs on the Floor will not be authorized through the internal process. Upstairs firms that employ DMMs may be authorized to access NYBX through NYBX's internal authorization process, provided, as noted above, FINRA, as agent for NYSE Group, examines such firms to ensure that policies, procedures and barriers are in place and are adequate to preclude improper sharing of trading information.

Therefore, because DMMs on the Floor will not have access to the NYBX Facility or NYBX order information, and because the DMM firms are subject to regulatory examinations to ensure the integrity of information barriers between the firms and their DMMs on the Floor, the Exchange believes that Section 11(b) of the Act and SEC Rule 11b–1 thereunder, which pertains to DMMs, is not applicable to the operation of the NYBX Facility.

Regulation of the NYBX Facility

The Exchange notes that NYSE Regulation represents that it has appropriate policies and procedures in place to adequately and effectively regulate the NYBX Facility. A surveillance plan describing the various surveillances that will be in place to monitor the operation of NYBX will be submitted to the SEC under separate cover.[19] Also, FINRA, as agent for NYSE Group, will perform examinations of DMM firms that trade on the NYBX Facility as described above.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'')[20] for this proposed rule change is the requirement under Section 6(b)(5)[21] 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 facility and, in general, to protect investors and the public interest. By this filing, the Exchange is seeking to establish the NYBX Facility to provide its customers with the ability to aggregate multiple sources of liquidity and to facilitate trading in block-sized orders. This electronic, anonymous trading facility will also allow customers to execute smaller orders and have quick access to multiple price points of displayed liquidity to meet size and price execution requirements. The Facility allows for the interaction of non-displayed orders with the aggregate of displayed and non-displayed orders of the DBK and the National Best Bid and Best Offer (''NBBO'') and considers protected quotations of all automated trading centers in securities listed on the NYSE in compliance with Regulation NMS. Therefore, the proposed rule filing is consistent with the promotion of just and equitable trading, and it seeks to protect the rights of investors and the public.

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

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–119 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–2008–119. 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

[19] The NYBX Surveillance Plan will be provided to the Commission, and it will be implemented prior to any trading on the NYBX Facility.

[20] 15 U.S.C. 78f(a).

[21] 15 U.S.C. 78f(b)(5).

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 offices 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–2008–119 and should be submitted on or before December 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27794 Filed 11–21–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58970; File No. SR-NYSE–2008–120]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, LLC Relating to the Limited Liability Company Agreement of New York Block Exchange, a Facility of NYSE

November 17, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'')[1] and Rule 19b–4 under the Exchange Act,[2] notice is hereby given that, on November 14, 2008, New York Stock Exchange, LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') 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

NYSE, a New York limited liability company, registered national securities exchange and self-regulatory organization, is submitting this rule filing (the ''Proposed Rule Change'') to the Commission in connection with the proposed formation of a joint venture between the Exchange and BIDS Holdings L.P., a Delaware limited partnership (''BIDS''). The Exchange proposes to establish a new electronic trading facility, the New York Block Exchange (''NYBX''), as a facility, as that term is defined in Section 3(a)(2) of the Exchange Act, of the Exchange. NYBX will be an electronic facility of the Exchange that will provide for the continuous matching and execution of securities listed on the NYSE of all non-displayed orders with the aggregate of all displayed and non-displayed orders of the NYSE Display Book® (''Display Book'' or ''DBK'') and considers protected quotations of all automated trading centers. The terms ''protected quotations'' and ''automated trading centers'' will have the same meanings as defined in Rule 600 of Regulation NMS. NYBX would be owned and operated by New York Block Exchange LLC (the ''Company''), a Delaware limited liability company formed and jointly owned by the Exchange and BIDS. In this Proposed Rule Change, the proposed Limited Liability Company Agreement of the Company (the ''LLC Agreement'') is attached as Exhibit 5A. Proposed Rule 2B, commentary.01, is attached as Exhibit 5B. The LLC Agreement of the Company is the source of the Company's governance and operating authority and, therefore, functions in a similar manner as articles of incorporation and by-laws function for a corporation.

The text of the proposed rule change is available at *http://www.nyse.com,* NYSE's principal office, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting this Proposed Rule Change to the Commission in connection with the proposed formation of a joint venture between the Exchange and BIDS. The Exchange proposes to establish a new electronic trading facility, called NYBX (the ''Facility''), as a facility (as that term is defined in Section 3(a)(2) of the Exchange Act) of the Exchange. NYBX will be an electronic facility of the Exchange that will provide for the continuous matching and execution of securities listed on the NYSE of all non-displayed orders with the aggregate of all displayed and non-displayed orders of the Display Book and considers protected quotations of all automated trading centers. NYBX would be owned and operated by the Company, a Delaware limited liability company formed and jointly owned by the Exchange and BIDS. BIDS will become an NYSE member in connection with the establishment of the facility. In addition to its ownership stake in the Company, the Exchange will enter into a services agreement with the Company (the ''Services Agreement'') pursuant to which the Exchange will perform certain financial, operational, information technology and development services for the Company. An affiliate of the Exchange, NYSE Market, Inc., is also an equity investor in BIDS.

The LLC Agreement is the source of the Company's governance and operating authority and, therefore, functions in a similar manner as articles of incorporation and by-laws function for a corporation. The Exchange is submitting a separate filing to establish rules relating to trading on NYBX.

Structure of the Company

As a limited liability company, ownership of the Company is represented by limited liability company interests in the Company (''Interests''). The holders of Interests are referred to as the members of the Company (the ''Members''). The Interests represent equity interests in the Company and entitle the holders thereof to participate in the Company's allocations and distributions. Currently, the Exchange and BIDS each own 50% of the Interests.

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Term and Termination

Pursuant to Section 1.6 of the LLC Agreement, the Company will have an initial term of three years from the date the LLC Agreement is entered into (the ''Effective Date''), with automatic one year renewal terms unless a Member elects to dissolve the Company within thirty days prior to the end of a term. In addition, Section 10.2(a) of the LLC Agreement provides that the Company may be dissolved upon the first to occur of the following: (i) If a Member does not make its pro rata share of capital contributions to the Company under certain circumstances; (ii) if the Members jointly agree to dissolve the Company; (iii) the determination by BIDS to dissolve the Company if the Exchange or any of its Affiliates enters into any agreement or arrangement with respect to a joint venture, licensing, partnership or other similar strategic agreement with, or acquiring equity representing an equal or greater percentage than the aggregate investment by the Exchange in BIDS of, any U.S. registered alternative trading system, as defined in Rule 300 of the Exchange Act (''ATS''), that executes block trades or that does not display its liquidity or orders to its subscribers or other users of the ATS; (iv) the determination of the Exchange to dissolve the Company if BIDS or any of its Affiliates enters into any agreement or arrangement with respect to a joint venture, licensing, partnership or other similar strategic agreement with, or receiving an equity investment representing an equal or greater percentage than the Exchange's investment in BIDS from, any U.S. or European contract market or securities exchange other than the Exchange or its Affiliates or any ATS that executed 10% or more of the securities in the relevant class of securities traded in the preceding quarter in the U.S.; (v) the delivery by either Member of written notice to the Company and the other Member of its determination to dissolve the Company for cause, including for an uncured material breach of the LLC Agreement, bankruptcy of the other Member or a material change in the relevant regulatory regime that frustrates the business of the Company; (vi) the delivery by any Member of written notice to the Company and the other Member of its determination to exercise the SRO Termination Right (as defined below in ''Regulation of the Company''); or (vii) the occurrence of any other event that would make it unlawful for the business of the Company to be continued.

Upon expiration of the term or the occurrence of any of the events set forth in Section 10.2(a) of the Agreement, the Company will be dissolved and terminated in accordance with the provisions of Article 10 of the LLC Agreement, including provisions for certain transition services by the Members in order for NYBX to continue to operate and to permit an orderly transition or cessation of the operation of NYBX.

Governance of the Company

Section 8.3 of the LLC Agreement establishes a board of directors of the Company (the ''Board of Directors'') to manage the business and affairs of the Company. Section 8.1(a) of the LLC Agreement provides that, subject to the limitations in the LLC Agreement and except as otherwise specifically contemplated by the LLC Agreement, the Board of Directors has exclusive and complete authority and discretion to manage the operations and affairs of the Company and to make all decisions regarding the business of the Company, and in carrying out his or her duties hereunder, each member of the Board of Directors shall (x) comply with the federal securities laws and the rules and regulations promulgated thereunder and (y) cooperate with NYSE LLC pursuant to its regulatory authority and the provisions of the LLC Agreement and with the SEC. Section 8.1(b) of the LLC Agreement provides that the Board of Directors shall delegate the day-to-day operations of the Company and the development of NYBX to the Exchange pursuant to the Services Agreement.

Section 8.3 of the LLC Agreement provides that the Board of Directors will consist of four directors, comprised of two individuals designated by the Exchange (each, a ''NYSE Director'') and two individuals designated by BIDS (each, a ''BIDS Director''). Any individual designated to the Board of Directors by a Member must be reasonably acceptable to the other Member and may not be subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Exchange Act). Any director who becomes subject to any such statutory disqualification shall be deemed to have automatically resigned from the Board of Directors.

Generally, under Section 8.3(f), the entire Board of Directors, either present or represented by proxy, shall constitute a quorum for the transaction of business. If such a quorum is not present within sixty (60) minutes after the time appointed for any meeting, the meeting shall be adjourned and the directors present either in person or represented by proxy at such meeting shall reschedule the meeting to occur within five (5) Business Days. If a director who was not present at the initial meeting is not present either in person or represented by proxy at the rescheduled meeting, then (i) the Member represented by such director shall promptly appoint an alternate director reasonably acceptable to the other Member and (ii) the rescheduled meeting shall be adjourned and the directors present either in person or represented by proxy at such meeting shall reschedule the meeting to occur within three (3) Business Days. If such alternate director is not present in person or represented by proxy at such second rescheduled meeting, then, except as set forth in the following sentence, three (3) directors, either present in person or represented by proxy, shall constitute a quorum for the transaction of business. In the event of a meeting of the Board of Directors solely with respect to the business of suspending or terminating a Member's voting privileges or membership under Section 7.1(b), the presence of the directors designated by the Member subject to sanction shall not be required in order to constitute a quorum to transact such business and in such event less than three (3) directors, either present in person or represented by proxy, may constitute a quorum for the transaction of such business as long as all directors designated by the Member not subject to sanction are present. Written notice of any rescheduled meeting shall be delivered to all directors at least one (1) Business Day prior to the date of such rescheduled meeting. Each Member shall direct, and shall use its reasonable best efforts to cause, each director designated by it to attend all meetings of the Board of Directors and, in the event such director is unable to attend a meeting, to cause such director to authorize a person or persons to act for him or her by proxy in accordance with Section 8.3(h). Each Member shall take all necessary actions, to the fullest extent permitted by law, to ensure that the directors designated by such Member vote on all matters.

Pursuant to Section 8.3(g), except as provided in the first sentence of Section 3.1(c) of the LLC Agreement the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, so long as such vote includes the vote of at least one NYSE Director and one BIDS Director. Specifically, a vote of the majority of the Board of Directors will be required to cause or permit the Company or any of its subsidiaries to do

or take any action that would materially impact the Company, the ownership or use of the Company's intellectual property and the rights of the Members, including without limitation a merger of the Company, selling the Company's assets, amending the LLC Agreement or other governance documents, acquiring or issuing securities of the Company, entering new lines of business, licensing intellectual property, making distributions to Members, incurring debt, filing for bankruptcy, approving and materially amending the Company's annual budget or operating plan, or taking any action that would impact the Company's regulatory status. The LLC Agreement does not provide for a third party deadlock provision.

If such alternate director is not present in person or represented by proxy at such second rescheduled meeting, then, except as set forth in the following sentence, three (3) directors, either present in person or represented by proxy, shall constitute a quorum for the transaction of business. In the event of a meeting of the Board of Directors solely with respect to the business of suspending or terminating a Member's voting privileges or membership under Section 7.1(b), the presence of the directors designated by the Member subject to sanction shall not be required in order to constitute a quorum to transact such business and in such event less than three (3) directors, either present in person or represented by proxy, may constitute a quorum for the transaction of such business as long as all directors designated by the Member not subject to sanction are present. Written notice of any rescheduled meeting shall be delivered to all directors at least one (1) Business Day prior to the date of such rescheduled meeting. Each Member shall direct, and shall use its reasonable best efforts to cause, each director designated by it to attend all meetings of the Board of Directors and, in the event such director is unable to attend a meeting, to cause such director to authorize a person or persons to act for him or her by proxy in accordance with Section 8.3(h). Each Member shall take all necessary actions, to the fullest extent permitted by law, to ensure that the directors designated by such Member vote on all matters.

Section 8.3(c) of the LLC Agreement provides that a director may only be removed (with or without cause) by the Member who designated such director; provided that any director (regardless of who designated such director) may be removed for cause by a majority vote of the other members of the Board of Directors voting at a meeting duly convened, so long as such majority includes at least one NYSE Director and one BIDS Director.

Under Section 8.1(d) of the LLC Agreement, the Board of Directors and each director agrees to comply with the federal securities laws and the rules and regulations promulgated thereunder and to cooperate with the Exchange pursuant to its regulatory authority and with the Commission. Furthermore, each director shall take into consideration whether his or her actions would cause the Facility or the Company to (i) engage in conduct that fosters and does not interfere with the ability of the Exchange or the Company to carry out their respective responsibilities under the Exchange Act and to prevent fraudulent and manipulative acts and practices, (ii) promote just and equitable principles of trade, (iii) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, (iv) remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and (v) in general, protect investors and the public interest.

Section 8.1(e) of the LLC Agreement provides that NYSE Regulation (as defined below) must receive notice of planned or proposed changes to the Company (not including changes relating solely to Non-Market Matters) or the Facility and that such changes may only be implemented if NYSE Regulation does not object affirmatively to such changes prior to implementation. If NYSE Regulation, in its sole discretion, determines that such planned or proposed changes to the Company or the Facility could cause a Regulatory Deficiency if implemented, NYSE Regulation may direct the Company to modify the proposal as necessary to ensure that it does not cause a Regulatory Deficiency, in which case the Company will, prior to implementation, modify the proposal such that NYSE Regulation does not object to the planned or proposed changes. In the event that NYSE Regulation, in its sole discretion, determines that a Regulatory Deficiency exists or is planned, NYSE Regulation may direct the Company to undertake such modifications to the Company (but not to include Non-Market Matters) or the Facility as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency and allow NYSE Regulation to perform and fulfill its regulatory responsibilities under the Exchange Act.

Under Section 8.9 of the LLC Agreement, the Company may, at the discretion of the Board of Directors, issue additional Interests to any person for any amount of consideration, if any, as determined by the Board of Directors and admit any such persons as an additional Member; provided, that such additional Member will automatically be bound by all of the terms and conditions of the LLC Agreement applicable to Members and that such additional Member executes the documentation required by the Board of Directors pursuant to which such additional Member agrees to be bound by the terms and provisions of the LLC Agreement.

Capital Contributions and Distributions

Section 3.1(a) of the LLC Agreement provides that at the Effective Date, each Member will make a cash capital contribution to the Company. Section 3.1(c) of the LLC Agreement provides that, except as otherwise required by law, no Member shall be required, or permitted, to make any additional capital contributions to the Company without the unanimous consent of the Board of Directors. If and when NYSE Regulation notifies the Company that actions are required by the Company in order for the Company to maintain its status as an operator of a facility of a self-regulatory organization pursuant to the Exchange Act, then the Company will determine the cost of such actions and the Board of Directors will direct the Members to make, on a pro rata basis, a capital contribution to the Company equal to the amount required for the Company to maintain such status. Each Member will make its pro rata share of any capital contribution requested by the Board of Directors promptly following its receipt of such request; provided, that each Member will have no obligation to make its pro rata share of the capital contribution requested pursuant to the preceding sentence if, after giving effect to such capital contribution, the aggregate amount of all capital contributions made by the Members pursuant to the preceding sentence during the three-year period ending on the date of such determination would exceed $1,000,000. If a Member does not make its pro rata share of such capital contribution in accordance with the preceding sentence, then either Member may cause the Company to dissolve in accordance with the provisions of the LLC Agreement.

Pursuant to Section 4.1 of the LLC Agreement, gain from the sale of assets of the Company will be allocated 50% to each member and operating income will be allocated in the same manner as gain unless the Board of Directors

unanimously determines that a different allocation or operating income is appropriate.

Section 5.1 of the LLC Agreement provides that, to the extent available for distribution, cash of the Company will generally be distributed 50% to each Member unless the Board of Directors has determined that the Members should be allocated operating income in differing percentages, in which case cash will be distributed in a manner that reflects such differing percentages as determined by the Board of Directors.

Intellectual Property

Pursuant to an intellectual property license to be entered into on the Effective Date by and among the Company, the Exchange and BIDS (the ''IP License''), each of the Exchange and BIDS will provide to the Company a non-exclusive license for the use of certain of its intellectual property and the Company will provide to each Member a non-exclusive license (exercisable only upon certain events) for the use of the intellectual property owned by the Company.

The LLC Agreement and the IP License provide that the Company will own intellectual property which is (i) developed for NYBX by a third party by or on behalf of the Company, (ii) expressly conveyed or contributed by any of the Members to the Company and all derivatives, improvements or enhancements thereto, or (iii) not in existence as of the Effective Date that is developed by any person explicitly for the use of NYBX and designated as such in writing during the development process and all derivatives, improvements or enhancements thereto; provided, that if such intellectual property is a derivative, improvement or enhancement to intellectual property owned by a Member, it shall only be owned by the Company if it is explicitly for the use of NYBX and designated as such in writing during the development process.

Non-Compete

Section 7.4 of the LLC Agreement provides that during the period commencing on the Effective Date and continuing until the earlier of (x) the one-year anniversary of the Effective Date and (y) the first day on which NYBX is available for use by the members of any one or more the U.S. self-regulatory organizations operated by NYSE Euronext (the ''NYSE Markets'') for trading as a facility approved by the Commission (the ''Non-Competition Period''), neither Member shall, and each Member shall cause its Affiliates not to, directly or indirectly compete with, or enter into any agreement with any other person that calls for such Member or its Affiliates to enter into any equity investment, joint venture, licensing or partnership that competes with, the business of the Company anywhere in the United States. The Non-Competition Period will be automatically extended for successive six-month periods unless a Member gives the other Member written notice of its intention to terminate the Non-Competition Period at least six months prior to the end of the then-current Non-Competition Period as so extended from time to time. Notwithstanding the foregoing, each Member and its Affiliates may (i) provide services to any other person that is not engaged in any business that is competitive with the business of the Company; (ii) own less than 5% of the issued and outstanding equity of any entity (so long as such Member or Affiliate does not control or participate in the management of such entity); (iii) take any action that may be necessary for it or its Affiliates to remain in compliance with applicable laws, rules or regulations; and (iv) continue to engage in any of its existing businesses.

Changes in Ownership of the Company

Section 9.1 of the LLC Agreement provides that each Members may not sell, assign, pledge or in any manner dispose of or create or suffer the creation of a security interest in or any encumbrance on all or a portion of its Interest in the Company (the commission of any such act being referred to as a ''Transfer''), except in accordance with the terms and conditions set forth in the LLC Agreement. Section 9.2 of the LLC Agreement permits a Member to Transfer all or any portion of its Interest to (i) a Permitted Transferee or (ii) a person that is not a Permitted Transferee with the consent of the other Member, subject to the satisfaction of the requirements set forth in Sections 9.3 and 9.8 of the LLC Agreement (described below), and provides that the transferee of all or any portion of a Member's Interest may be admitted to the Company as a Member upon the prior written consent of the Board of Directors.

Section 9.3 of the LLC Agreement prohibits the Transfer of all or any portion of an Interest in the Company unless: (i) The transferor pays all reasonable costs and expenses incurred by the Company in connection with the Transfer; (ii) the transferor delivers to the Company a fully executed copy of all documents relating to the Transfer and the agreement of the transferee in writing and otherwise in form and substance acceptable to the Board of Directors to be bound by the terms imposed upon such Transfer by the Board of Directors and by the terms of the LLC Agreement and to assume all obligations of the transferor under the LLC Agreement relating to the Interest that is the subject of such Transfer; (iii) the Board of Directors is reasonably satisfied that the Transfer will not (A) cause the Company to be treated as an association taxable as a corporation for federal income tax purposes, (B) cause the Company to be treated as a ''publicly traded partnership'' within the meaning of the Internal Revenue Code of 1986, as amended from time to time (the ''Code''), (C) violate any federal, state or non-United States securities laws, rules or regulations, (D) cause some or all of the assets of the Company to be ''plan assets'' or the investment activity of the Company to constitute ''prohibited transactions'' under ERISA or the Code, and (E) cause the Company to be an investment company required to be registered under the Investment Company Act of 1940, as amended. Under Section 9.1 of the LLC Agreement, any Transfer or purported Transfer of an Interest not made in accordance with the LLC Agreement will be null and void and of no force or effect whatsoever.

Section 9.8(a) of the LLC Agreement provides that beginning after Commission approval of this proposed rule change, the Company must provide the Commission with written notice ten days prior to the closing date of any acquisition of an Interest by a person that results in a Member's percentage ownership interest in the Company, alone or together with any Related Person of such Member, meeting or crossing either the 5%, 10%, or 15% thresholds.

Section 9.8(b) of the LLC Agreement provides that beginning after Commission approval of this proposed rule change, no person that is not a Member as of the Effective Date, either alone or together with its Related Persons, may directly own an Interest that would result in such person having a percentage ownership interest exceeding 20% (the ''Concentration Limitation''); provided, however, that the Concentration Limitation shall not apply to the Exchange. The Concentration Limitation shall apply to each person (other than the Exchange) unless and until: (i) Such person shall have delivered to the Board of Directors a notice in writing, not less than 45 days (or such shorter period as the Board of Directors expressly consents to) prior to the acquisition of any Interest that

would cause such person (either alone or together with its Related Persons) to exceed the Concentration Limitation, of such person's intention to acquire such Interest; (ii) such notice shall have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and shall have become effective thereunder; and (iii) the Board of Directors shall not have determined to oppose such person's acquisition of such Interest. The Board of Directors shall oppose such person's acquisition of such Interest if the Board of Directors determines, in its sole discretion, that (A) such ownership by such person, either alone or together with its Related Persons, will impair the ability of the Company and the Board of Directors to carry out its functions and responsibilities, including but not limited to, under the Exchange Act, or is otherwise not in the best interests of the Company; (B) such ownership by such person, either alone or together with its Related Persons, will impair the ability of the Commission to enforce the Exchange Act; (C) such person or its Related Persons are subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Exchange Act); or (D) if such Interest would result in the person having an ownership interest in the Company exceeding the Concentration Limitation, either such person or one of its Related Persons is a ''member'' or ''member organization'' of the Exchange (as defined in the rules of the Exchange, as such rules may be in effect from time to time). In making a determination pursuant to the foregoing, the Board of Directors may impose such conditions and restrictions on such person and its Related Persons as the Board of Directors may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Company.

Section 9.8(c) of the LLC Agreement provides that beginning after Commission approval of this proposed rule change, the Exchange's percentage ownership interest shall not decline below 50% unless and until: (i) The Exchange shall have delivered to the Board of Directors a notice in writing, not less than 45 days (or such shorter period as the Board of Directors shall expressly consent to) prior to the Transfer of any Interest that would result in the Exchange (either alone or together with its Related Persons) holding less than a 50% ownership interest in the Company, of the Exchange's intention to Transfer such Interest; and (ii) such notice shall have been filed with, and approved by, the Commission under Section 19(b) of the Exchange Act and shall have become effective thereunder.

Section 9.8(d) of the LLC Agreement provides for indirect changes in control of the Company. Any person that acquires a controlling interest (i.e., an interest of 25% or more of the total voting power) in a Member who, alone or together with any Related Person of such Member, holds a Percentage Interest in the Company equal to or greater than 20% would be required to agree to become a party to the LLC Agreement and abide by its terms. The amendment to the LLC Agreement caused by the addition of the indirect controlling party would trigger a proposed rule change that the Exchange would have to file with the Commission pursuant to Section 19(b) of the Exchange Act. The non-economic rights and privileges, including all voting rights, of the Member in which such controlling interest is acquired would be suspended until this proposed rule change becomes effective under the Exchange Act or until the indirect controlling party ceases to have a controlling interest in such Member.

Trading Volume Limitations

Section 9.9 of the LLC Agreement provides that if (i) during at least 4 of the then preceding 6 calendar months, the average daily trading volume in the Facility exceeds 10% of the aggregate average daily trading volume of the Exchange (The aggregate average daily trading volume in the Facility shall be calculated based upon the trading volume of the Facility itself combined with trading volume in the NYSE Display Book® (''Display Book'') that originated in the Facility, if any) and (ii) a Member (other than the Exchange), either alone or together with its Related Persons owns Interests resulting in a percentage ownership interest exceeding the Concentration Limitation, then if such Member elects not to Transfer sufficient Interests within 180 days after the date on which both the conditions in clauses (i) and (ii) are satisfied so that such Member does not exceed the Concentration Limitation, an independent third party SRO engaged by the Company shall begin, within such 180-day period, to conduct market surveillance of such Member with respect to such Member's trading activity in both the Facility and in NYSE LLC, such that no Transfer in respect of the Concentration Limitation set forth in this Section 9.9 will be required under applicable law or regulation.

Regulation of the Company

Under Section 8.1(c) of the LLC Agreement, the Members acknowledge and agree that NYSE Regulation, Inc., an independent, not-for-profit subsidiary of the Exchange, together with its successors (''NYSE Regulation''), will have regulatory responsibility for the activities of NYBX and will perform all actions related thereto, including without limitation the following actions: (i) The adoption, amendment and interpretation of policies arising out of and regarding any statement made generally available to the membership of the Exchange, to persons having or seeking access to NYBX or to a group or category of such persons that establishes or changes any standard, limit or guideline with respect to (A) the rights, obligations or privileges of such persons or group or category of persons or (B) the meaning, administration or enforcement of any new or existing rule or policy of NYBX, including any exemption from such rule or policy; (ii) adoption, amendment and interpretation of policies and rules relating to and regarding the regulation of NYBX and approval of rule filings related to NYBX prior to filing with the Commission; (iii) securities regulation, record keeping obligations and other matters implicating the self-regulatory organization responsibilities of the Exchange under the Exchange Act; and (iv) real-time market surveillance and trading activity reported to NYBX (collectively, the ''SRO Responsibilities'').

The Exchange will consult with the Board of Directors with respect to the SRO Responsibilities of NYSE Regulation; provided, however, that to the extent it is impracticable or prohibited by law for the Exchange to consult with the Board of Directors in advance of taking any action as part of its SRO Responsibilities, the Exchange will consult with the Board of Directors or the applicable Member as soon as practicable thereafter. Such consultation will include providing the Board of Directors with the reasonable opportunity to review and comment in advance upon non-routine information relating to NYBX that appears in filings, statements or applications submitted to the Commission or another governmental or regulatory authority on behalf of the Company that are material to ensuring that the Company and NYBX comply with applicable federal securities laws and, to the extent not otherwise prohibited by law, keeping the Board of Directors apprised, on a regular and timely manner, of non-routine notices or orders relating to

NYBX received by the Exchange or NYSE Regulation from the Commission or another governmental or regulatory authority. The Board of Directors cannot require the Exchange to act or fail to act in a manner that the Exchange reasonably believes to be inconsistent with its regulatory obligations.

Section 8.1(c) of the LLC Agreement also provides that should NYSE Regulation (i) exercise its authority in a manner that materially adversely affects the ability of any Member to utilize NYBX in accordance with the LLC Agreement or (ii) require the Company to take any action having a material effect that would otherwise require the approval of the Board of Directors, but which does not receive such approval either prior to or following such action, then (x) in the case of clause (i) above, each Member so adversely affected, and (y) in the case of clause (ii) above, each Member, will have the right to cause the Company to dissolve in accordance with the provisions of the LLC Agreement (the ''SRO Termination Right'').

Section 7.1(b) of the LLC Agreement provides that, after appropriate notice and opportunity for hearing, the Board of Directors, by a vote of a majority of the directors (excluding the vote of the directors designated by the Member subject to sanction), may suspend or terminate a Member's voting privileges or membership in the event: (i) Such Member has materially violated a provision of the LLC Agreement relating to Regulatory Matters or any federal or state securities law; (ii) such Member is subject to any applicable ''statutory disqualification'' (as defined in Section 3(a)(39) of the Exchange Act); or (iii) such action is necessary or appropriate in the public interest or for the protection of investors. Prior to any such suspension or termination, the Board of Directors will deliver to such Member a written notice specifying in reasonable detail the basis for such proposed suspension or termination.

Section 14.1 of the LLC Agreement generally provides that the Members, the members of the Board of Directors and the Company may not disclose any confidential information of the Company or any Member to any person, except as expressly permitted by the LLC Agreement. Section 14.1 of the LLC Agreement provides exceptions for, among other things, disclosure required by any applicable law, regulation or legal process or by the rules of any stock exchange, regulatory body or governmental authority, including without limitation any rules and regulations promulgated under the Exchange Act, and disclosure to the SEC or other regulatory body or governmental authority in connection with any necessary regulatory or governmental approval. Furthermore, nothing in the LLC Agreement shall be interpreted to limit or impede the rights of the Commission, the Exchange or NYSE Regulation to access and examine confidential information of the Company pursuant to U.S. federal securities laws, and the rules and regulations promulgated thereunder, or to limit or impede the ability of a member of the Board of Directors, any Member or officer, director, agent or employee of a Member or of the Company to disclose confidential information of the Company to the Commission, the Exchange or NYSE Regulation.

Furthermore, Section 14.1 of the LLC Agreement provides that all confidential information pertaining to the self-regulatory function of the Exchange or the Company (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Company will not be made available to any persons other than to those officers, directors, employees and agents of the Company and the Members that have a reasonable need to know the contents thereof, will be retained in confidence by the Company and the Members and their respective officers, directors, employees and agents, and will not be used for any commercial purposes.

Regulatory Jurisdiction Over Members

Under Section 6.1(a) of the LLC Agreement, the Members acknowledge that, to the extent related to the Company's business, the books, records, premises, officers, directors, agents and employees of the Company and of its Members shall be deemed to be the books, records, premises, officers, directors, agents and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Exchange Act. In addition, the books and records of the Company will be maintained at the principal office of the Company in New York and will be subject at all times to inspection and copying by the Commission and the Exchange at no additional charge to the Commission or the Exchange.

Under Section 6.1(b) of the LLC Agreement, the Company, its Members and the officers, directors, agents and employees of the Company and its Members irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission and the Exchange for purposes of any suit, action or proceeding pursuant to U.S. federal securities laws, and the rules and regulations promulgated thereunder, arising out of, or relating to, activities of the Company and waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter hereof may not be enforced in or by such courts or agency.

Under Section 6.1(c) of the LLC Agreement, the Company, its Members, and the officers, directors, agents, and employees of the Company and its Members agree to comply with the federal securities laws and the rules and regulations promulgated thereunder and to cooperate with the Exchange pursuant to its regulatory authority and the provisions of the LLC Agreement and with the Commission and to engage in conduct that fosters and does not interfere with the Company's and NYSE LLC's ability to (i) prevent fraudulent and manipulative acts and practices; (ii) promote just and equitable principles of trade; (iii) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; (iv) remove impediments to and perfect the mechanisms of a free and open market and a national market system; and (v) in general, protect investors and the public interest.

Furthermore, Section 8.1(d) provides that the Company and each Member shall take such action as is necessary to ensure that the Company's and such Member's officers, directors, agents and employees consent in writing to the application to them of the provisions in the LLC Agreement with respect to their activities relating to the Company.

The Exchange believes that these provisions will serve as notice to Members that they will be subject to the jurisdiction of the U.S. federal courts, the Commission and the Exchange. Accordingly, these provisions ensure that, should an occasion arise which requires regulatory cooperation or jurisdictional submission from the Members, it will be forthcoming and uncontested.

Amendments to the LLC Agreement and the Certificate of Formation

Pursuant to Section 13.1 of the LLC Agreement, any amendment to the LLC Agreement which does not adversely affect the right of any Member in any material respect may be made by the Board of Directors without the consent of the Members if such amendment is

for the purpose of admitting substituted or additional Members as permitted by the LLC Agreement, necessary to maintain the Company's status as a partnership that is not a ''publicly traded partnership'' pursuant to the Code, necessary to preserve the validity of any and all allocations of income, gain, loss or deduction pursuant to the Code, or contemplated by the LLC Agreement. Any amendments other than those described in the foregoing sentence require the consent of all Members. If the LLC Agreement is amended, the Board of Directors will amend the Certificate of Formation to reflect such change if the Board of Directors deems such amendment to be necessary or appropriate.

Furthermore, Section 13.1 of the LLC Agreement provides that for so long as the Company is a facility of the Exchange or of a successor of the Exchange that is a self-regulatory organization, before any amendment or repeal of any provision of the LLC Agreement becomes effective, such amendment or repeal must either (i) be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder or (ii) be submitted to the board of directors of the Exchange or its successor, and if the Exchange's board of directors determines that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal will not be effectuated until filed with or filed with and approved by the Commission, as the case may be.

Relationship of the Exchange to BIDS

On February 25, 2008, NYSE Market, Inc., a Delaware corporation and wholly-owned subsidiary of the Exchange, and BIDS entered into a Contribution Agreement. Pursuant to the Contribution Agreement, NYSE Market, Inc. contributed cash to the capital of BIDS in exchange for limited partnership interests in BIDS representing on the date of such issuance 8.57% of the aggregate limited partnership interests in BIDS (the ''Purchased Interests''). The Exchange and its affiliates do not have any voting or other ''control'' arrangements with any of the other limited partners or general partner of BIDS relating to its investment in BIDS. The purchase by NYSE Market, Inc. of the Purchased Interests was consummated on February 25, 2008. As a result of such purchase, NYSE Market, Inc. became a limited partner of BIDS pursuant to the Amended and Restated Limited Partnership Agreement of BIDS dated January 31, 2007. The general partner of BIDS is BIDS Holdings GP LLC.

The Exchange proposes that there be an exemption from Rule 2B of the Exchange with respect to the investment by NYSE Market, Inc. in BIDS. In relevant part, Rule 2B provides that, without prior Commission approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange; provided, however, that, if a director of an affiliate of a member organization serves as a director of NYSE Euronext, this fact shall not cause such member organization to be an affiliate of the Exchange, or an affiliate of an affiliate of the Exchange. Upon execution of the LLC Agreement and BIDS' approval as a member organization, the Exchange (through an affiliate) will maintain an ownership interest in a member organization and BIDS will be affiliated with an affiliate of the Exchange, in each case which without Commission approval would be prohibited by Rule 2B. The Commission has also previously noted its concern regarding (i) the potential for conflicts of interest in instances where an exchange is affiliated with one of its members and (ii) the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members. As such, the Exchange requests that the Commission approve the relationships between BIDS and the Exchange described above, subject to the conditions and limitations set out below.

In making such a request, the Exchange notes that, consistent with the Exchange's procedures relating to its affiliated outbound router, Archipelago Securities LLC, the Exchange will adopt certain policies and procedures relating to BIDS to mitigate concerns that there are potential conflicts of interest in instances where a member firm is affiliated with an exchange, including with respect to the potential for informational advantages that could place an affiliated member of an exchange at a competitive advantage vis-à-vis other non-affiliated members.

The Exchange notes that with respect to its business activities, BIDS, which will become an NYSE member prior to commencement of the Facility, is subject to independent oversight and enforcement by the Financial Industry Regulatory Authority (''FINRA''), an unaffiliated self-regulatory organization (''SRO'') that is BIDS'designated examining authority. In this capacity, FINRA is responsible for examining BIDS with respect to its books and records and capital obligations, and shares with NYSE Regulation the responsibility for reviewing BIDS' compliance with intermarket trading rules such as SEC Regulation NMS. In addition, through an agreement between FINRA and the NYSE pursuant to the provisions of SEC Rule 17d–2 under the Exchange Act, FINRA's staff will review for BIDS' compliance with other NYSE rules through FINRA's examination program. NYSE Regulation will, upon commencement of the Facility's operations, monitor BIDS for compliance with NYSE trading rules, subject, of course, to SEC oversight of NYSE Regulation's regulatory program.

In order to alleviate any residual concerns the Commission may have regarding the potential for conflicts of interest, the Exchange notes that NYSE Regulation has agreed with the Exchange that it will collect and maintain the following information of which NYSE Regulation staff becomes aware—namely, all alerts, complaints, investigations and enforcement actions where BIDS (in its capacity as an NYSE member) is identified as having potentially violated NYSE or applicable SEC rules—in an easily accessible manner, so as to facilitate any review conducted by the SEC's Office of Compliance Inspections and Examinations. NYSE Regulation has further agreed with the Exchange that it will provide a report to the Exchange's Chief Regulatory Officer, on at least a quarterly basis, which: (i) Quantifies all alerts (of which NYSE Regulation is aware in its tracking system) that identify BIDS as having potentially violated NYSE or SEC rules and (ii) quantifies the number of all investigations that identify BIDS as having potentially violated NYSE or SEC rules.

The Exchange is also proposing to amend Exchange Rule 2B by adding commentary.01. As amended, Exchange Rule 2B, commentary.01 will require the implementation of policies and procedures that are reasonably designed to ensure that BIDS Holdings, L.P. and its affiliates do not have access to non-public information relating to the Exchange, obtained as a result of BIDS' affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange; provided, however, that BIDS Holdings, L.P. and its affiliates shall be

permitted to have access to non-public information relating to the parties' obligations under the LLC Agreement or the relationship of the parties contemplated by the LLC Agreement, and such non-public information shall be kept confidential in accordance with Section 14.1 of the LLC Agreement, including the requirement that such non-public information shall not be made available to any Persons other than to those officers, directors, employees and agents of the Company and the Members that have a reasonable need to know the contents thereof. These policies and procedures would include systems development protocols to facilitate an audit of the efficacy of these policies and procedures.

Specifically, Exchange Rule 2B, commentary.01 shall provide as follows:

The Exchange and BIDS shall establish and maintain procedures and internal controls reasonably designed to ensure that BIDS Holdings, L.P. and its affiliates do not have access to non-public information relating to the Exchange, obtained as a result of BIDS' affiliation with the Exchange, until such information is available generally to similarly situated members of the Exchange; provided, however, that BIDS Holdings, L.P. and its affiliates shall be permitted to have access to non-public information relating to the parties' obligations under the LLC Agreement or the relationship of the parties contemplated by the LLC Agreement, and such non-public information shall be kept confidential in accordance with Section 14.1 of the LLC Agreement, including the requirement that such non-public information shall not be made available to any Persons other than to those officers, directors, employees and agents of the Company and the Members that have a reasonable need to know the contents thereof.

The Exchange believes these measures effectively address the concerns identified by the Commission regarding the potential for informational advantages favoring BIDS vis-à-vis other non-affiliated NYSE members. The Exchange also notes that Section 9.9 of the LLC Agreement will also mitigate these concerns. Section 9.9 of the LLC Agreement provides that if during at least 4 of the then preceding 6 calendar months, the average daily trading volume in the Facility exceeds 10% of the aggregate average daily trading volume of the Exchange, then, within 180 days, either an independent third party SRO engaged by the Company must begin to conduct market surveillance of BIDS with respect to BIDS's trading activity in both the Facility and in NYSE LLC, or BIDS must Transfer sufficient Interests so that BIDS does not exceed the Concentration Limitation.

In addition, the Exchange notes that NYSE Market, Inc. owns less than 9% of the equity in BIDS and therefore does not own a controlling interest in BIDS or otherwise have any veto or other special voting rights with respect to the management or operation of BIDS. The Exchange further notes that the general partner of BIDS, in which the Exchange and its affiliates hold no interests, manages the day-to-day business of BIDS. The Exchange acknowledges that if the Exchange or any of its affiliates were to directly or indirectly increase the equity ownership of BIDS, such increase would require prior Commission approval. The Exchange believes the foregoing measures and factors minimize the concerns identified by the Commission regarding potential conflicts of interest.

Pilot Period

The Exchange proposes that the Commission authorize the exemption from Rule 2B for a pilot period of one year from the date of the approval of this rule filing. The Exchange believes that this pilot period is of sufficient length to permit both the Exchange and the Commission to assess the impact of the rule change described herein.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [3] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes 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 not received any unsolicited written comments from members or other interested parties.

[3] 15 U.S.C. 78f(b)(5).

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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–120 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–2008–120. 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 offices 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–2008–120 and should be submitted on or before December 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27795 Filed 11–21–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58971; File No. SR–NYSE–2008–115]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Exchange Rule 104T To Make Certain Technical Amendments to the Rule To Conform it to the Exchange's Recently Instituted New Market Model Pilot

November 17, 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 4, 2008, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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 Rule 104T (Dealings by DMMs) to make certain technical amendments to the rule to conform it to the Exchange's recently instituted New Market Model Pilot.

The text of the proposed rule change is available at *http://www.nyse.com,* NYSE's principal office, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to make certain technical amendments to: (i) NYSE Rule 104T (Dealings by DMMs) to include rule language governing DMM quoting requirements that was inadvertently not included in the rule text; (ii) conform the rule language of NYSE Rule 104T governing price improvement with changes approved by the Securities and Exchange Commission (''SEC'' or ''Commission'') in a separate filing; and (iii) clarify the rule text of NYSE Rules 70, 104T and 104 as it pertains to Floor brokers and DMMs reserve functionality.

On October 24, 2008, the Commission approved the operation of a pilot for the Exchange's New Market Model.[4] As part of this new model the functions formerly carried out by specialists on the Exchange will be replaced by a new market participant, to be known as a Designated Market Maker (''DMM''). While there are some similarities in the manner in which DMMs will operate, there are some major differences as well. For example, DMMs will continue to be assigned individual NYE-listed [sic] securities as they were under the specialist system, and have an affirmative obligation with respect to maintaining a fair and orderly market for trading those assigned securities. Unlike the specialist system, each DMM will also have a minimum quoting requirement[5] in its assigned securities but will no longer have a negative obligation.

The implementation of these changes required the Exchange to amend its previous rule governing specialist conduct, former NYSE Rule 104 (Dealings by Specialists). As approved, the New Market Model will be phased[6] into the Exchange's marketplace to allow for the careful monitoring of technological and trading pattern changes that are the core of its operation. The Exchange therefore created transitional NYSE Rule 104T in order to govern DMM conduct during the first phase of the pilot. DMMs were subject to the quoting requirement upon implementation of the Pilot; however, the language imposing the quoting requirement was inadvertently not included in NYSE Rule 104T. Through this filing the Exchange seeks to correct that oversight and add subparagraph ''k'' to Rule 104T which will read as follows:

With respect to maintaining a continuous two-sided quote with reasonable size, DMM units must maintain a bid or an offer at the National Best Bid and National Best Offer (''inside'') at least 10% of the trading day for securities in which the DMM unit is registered with an average daily volume on the Exchange of less than one million shares, and at least 5% for securities in which the DMM unit is registered with an average daily trading volume equal to or greater than one million shares. Time at the inside is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside. In calculating whether a DMM is

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

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

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (approving certain rules to operate as a pilot scheduled to end October 1, 2009).

[5] DMMs will be required to maintain displayed bids and offers at the National Best Bid or Offer (''NBBO'') for a certain percentage of the trading day in assigned securities. Specifically, with respect to maintaining a continuous two-sided quote with reasonable size, DMMs must maintain a bid or offer at the NBBO (''inside'') for securities in which the DMM is registered at a prescribed level based on the average daily volume of the security. Securities that have a consolidated average daily volume of less than one million shares per calendar month are defined as Less Active Securities and securities that have a consolidated average daily volume of equal to or greater than one million shares per calendar month are defined as More Active Securities.

For Less Active Securities, a specialist unit must maintain a bid or an offer at the NBBO for at least 10% of the trading day during a calendar month. For More Active Securities, a specialist unit must maintain a bid or an offer at the NBBO for at least 5% or more of the trading day during a calendar month. DMMs will be expected to satisfy the quoting requirement for both volume categories in their assigned securities.

[6] Pursuant to the implementation schedule, no later than five weeks after Commission approval, DMMs will still receive information about orders that are at or between the Exchange quote. DMMs must continue to abide by their affirmative obligations, meeting his or her requirements to maintain displayed bids and offers at the NBBO and re-enter liquidity pursuant to NYSE Rule 104T (''Phase 1''). After the fifth week of the operation of the Pilot, Phase 1 will be completed and NYSE Rule 104T will cease operation. Once NYSE Rule 104T ceases operation, DMMs will be subject to new NYSE Rule 104 (Dealings and Responsibilities of DMMs) in Phase 2.

meeting the 10% and 5% measure, credit will be given for executions for the liquidity provided by the DMM. Reserve or other hidden orders entered by the DMM will not be included in the inside quote calculations.

The Exchange further seeks to amend Exchange Rule 104T(e) to remove legacy language related to a requirement that specialists be represented in the quote in a ''meaningful amount'' before they can send a trading message that will provide price improvement to arriving marketable orders (*i.e.*, those orders capable of trading in the current market upon arrival).

On September 11, 2008, the Commission approved the amendment of former NYSE Rule 104(e) to remove the requirement that specialists be represented in the quote in a ''meaningful amount'' before he or she may send a trading message that will provide price improvement to arriving marketable orders (*i.e.*, those orders capable of trading in the current market upon arrival).[7] Pursuant to that amendment specialists were able to provide algorithmically-generated price improvement to all or part of a marketable incoming order provided that the price improvement to be supplied by the specialist is at least one cent. NYSE Rule 104T was not updated to reflect this change and the Exchange seeks to update the language to reflect that amendment through this filing.

Pursuant to the changes approved in the New Market Model, Floor brokers and DMMs may maintain reserve interest consistent with the Exchange Rules governing Reserve Orders.[8] NYSE Rule 104T(d)(1) was not conformed to reflect this language. NYSE Rules 70(b)(ii) and 104(c) have language to express this concept; however, the language in the two rules is inconsistent. Specifically, NYSE Rule 70 states in pertinent part, ''A Floor broker shall have the ability to maintain undisplayed reserve interest consistent with Exchange rules governing Reserve Orders.'' NYSE Rule 104 states, ''A DMM unit may maintain non displayed reserve interest consistent with Exchange Rules governing Reserve Orders.'' The Exchange seeks to revise the rule language of NYSE Rules 70(b)(ii), 104T(d)(1) and 104(c) to make them consistent and to clarify that Floor brokers and DMMs may maintain reserve interest consistent with Exchange rules governing Reserve Orders.

The Exchange further seeks to amend typographic errors in NYSE Rules 123A, 123B and 1000. Specifically, in NYSE Rule 123A Supplementary Material.32, the NYSE deleted the word ''specialist'' from the first sentence and did not insert ''DMM'' in its place. Additionally, the Exchange did not delete the word ''specialist'' from the last paragraph of the same section and insert ''DMM.'' The Exchange now proposes to insert ''DMM'' in the first sentence of NYSE Rule 123A Supplementary Material.32 so that it will read, ''If a report has not been received from a DMM on an order which he or she should have executed, the *DMM* is responsible for any loss which may be sustained up to and including the next opening price.'' The Exchange further seeks to amend the last sentence of the last paragraph to read, ''In no case where it is deemed that a DMM did not send out a report shall the liability of the *DMM* extend beyond the closing price on the business day following the day of the transaction.''

Finally, NYSE Rule 123B as approved in the New Market Model, contains two subparagraphs lettered ''d''. The Exchange seeks to change the second subparagraph ''d'' to ''e'' in order to correct the lettering. Similarly, NYSE Rule 1000, as approved in the New Market Model deleted the provisions of subparagraph (e)(ii)(D) and did not change the letter of the subsequent subparagraph (e)(ii)(E) to ''(D)''. As such NYSE Rule subparagraph (e)(ii) is lettered ''A'' through E without a ''D'' letter designation. The Exchange therefore seeks to change the current letter ''E'' of that provision to ''D'' to allow for accurate consecutive lettering of the rule.

2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the ''1934 Act'') for this proposed rule change are the requirements under Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the instant proposal is consistent with the above principals [sic] in that it conforms the rule language to the approved New Market model which the Exchange anticipates will enhance the liquidity in the market and foster increased competition among Exchange market participants thus providing Exchange customers with additional opportunities for price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of 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[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[12] which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will conform the rule text to what was previously approved by the Commission in prior Exchange proposed rule changes.[13] Waiving the operative delay will ensure that the rule text of the Exchange is accurate and will avoid potential confusion by

[7] *See* Securities Exchange Act Release No. 58517 (September 11, 2008), 73 FR 53914 (September 17, 2008) (SR–NYSE–2008–61).

[8] *See* NYSE Rule 13.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. NYSE has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See supra* notes 4 and 7.

eliminating technical errors.[14] Accordingly, the Commission designates the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–115 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–2008–115. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–115 and should be submitted on or before December 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Acting Secretary.

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BILLING CODE 8011–01–P

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58945; File No. SR–NYSEArca–2008–118]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services

November 13, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), 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 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 its Schedule of Fees and Charges for Exchange Services. A copy of the new Schedule, showing changes pursuant to this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE Arca included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE Arca has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the existing Schedule in order to include foreign currency options (''FCO'') in the Linkage Fees rates that are currently applied only to issues included in the Penny Pilot.

The Exchange has recently proposed an amendment to its rules that will enable the Exchange to list and trade FCOs.[3] In addition to the issues included in the Penny Pilot, FCOs will also be quoted and traded in one cent increments. Presently, the Exchange charges $0.45 for all electronically executed Linkage Orders in Penny Pilot issues.[4] Pursuant to the proposed change, the Exchange will also charge $0.45 for all electronically executed Linkage Orders in FCO's. Upon approval, the Exchange intends to apply this reduced fee (as compared to fees charged for Linkage Orders executed in non-eligible issues).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) [5] of the Act, in general, and section 6(b)(4),[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities for the purpose of executing Linkage orders that are routed to the Exchange from other market centers. In most instances, this proposal decreases the applicable fees for Users.

[3] *See* Securities and Exchange Commission Release No. 34–58800, October 16, 2008, (notice of immediate effectiveness of SR–NYSEArca–2008–109).

[4] The Exchange may trade option contracts in one cent increments in certain approved issues as part of the Penny Pilot, through March 27, 2009. *See* Securities Exchange Act Release No. 34–56568 (September 27, 2007), 72 FR 56422 (October 3, 2007).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

Without this filing, orders in FCOs that access the Exchange via Linkage will be charged more than similar electronic transactions 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 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2008–118 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–118. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–118 and should be submitted on or before December 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27877 Filed 11–21–08; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58948; File No. SR–NYSEArca–2008–105]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Relating to Listing Certain Derivative Products Pursuant to Continued Listing Criteria

November 14, 2008.

I. Introduction

On October 1, 2008, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to listing certain Derivative Products (as defined in proposed Commentary .01 to NYSE Arca Equities Rule 5.2(b)) pursuant to continued listing criteria. The proposed rule change was published for comment in the **Federal Register** on October 10, 2008.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to adopt new Commentary .01 to NYSE Arca Equities Rule 5.2(b) to permit the listing of a Derivative Product[4] that (1) was originally listed on another registered national securities exchange (''Other SRO'') and continues to be listed on such Other SRO, and (2) satisfies the Exchange's continued listing criteria applicable to the relevant product class that would include such Derivative Product.

For example, in the case of an Index-Linked Security that is listed on an Other SRO, the staff of the Exchange would determine whether the Index-Linked Security meets the Exchange's continued listing criteria. If the Index-Linked Security satisfies the Exchange's continued listing criteria, then NYSE Arca could proceed to list such security on the Exchange. If the Index-Linked Security does not meet the continued listing criteria, the staff of the Exchange would then, in its sole discretion, either file a separate rule filing pursuant to Rule 19b–4 under the Act proposing that the Index-Linked Security be listed on the Exchange pursuant to the criteria

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58734 (October 6, 2008), 73 FR 60388.

[4] Commentary .01 to NYSE Arca Equities Rule 5.2(b) defines ''Derivative Product'' to include securities described in NYSE Arca Equities Rule 5.2(j)(2) (Equity Linked Notes); NYSE Arca Equities Rule 5.2(j)(3) (Investment Company Units); NYSE Arca Equities Rule 5.2(j)(4) (Index-Linked Exchangeable Notes); NYSE Arca Equities Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities); NYSE Arca Equities Rule 8.100 (Portfolio Depositary Receipts); and Commentary .01 to NYSE Arca Equities Rule 8.200 (Trust Issued Receipts). Exchange rules relating to the listing and trading, including trading pursuant to unlisted trading privileges, of ''Derivative Products,'' as described above, permit the listing and trading of such products pursuant to Rule 19b–4(e) under the Act. Rule 19b–4(e) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. *See* 17 CFR 240.19b–4(e)(1).

set forth in the rule filing or decline to list the Index-Linked Security on the Exchange.

Prior to listing on the Exchange, the issuer of a Derivative Product would be required to properly delist from the Other SRO and satisfy the applicable listing procedures of the Exchange and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Act,[5] relating to listing such Derivative Product on the Exchange. In addition, the Exchange represents that, for any Derivative Product listed pursuant to proposed Commentary .01 to NYSE Arca Equities Rule 5.2(b), other than the initial listing standards, the shares or other units of such Derivative Product will comply with all other pertinent requirements applicable to the product class that would include such Derivative Product, including, but not limited to, requirements relating to the dissemination of key information, such as an index value, reference asset value, and intraday indicative value, and rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in Exchange rules applicable to such Derivative Product and prior Commission orders approving the generic listing rules applicable to the listing and trading of such Derivative Product.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[6] and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposal would permit the Exchange to list and trade any Derivative Product that (1) was originally listed on an Other SRO and continues to be listed on such Other SRO, and (2) satisfies the Exchange's continued listing criteria applicable to the product class that would include such Derivative Product. The Commission believes that the proposal reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in Section 6(b)(5) of the Act. The Commission notes that (1) it has previously approved the generic listing standards, including the continued listing criteria, applicable to each product class that would include such Derivative Product, and (2) the continued listing criteria applicable to a Derivative Product are substantially similar to those of Other SROs that list such Derivative Product.[9] The Commission also notes that, for any Derivative Product listed on the Exchange pursuant to proposed Commentary .01 to NYSE Arca Equities Rule 5.2(b), the shares of such Derivative Product must comply with all of the other pertinent requirements applicable to the product class that would include such Derivative Product including, without limitation, requirements relating to the dissemination of key values and the rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and Information Bulletins to ETP Holders, as set forth in the applicable Exchange rules and prior Commission orders approving the generic listing rules applicable to the listing and trading of such Derivative Product. In addition, prior to listing on the Exchange, the issuer of a Derivative Product must properly delist from the Other SRO and satisfy all relevant Exchange listing procedures and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Act. If the Exchange seeks to list a Derivative Product that does not satisfy the Exchange's continued listing standards applicable to such product, it may not do so pursuant to proposed Commentary .01 to NYSE Arca Equities Rule 5.2(b). Instead, the Exchange must obtain prior Commission approval pursuant to Section 19(b)(2) of the Act.

The Commission believes that the Exchange's proposal would facilitate the timely and efficient listing and continuous trading of a Derivative Product should an issuer of such Derivative Product, originally listed on an Other SRO, choose to delist from such Other SRO and list such Derivative Product on the Exchange, *provided* that all of the requirements with respect to the Derivative Product referenced herein, including all of the applicable requirements governing the trading of such Derivative Product, as set forth in Exchange rules and prior applicable Commission orders, are satisfied. For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act and finds good cause for approving the proposed rule change.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSEArca–2008–105) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27878 Filed 11–21–08; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78(*l*).

[6] 15 U.S.C. 78f.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] For example, the following are NYSE Alternext US LLC (''NYSE Alternext'') listing standards for Derivative Products having similar or identical continued listing standards to those of the Exchange: Index Fund Shares (NYSE Alternext Equities Rule 1000A *et seq.*); Portfolio Depositary Receipts (Rules 1000 *et seq.*); Trust Issued Receipts (Rules 1200 *et seq.*); and securities listed under Section 107 of the NYSE Alternext *Company Guide*, including Equity-Linked Term Notes; Index-Linked Exchangeable Notes; Index-Linked Securities; Commodity-Linked Securities; Currency-Linked Securities; Fixed Income-Linked Securities; Futures-Linked Securities; and Combination-Linked Securities.

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58956; File No. SR–NYSEArca–2008–124]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To List Shares of iShares Silver Trust

November 14, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 5, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons and approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to list and trade shares (''Shares'') of the iShares® Silver Trust (the ''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.'' [3] The Commission has previously approved listing of the Shares on NYSE Alternext U.S. LLC (''NYSE Alternext US'') (formerly, the American Stock Exchange LLC (''Amex'')) [4] and trading on the Exchange pursuant to UTP.[5] Prior to listing on the Exchange, the issuer of the Shares would be required to satisfy the applicable delisting procedures of NYSE Alternext US and applicable statutory and regulatory requirements, including, without limitation, Section 12 of Securities Exchange Act of 1934 (''Act''),[6] relating to listing the Shares on the Exchange.[7]

The Shares represent beneficial ownership interests in the net assets of the Trust consisting primarily of silver bullion (''silver''). The investment objective of the Trust is for the Shares to reflect the performance of the price of silver, less the Trust's expenses.

Descriptions of the Trust and the Shares are included in the Amex Order, the UTP Filing, and Registration Statement for the Trust.[8] The Exchange represents that the Shares satisfy the requirements of Rule 8.201 and thereby qualify for listing on the Exchange.[9] The Exchange states that all of the facts describing the Trust and the Shares contained in the Amex Order are true and correct as of the date of this filing. The Exchange states further that the representations included in the Amex Order relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange. To the extent NYSE Alternext US has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange represents that it would take the place of NYSE Alternext US in such role and discharge such obligations.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. The Shares will trade on the Exchange from 4:00 a.m. to 8:00 p.m. Eastern Time.[10] The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying silver, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying silver, related futures or options on futures or any other related derivative (including the Shares). In addition, NYSE Arca Equities Rule 8.201(g) prohibits an ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the underlying silver, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying silver market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Shares. The Exchange represents that these

[3] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust.

[4] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (''Amex Order'').

[5] *See* Securities Exchange Act Release No. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (''UTP Filing'').

[6] 15 U.S.C. 78(*l*).

[7] *See* e-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Brian O'Neill, Attorney, and Christopher Chow, Special Counsel, Division of Trading and Markets, Commission, dated November 12, 2008 (''November 12 e-mail''). The Exchange will seek the voluntary consent of the issuer of the Shares to be delisted from NYSE Alternext US and listed on the Exchange.

[8] *See* the Registration Statement for the Trust, dated May 29, 2008 (Registration Statement No. 333–149810).

[9] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[10] *See* November 12 e-mail, *supra*, note 7.

procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying silver, silver futures contracts, options on silver futures, or any other silver derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[11] Also, the Exchange has an Information Sharing Agreement with the New York Mercantile Exchange (''NYMEX'') for the purpose of sharing information in connection with trading in or related to COMEX (a division of NYMEX) silver futures contracts.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable and that silver is a wasting asset); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the Intraday Trading Value (''ITV'') is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) the risks involved in trading the Shares in the Opening and Late Trading Sessions when an updated ITV will not be calculated or publicly disseminated.[12] For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Basket Silver Amount) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical silver, that the Commission has no jurisdiction over the trading of silver as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of silver futures contracts and options on silver futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[13] of the Act in general and furthers the objectives of Section 6(b)(5)[14] in particular in that it is 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 regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The proposed rule change will permit the listing and trading of the Shares on the Exchange, which the Exchange believes will benefit investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–124 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–2008–124. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–124 and should be submitted on or before December 15, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed

[11] A list of ISG members is available at *http://www.isgportal.org.*

[12] *See* November 12 e-mail, *supra*, note 7.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.201. NYSE Arca represents that the Shares satisfy the requirements of Rule 8.201, which include initial and continued listing criteria to which the Shares will be subject. The Exchange deems the Shares to be equity securities, thus subjecting the Shares to the Exchange's existing rules governing the trading of equity securities. The Shares will trade on the Exchange from 4 a.m. to 8 p.m. Eastern Time. The Commission approved the listing and trading of the Shares on Amex,[17] now known as NYSE Alternext US, and trading of the Shares pursuant to UTP on NYSE Arca.[18]

The Commission believes that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[19] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange states that: (1) The representations included in the Amex Order relating to the dissemination and availability of information regarding the Shares will apply to listing and trading of the Shares on the Exchange; and (2) to the extent NYSE Alternext U.S. has any affirmative obligations with respect to dissemination of information or key values relating to the Shares, the Exchange will assume the role of NYSE Alternext US and discharge such obligations. Accordingly, among other things:

1. The last sale price for the Shares will be disseminated on a real-time basis via the facilities of the Consolidated Tape Association;[20]

2. Shortly after 4 p.m. each business day, the NAV of the Trust, the Basket Silver Amount (for orders properly placed by 4 p.m. during the day), and the next day's Indicative Basket Silver Amount are disseminated;[21]

3. The ITV will be disseminated on a per Share basis at least every 15 seconds between 9:30 a.m. and 4:15 p.m. Eastern Time;[22]

4. The Trust's Web site is and will be publicly accessible at no charge and will contain, among other things, the NAV of the Silver Shares and the Basket Silver Amount as of the prior business day, the Indicative Basket Amount, the Bid-Ask Price, and a calculation of the premium or discount of the Bid-Ask Price in relation to the closing NAV;[23]

5. The Trust's Web site, to which the NYSE Arca will link, will also provide data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters, the Prospectus, and other applicable quantitative information; and[24]

6. The Exchange will provide a hyperlink on its Web site to the Trust's Web site (*http://www.iShares.com*), which will include, among other things a real-time indicative silver spot price through TheBullionDesk at *http://www.thebuilliondesk.com*.[25]

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under its continued listing standards, after the 12-month period following the commencement of trading on the Exchange, the Exchange will consider suspending trading in the Shares or removing them from listing if: (1) The value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange, or if the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value;[26] or (2) the ITV is no longer made available on at least a 15-second delayed basis.[27] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares.[28] Specifically, however, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants pursuant to NYSE Arca Equities Rule 7.34(a)(5).

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions (described above) on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. The Exchange states that it has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange states that it can obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

In support of this proposal, the Exchange has made the following representations:

(1) The Shares satisfy the requirements of NYSE Arca Equities Rule 8.201, which includes the initial and continued listing criteria for Commodity-Based Trust Shares.

(2) The Exchange's surveillance procedures are adequate to properly monitor trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(3) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[29] for approving the proposed rule

[15] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Amex Order, *supra*, note 4.

[18] *See* UTP Filing, *supra*, note 5.

[19] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[20] *See* Amex Order, *supra*, note 4, 71 FR at 14970.

[21] *Id.* at 14969–70.

[22] *Id.* at 14971.

[23] *Id.*

[24] *Id.* at 14974–75.

[25] *Id.* at 14971.

[26] *See* NYSE Arca Equities Rule 8.201(e)(2)(iv).

[27] *See* NYSE Arca Equities Rule 8.201(e)(2)(v).

[28] Trading may be halted because of market conditions or for reasons that make trading in the Shares inadvisable, including: (1) The extent to which trading is not occurring in the underlying securities; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[29] 15 U.S.C. 78s(b)(2).

change prior to the 30th day after the date of publication of notice in the **Federal Register**. Previously, the Commission approved the listing and trading of the Shares on Amex,[30] and the trading of the Shares pursuant to UTP on the Exchange.[31] The Exchange's proposal to list and trade the Shares does not appear to present any novel or significant regulatory issues.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NYSEArca–2008–124) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27879 Filed 11–21–08; 8:45 am]

BILLING CODE 8011–01–P

[30] *See* Amex Order, *supra*, note 4.

[31] *See* UTP Filing, *supra*, note 5.

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58965; File No. SR–NYSEArca–2008–127]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of Units of the United States Oil Fund, United States Heating Oil Fund, United States Gasoline Fund, United States 12 Month Oil Fund, United States 12 Month Natural Gas Fund, and the United States Natural Gas Fund

November 17, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 5, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposed rule change on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to list the following Partnership Units (''Units'') pursuant to NYSE Arca Equities Rule 8.300: United States Oil Fund, LP; United States Heating Oil Fund, LP; United States Gasoline Fund, LP; United States 12 Month Oil Fund, LP; United States 12 Month Natural Gas Fund, LP; and the United States Natural Gas Fund, LP (each, a ''Partnership,'' and collectively ''Partnerships''). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the 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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under NYSE Arca Equities Rule 8.300, the Exchange may propose to list and trade or trade pursuant to unlisted trading privileges (''UTP'') Partnership Units (''Units'').[3] The Exchange proposes to list and trade the following Units pursuant to NYSE Arca Equities Rule 8.300: United States Oil Fund, LP (''USOF''); United States Heating Oil Fund, LP (''USHO''); United States Gasoline Fund, LP (''USG''); United States 12 Month Oil Fund, LP (''12 Month Oil Fund''); United States 12 Month Natural Gas Fund, LP (''12 Month Natural Gas Fund''); and the United States Natural Gas Fund, LP (''USNG''). The Commission has previously approved listing of the Partnerships on the NYSE Alternext US LLC (''NYSE Alternext US'') (formerly, the American Stock Exchange LLC (''Amex'')) [4] and trading on the Exchange pursuant to UTP.[5] Prior to listing on the Exchange, the issuer of the Units would be required to satisfy the applicable delisting procedures of NYSE Alternext US and applicable statutory and regulatory requirements, including, without limitation, Section 12 of the Securities Exchange Act of 1934 (''Act''),[6] relating to listing the Units on the Exchange.[7]

Descriptions of the Partnerships and the Units are included in the Amex Filings, the UTP Filings, and the respective Registration Statements, as amended, for the Units.[8] The Exchange represents that the Units satisfy the requirements of Rule 8.300 and thereby qualify for listing on the Exchange. The Exchange states that all of the facts describing the Partnerships and the Units contained in the Amex Filings are true and correct as of the date of this filing. The Exchange states further that the representations included in the Amex Filings relating to the dissemination and availability of information regarding the Units will apply to listing and trading of the Units on the Exchange. To the extent NYSE

[3] On May 25, 2006, the Commission approved NYSE Arca Equities Rule 8.300, which sets forth the rules related to listing and trading criteria for Partnership Units. *See* Securities Exchange Act Release No. 53875 (May 25, 2006), 71 FR 32164 (June 2, 2006) (SR–NYSEArca–2006–11) (approving trading pursuant to UTP of Partnership Units of the United States Oil Fund, LP).

[4] *See* Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR–Amex–2005–127) (order approving Amex listing of USOF); 56831 (November 21, 2007), 72 FR 67612 (November 29, 2007) (SR–Amex–2007–98) (order approving Amex listing of 12 Month Oil Fund and 12 Month Natural Gas Fund); 55632 (April 13, 2007), 72 FR 19987 (April 20, 2007) (SR–Amex–2006–112) (order approving Amex listing of USNG); 57188 (January 23, 2008), 73 FR 5607 (January 30, 2008) (SR–Amex–2007–70) (order approving Amex listing of USHO and USG) (collectively, the ''Amex Filings'').

[5] *See* Securities Exchange Act Release No. 56832 (November 21, 2007), 72 FR 67328 (November 28, 2007) (SR–NYSEArca–2007–102) (order approving UTP trading of 12 Month Oil Fund and 12 Month Natural Gas Fund); Securities Exchange Act Release No. 56042 (July 11, 2007), 72 FR 39118 (July 17, 2007) (SR–NYSEArca–2007–45) (order approving UTP trading of USNG); Securities Exchange Act Release No. 57294 (February 8, 2008), 73 FR 8917 (February 15, 2008) (SR–NYSEArca–2007–78) (order approving UTP trading of USHO and USG) (collectively, with the orders cited in note 3, *supra*, the ''UTP Filings'').

[6] 15 U.S.C. 78(l).

[7] The Exchange will seek the voluntary consent of the issuer of the Units currently listed on NYSE Alternext U.S. to be delisted from NYSE Alternext U.S. and listed on the Exchange.

[8] *See* USHO's Form S–1, dated April 19, 2007 (File No. 333–142211); USG's S–1, dated April 18, 2007 (File No. 333–142206); the 12 Month Oil Fund's Form S–1, dated July 5, 2007 (File No. 333–144348); the 12 Month Natural Gas Fund's S–1, dated July 6, 2007 (File No. 333–144409); USNG's Form S–1, dated October 6, 2006 (File No. 333–137871); USOF's Form S–1, dated May 16, 2005(File No. 333–124950).

Alternext US has any affirmative obligations with respect to dissemination of information or key values relating to the Units, the Exchange represents that it would take the place of NYSE Alternext US in such role and discharge such obligations.

The Partnerships will comply with the requirements of Rule 10A–3 [9] under the Act as it applies to limited partnerships.

Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities. Units will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. The minimum trading increment for Units on the Exchange will be $0.01.

NYSE Arca Equities Rule 8.300(e) sets forth certain restrictions on ETP Holders acting as registered Market Makers in Units to facilitate surveillance. NYSE Arca Equities Rule 8.300(e)(2)–(3) requires that the ETP Holder acting as a registered Market Maker in the Units provide the Exchange with necessary information relating to its trading in the underlying asset or commodity, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.300(e)(4) prohibits the ETP Holder acting as a registered Market Maker in the Units from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying asset or commodity, related futures or options on futures or any other related derivative (including the Units). In addition, NYSE Arca Equities Rule 8.300(e)(1) prohibits the ETP Holder acting as a registered Market Maker in the Units from being affiliated with a market maker in the underlying asset or commodity, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units could be halted pursuant to the Exchange's ''circuit breaker'' rule.[10] Under Rule 7.34(a)(5), if the Exchange becomes aware that the net asset value (''NAV'') for the Units is not being disseminated to all market participants at the same time, it will halt trading in the Units on the Exchange until such time as the NAV is available to all market participants. In addition, if the portfolio composition applicable to Units, as disseminated on the Web site for the Units (as identified in the Amex Filings) is not disseminated to all market participants at the same time, the Exchange will halt trading in the affected Units.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Partnership Units, to monitor trading in the Units. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Units, the applicable physical commodities included in, or options, futures or options on futures on, or any other derivatives based on such commodities, through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. With regard to the petroleum-based and natural gas futures underlying the Units, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the New York Mercantile Exchange and the InterContinental Exchange pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current applicable petroleum-based and natural gas futures are traded are members of the Intermarket Surveillance Group (''ISG'') and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. A list of ISG members is available at *http://www.isgportal.org.*

In addition, to the extent that a Partnership invests in petroleum-based, natural gas and similar futures contracts traded on other exchanges, not more than 10% of the weight of the Partnership assets in the aggregate shall consist of such futures contracts whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Units. Specifically, the Bulletin will discuss the following: (1) The risks involved in trading the Units during the Opening and Late Trading Sessions when an updated Indicative Partnership Value will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Units (and that Units are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (4) how information regarding the Indicative Partnership Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each Partnership is subject to various fees and expenses described in the relevant registration statement.

The Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, that the Commission has no jurisdiction over the trading of heating oil, gasoline, crude oil, natural gas or petroleum-based fuels, and that the CFTC has regulatory jurisdiction over the trading of petroleum-based and natural gas futures contracts and related options.

[9] 17 CFR 240.10A–3.

[10] *See* NYSE Arca Equities Rule 7.12.

The Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

The Bulletin will also disclose that the NAV for the Units will be calculated after 4:00 p.m. ET each trading day.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it is 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. The Exchange believes that the proposed rule change will permit the listing of the Units on the Exchange, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.300 are intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2008–127 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–2008–127. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–127 and should be submitted on or before December 15, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission notes that it has approved the listing and trading of the Units on Amex,[15] now known as NYSE Alternext US, and the trading of the Units pursuant to UTP on the Exchange.[16]

The Commission believes that the proposal to list and trade the Units on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[17] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange has stated that the representations included in the Amex Filings relating to the dissemination and availability of information regarding the Units will apply to the listing and trading of the Units on the Exchange, and, to the extent NYSE Alternext U.S. (formerly Amex) has any affirmative obligations with respect to dissemination of information or key values relating to the Units, the Exchange represents that it would take the place of NYSE Alternext U.S. in such role and discharge such obligations.[18] The Commission notes that, at a minimum, the Units must comply with NYSE Arca Equities Rules 8.300(d)(2)(ii) and (iii), which relate to the regular dissemination of the value of the underlying benchmark investment, commodity, or asset and the Indicative Partnership Value, respectively, for continued trading of the Units on the Exchange.

The Commission also believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that, under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Units is not being disseminated to all market participants at the same time, it will halt trading in the Units on the Exchange until such time as the NAV is available to all market participants. In addition, if the portfolio composition applicable to the Units, as disseminated on the Web site for the Units (as identified in the Amex Filings), is not disseminated to all

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Amex Filings, *supra*, note 4.

[16] *See* UTP Filings, *supra*, note 5.

[17] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[18] *See* Amex Filings, *supra*, note 4.

market participants at the same time, the Exchange will halt trading in the affected Units. Moreover, NYSE Arca Equities Rule 8.300(e) limits certain dealings and trading activity of ETP Holders acting as registered Market Makers in Units, prescribes various recordkeeping and disclosure requirements for ETP Holders, and prohibits the use of any material non-public information regarding trading in the underlying physical asset or commodity, futures or options on futures, or any other related derivatives.

The Commission further believes that the trading rules and procedures to which the Units will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Units are equity securities subject to NYSE Arca's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Units satisfy the requirements of NYSE Arca Equities Rule 8.300, which includes the initial and continued listing criteria for Partnership Units.

(2) The Exchange's surveillance procedures are adequate to properly monitor trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(3) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to its ETP Holders in connection with the trading of the Units.

(4) The Partnerships will comply with the requirements of Rule 10A–3 under the Act [19] as it applies to limited partnerships.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[20] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes that it has previously approved the listing and trading of the Units on Amex [21] and believes that the Exchange's proposal to list and trade such Units does not appear to present any novel or significant regulatory issues. As such, the Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such products.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NYSEArca–2008–127) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27880 Filed 11–21–08; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 240.10A–3.

[20] 15 U.S.C. 78s(b)(2).

[21] *See* Amex Filings, *supra*, note 4. The Units have also been approved for trading on the Exchange pursuant to UTP. *See* UTP Filings, *supra*, note 5.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58967; File No. SR–NYSEArca–2008–129]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services That Apply to Mid-Point Passive Liquidity Orders

November 17, 2008.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Exchange Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 6, 2008, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange''), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), 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 its Schedule of Fees and Charges for Exchange Services (the ''Schedule'') in order to extend its credit for Mid-Point Passive Liquidity (''MPL'') orders to include transactions that provide liquidity in Tape C securities. A copy of the new Schedule, showing changes pursuant to this filing, attached as Exhibit 5, is available on the Exchange's Web site at *http://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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently offers NYSE Arca Users [4] a $.0015 per share credit for MPL orders that provide liquidity in Tape A securities. In order to provide additional incentives for participation and price improvement on NYSE Arca, the Exchange proposes to extend this credit to MPL orders that provide liquidity in Tape C securities. For start of month billing purposes, the Exchange intends to offer this $.0015 per share credit to all Users for MPL orders providing liquidity in Tape C securities retroactively, starting November 3, 2008.

The Exchange believes that the proposed credit will foster additional flexibility and increased system functionality for NYSE Arca Users. The Exchange further believes that the proposed credits are reasonable and that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.19b–4.

[4] *See* NYSE Arca Equities Rule 1.1(yy) for the definition of ''User.'' Under Rule 1.1(yy), the term User means any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Marketplace pursuant to NYSE Arca Equities Rule 7.29. MPL Orders, similar to all other order types offered by the Exchange, are available only to authorized Users.

[5] 15 U.S.C. 78a *et seq.*

6(b)(4),[6] in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed credits are reasonable. The proposed credits further the objectives of Regulation NMS by promoting competition and granting fair and equal access to all exchange participants. The Exchange also believes that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

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 Exchange 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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and SEC Rule 19b–4(f)(2) thereunder in that it establishes or changes a due, fee, or other charge imposed on members by the self-regulatory organization.

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–2008–129 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–2008–129. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2008–129 and should be submitted on or before December 15, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27882 Filed 11–21–08; 8:45 am]

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[6] 15 U.S.C. 78f(b)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58968; File No. SR–NYSEArca–2008–111]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change To Amend NYSE Arca Equities Rule 5.2(j)(6)(v) in Order To Add the CBOE Volatility Index® (''VIX®'') Futures (''VIX Futures'') to the Definition of Futures Reference Asset

November 17, 2008.

On October 17, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder to amend NYSE Arca Equities Rule 5.2(j)(6)(v) to add the CBOE Volatility Index® (''VIX®'') Futures (''VIX Futures'') to the definition of ''Futures Reference Asset.'' The proposed rule change was published for comment in the **Federal Register** on October 30, 2008 for a 15-day comment period.[3] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

The Commission has previously approved the listing and trading, pursuant to NYSE Arca Equities Rule 5.2(j)(6), including listing pursuant to Rule 19b–4(e) under the Act (''Rule 19b–4(e)''), of Index-Linked Securities, which term currently is defined in NYSE Arca Equities Rule 5.2(j)(6) to encompass Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities.[4] The Exchange proposes to amend NYSE Arca Equities Rule 5.2(j)(6)(v) to add the VIX Futures as an underlying financial instrument of a Futures-Linked Security and include VIX Futures within the definition of a Futures Reference Asset.[5]

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58855 (October 24, 2008), 73 FR 64647 (''Notice'').

[4] *See* Securities Exchange Act Release Nos. 56637 (October 10, 2007), 72 FR 58704 (October 16, 2007) (SR–NYSEArca–2007–92) and 57505 (March 14, 2008), 73 FR 15550 (March 24, 2008) (SR–NYSEArca–2008–20).

[5] For more details on the VIX and VIX Futures, *see* Notice, *supra* note 3.

and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 of the Act.[7] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be 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, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that it has previously approved NYSE Arca Equities Rule 5.2(j)(6) to list and trade Index-Linked Securities, including Futures-Linked Securities on the Exchange pursuant to Rule 19b–4(e).[9] The Exchange represented that any securities it would list and/or trade pursuant to proposed amended NYSE Arca Equities Rule 5.2(j)(6) would continue to comply with all Exchange rules applicable to the listing and trading of Index Linked Securities. Therefore, the Commission does not believe that the proposed rule change raises any novel regulatory issues and hereby approves the proposed rule change.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that accelerating approval of the proposed rule change would facilitate the listing and trading of additional Futures-Linked Securities, offering greater choices to market participants, while still protecting investors. For the reasons discussed above, the Commission does not believe that the proposed rule change raises any new regulatory issues.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSEArca2008–111) is hereby approved on an accelerated basis.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] *See*, *supra*, note 4.

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–27883 Filed 11–21–08; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11527 and # 11528]

Michigan Disaster # MI–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Michigan dated 11/17/2008.

Incident: Severe Storms and Flooding.

Incident Period: 09/12/2008 through 10/14/2008.

Effective Date: 11/17/2008.

Physical Loan Application Deadline Date: 01/16/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 08/17/2009.

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: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Kalamazoo.

Contiguous Counties:

Michigan: Allegan, Barry, Branch, Calhoun, Cass, Saint Joseph, and Van Buren.

The Interest Rates are:

	Percent
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11527 B and for economic injury is 11528 0.

The State which received an EIDL Declaration # is Michigan.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 17, 2008.

Sandy K. Baruah,

Acting Administrator.

[FR Doc. E8–27778 Filed 11–21–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

[Docket No. OST–2007–27407]

National Surface Transportation Infrastructure Financing Commission

AGENCY: Department of Transportation (DOT).

ACTION: Notice of meeting location and time.

SUMMARY: This notice lists the location and time of the seventeenth meeting of the National Surface Transportation Infrastructure Financing Commission.

FOR FURTHER INFORMATION CONTACT: John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov.*

SUPPLEMENTARY INFORMATION: By **Federal Register** Notice dated March 12, 2007, and in accordance with the requirements of the Federal Advisory Committee Act (''FACA'') (5 U.S.C. App. 2) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (''SAFETEA–LU'') (Pub. L. 109–59, 119 Stat. 1144), the U.S. Department of Transportation (the ''Department'') issued a notice of intent to form the National Surface Transportation Infrastructure Financing Commission (the ''Financing Commission''). Section 11142(a) of SAFETEA–LU established the National Surface Transportation Infrastructure Financing Commission and charged it with analyzing future highway and transit needs and the finances of the Highway Trust Fund and with making recommendations regarding alternative approaches to financing surface transportation infrastructure.

Notice of Meeting Location and Time

The Commissioners have agreed to hold their seventeenth meeting from 8:30 a.m. to 4 p.m. on Wednesday, December 10, 2008, at the office of the Information Technology and Innovation Foundation (ITIF), 1250 I (''Eye'') Street, NW., Suite 200, Washington, DC 20005. The meeting will be open to the public.

If you need accommodations because of a disability or require additional information to attend the meeting, please contact John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov.*

Issued on this 14 day of November, 2008.

John V. Wells,

Chief Economist, U.S. Department of Transportation, Designated Federal Official.

[FR Doc. E8–27824 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0299]

Agency Information Collection Activities; Revision and Renewal of a Currently-Approved Information Collection: OMB Control No. 2126–0017 (Financial Responsibility, Motor Carriers, Freight Forwarders and Brokers)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA requests OMB approval to revise and renew a currently-approved ICR entitled, ''Financial Responsibility, Trucking and Freight Forwarding,'' to reflect an increase in burden hours due to an increase in the estimated number of annual responses. In addition, the title of the ICR is being changed to ''Financial Responsibility, Motor Carriers, Freight Forwarders and Brokers,'' to better describe its purpose. This ICR sets forth the financial responsibility documentation requirements for motor carriers, freight forwarders and property brokers so they can maintain the minimum levels of financial responsibility required under the Federal Motor Carrier Safety Regulations (FMCSRs) to operate in interstate, foreign or intrastate commerce. FMCSA invites public comment on this ICR.

DATES: We must receive your comments on or before *January 23, 2009.*

ADDRESSES: You may submit comments bearing the Department of Transportation (DOT) Docket Management System (DMS) Docket Number FMCSA Docket Number FMCSA–2008–0299 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Group Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC, 20590–0001, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Please note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below:

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR 19477–78). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Dorothea Grymes, Transportation Specialist, Office of Enforcement and Compliance, Commercial Enforcement Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Ave., SE., Washington DC 20590–0001. Telephone Number: (202) 385–2405; E-mail Address: *dorothea.grymes@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Transportation (Secretary) is authorized to register for hire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902, surface freight forwarders under the provisions of 49 U.S.C. 13903, and property brokers under the provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registration requirements to the FMCSA. The registration remains valid only as long as these transportation entities maintain, on file with the FMCSA, evidence of the required levels of insurance coverage pursuant to 49 U.S.C. 13906. FMCSA regulations governing the financial responsibility requirements for these entities are found at 49 CFR part 387.

Forms for Endorsements, Certificates of Insurance and Others

Evidence of Bodily Injury and Property Damage (BI&PD) Liability Forms BMC–91 and 91X entitled, ''Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance,'' and Form BMC–82 entitled, ''Motor Carrier Bodily Injury and Property Damage Liability Surety Bond Under 49 U.S.C. § 13906,'' provide evidence of the required coverage for bodily injury and property damage (BI&PD) liability.

Requirement to obtain Surety Bond or Trust Fund Agreement Form BMC–34 entitled, ''Motor Carrier Cargo Liability Certificate of Insurance,'' and Form BMC–83 entitled ''Motor Carrier Cargo Liability Surety Bond Under 49 U.S.C. § 13906,'' establish a carrier's compliance with the agency's cargo liability requirements. Form BMC–84 entitled ''Property Broker's Surety Bond Under 49 U.S.C. § 13906,''and Form BMC–85 entitled, ''Property Broker's Trust Fund Agreement Under 49 U.S.C. § 13906,'' are filed by brokers to comply with the requirement that they must have a $10,000 surety bond or trust fund

agreement in effect before FMCSA will issue a property broker license.

Cancellation of Prior Filings Form BMC–35 entitled, Notice of Cancellation Motor Carrier Insurance Under 49 U.S.C. 13906, Form BMC–36 entitled, ''Notice of Cancellation Motor Carrier and Brokers Surety Bonds Under 49 U.S.C. § 13906,'' and Form 85 entitled, ''Property Broker's Trust Fund Agreement Under 49 U.S.C. 13906,'' cancel prior filings.

Endorsement Form BMC 90 entitled, ''Endorsement for Motor Carrier Policies of Insurance for Automobile Bodily Injury and Property Damage Liability Under Section 13906, Title 49 of the United States Code,'' and Form BMC–32 entitled, ''Endorsement for Motor Common Carrier Policies of Insurance for Cargo Liability Under 49 U.S.C. § 13906,'' are executed by the insurance company, attached to BI&PD and cargo insurance policies, respectively, and forwarded to the motor carrier or freight forwarder.

Self Insurance motor carriers can also apply to the FMCSA to self-insure BI&PD and/or cargo liability in lieu of filing certificates of insurance with the FMCSA, as long as the carrier maintains a satisfactory safety rating. See 49 CFR 387.7(d)(3) and 387.309. The Form BMC–40 is the application used by carriers to apply for self-insurance authority.

Title: Financial Responsibility, Motor Carriers, Freight Forwarders and Brokers, formerly titled ''Financial Responsibility, Trucking and Freight Forwarding.''

OMB Control Number: 2126–0017.

Type of Request: Revision of a currently-approved information collection.

Respondents: Motor carriers, freight forwarders and brokers.

Estimated Number of Respondents: 251,415.

Estimated Time per Response: The estimated average burden per response for the Form BMC–40 is 40 hours. The estimated average burden per response for all of the other remaining insurance forms (BMC–32, 34, 35, 36, 82, 83, 84, 85, 90, 91, and 91X) is 10 minutes per form.

Expiration Date: February 28, 2009.

Frequency of Response: Certificates of insurance, surety bonds, and trust fund agreements are required when the transportation entity first registers with the FMCSA and then when such coverages are changed or replaced. Notices of cancellation are required only when such certificates of insurance, surety bonds or trust fund agreements are canceled. The Form BMC–40 is generally filed only when a carrier seeks approval from FMCSA to self-insure its BI&PD and/or cargo liability.

Estimated Total Annual Burden: 66,960 hours [5 BMC–40 filings per year x 40 hours to complete + 400,560 filings per year for all of the other forms x 10 minutes/60 minutes to complete = 66,960].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the agency to perform its mission; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: November 14, 2008.

Terry Shelton,

Associate Administrator for Research and Information Technology.

[FR Doc. E8–27867 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of an Environmental Impact Statement/Environmental Impact Report for the Geary Bus Rapid Transit Project in San Francisco, CA

AGENCY: Federal Transit Administration (FTA), Department of Transportation.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the San Francisco County Transportation Authority (The Authority) intend to prepare an EIS on the implementation of a fixed-guideway transit system in the Geary Boulevard Corridor located between the Transbay Terminal on the east (at First and Mission Streets) and 33rd Avenue on the west. Alternatives proposed to be considered in the draft EIS include a combined No Project/Transportation Systems Management (TSM) Alternative, a Geary BRT Alternative and any additional reasonable alternatives that emerge from the study process. The EIS will be prepared to satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations. The FTA and The Authority request public and interagency input on the purpose and need to be addressed by the project, the alternatives to be considered in the EIS, and the environmental and community impacts to be evaluated.

DATES: Written comments on the scope of the NEPA review, including the project's purpose and need, the alternatives to be considered, and the related impacts to be assessed, should be sent to The Authority by December 24, 2008. *See* **ADDRESSES** below.

Scoping Meetings: Meetings to accept comments on the scope of the EIS will be held on December 4 and December 6, 2008 at the locations given below. On December 4, 2008, the public scoping meeting will begin at 6 p.m. and continue until 8 p.m. or until all who wish to provide oral comments have been given the opportunity. The meeting on December 6, 2008 will begin at 10 a.m. and continue until 12 p.m. or until all who wish to provide oral comments have been given the opportunity.

The locations are accessible to people with disabilities. A court reporter will record oral comments. Forms will be provided on which to submit written comments. Project staff will be available at the meeting to informally discuss the EIS scope and the proposed project. Governmental agencies will be invited to a separate scoping meeting to be held on December 3, 2008 at the San Francisco County Transportation Authority between 1 p.m. and 3 p.m.

ADDRESSES: Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, and the related impacts to be assessed, should be sent to Zabe Bent, Principal Transportation Planner; San Francisco County Transportation Authority; 100 Van Ness Avenue, 26th Floor; San Francisco, CA 94102. *Phone:* (415) 522–4819. Fax: (415) 522–4829. *E-mail: Elizabeth.Bent@sfcta.org.* Please include the name of an appropriate contact person in your agency for continued EIS coordination. Further project information will be available at the scoping meetings and may also be obtained by calling (415) 522–4800, by downloading materials from *http://www.GearyBRT.org* or by e-mailing *gearybrt@sfcta.org.*

SUPPLEMENTARY INFORMATION:

I. Background/Project Description

The proposed project would be located in the Geary Boulevard Corridor, a key east-west transportation corridor in the heart of the City and County of San Francisco. Geary Boulevard is an important roadway and transit route serving high-density commercial and

residential areas along its length from Market Street on the east to Pacific Ocean on the west. The project aims to improve travel times and reliability in the portion of the transit corridor located between the Transbay Terminal on the east (at First and Mission Streets) and 33rd Avenue on the west; special focus will be on the segment located west of Van Ness Avenue which is the most congested portion of the corridor. The roadway serves as a major thoroughfare for local traffic as well as through traffic, carrying over 50,000 transit trips per day, between 30,000 and 65,000 auto trips daily depending on the location on the corridor, and thousands of pedestrian and bicycle trips. Transit service is provided by Muni route 38–Geary (including 38L, 38AX, and 38BX), and by Golden Gate Transit (based in Marin County), which operates commute service and limited all-day service into San Francisco on Geary Boulevard. Unlike many transit routes that primarily serve commuters, transit ridership on Geary Boulevard is consistently high throughout the day, on both weekdays and weekends, and in both the eastbound and westbound directions. A number of major north-south transit routes cross Geary Boulevard and generate major bus-to-bus transfers with Geary Boulevard services, including Muni lines 22–Fillmore, 49–Van Ness, 30–Stockton, and 14–Mission (including 14L and 14X), and the Muni Metro T-Line (formerly 15–Third). In addition to the routes on and perpendicular to Geary Boulevard, routes that operate within a few blocks of Geary Boulevard are considered part of the broader Geary corridor, including 1–California (including 1AX and 1BX), 2–Clement, 3–Jackson, 4–Sutter, and 31–Balboa.

Traffic congestion in mixed-flow traffic lanes and transit overcrowding result in poor transit service reliability and low average bus speeds, currently just 8 to 10 miles per hour for Muni Route 38–Geary. Bus reliability is poor, with high variation in headways and bunching. Buses serve as much as 25% of the trips made in the Geary Boulevard corridor in the PM peak hour, with the highest passenger loads between Fillmore Street and Van Ness Avenue. For all neighborhoods in the corridor, walking also accounts for a large percentage of trips. The non-auto mode share in the neighborhoods located in the heart of the city is as follows: The Tenderloin is over 50% bike, walk and transit; in the Western Addition/Japantown, it is 40%; and in the Richmond it is just over 30%. In spite of high transit ridership and high pedestrian use, much of the current roadway layout and traffic signal infrastructure on Geary primarily benefits motorists more than it benefits transit riders and pedestrians. A major project purpose is, therefore, to improve its walkability and livability.

Geary Boulevard has been identified as a high priority transit improvement corridor in a number of planning studies and funding actions by the City and County of San Francisco. The Authority's Four Corridors Plan (1995) and Muni's Vision for Rapid Transit (2000) and Transit Effectiveness Project (2008) identify Geary Boulevard as a priority corridor for rapid transit improvements. Along with two other key transit corridors, Geary Boulevard was designated for BRT improvements in the New Expenditure Plan for San Francisco, approved in November 2004 by voters as Proposition K, the reauthorization of the City's half-cent transportation sales tax measure. The Expenditure Plan is the investment component of the 2004 San Francisco Countywide Transportation Plan, which sets forth the city's ''blueprint to guide the development of transportation funding priorities and policy'' with a key objective being the promotion and implementation of San Francisco's Transit First policy through the development of a network of fast, reliable transit including bus rapid transit. The Geary Corridor BRT Study (the Feasibility Study) was initiated in 2004, completed in 2007, and evaluated the feasibility of four alternative BRT configurations on Geary Boulevard. A Transportation Systems Management (TSM) and three full-featured BRT alternatives were developed and compared with a No Project scenario, in conjunction with a comprehensive public and agency participation program. The Feasibility Study found that all the BRT configurations studied would be feasible on Geary and recommended an environmental analysis and further technical design work to identify a preferred alternative. The alternatives—and others identified through the scoping process—will be addressed in the proposed project EIS.

As discussed above, previous studies and documents relevant to this action include the recently completed Geary Boulevard BRT Feasibility Study (June 2007); 2005 Prop K Strategic Plan (March 2005); 2004 San Francisco Countywide Transportation Plan (adopted July 20, 2004), and the New Transportation Expenditure Plan for San Francisco (Proposition K, approved November 4, 2003). These documents describe the planning and funding for transportation improvements in San Francisco, including BRT in major bus corridors.

II. Scoping

The FTA and The Authority invite all interested individuals, organizations, and Federal, State, and local governmental agencies to comment on the project's purpose and need, the alternatives to be considered in the EIS and the impacts to be evaluated. During the scoping process, comments on the proposed statement of purpose and need should address its completeness and adequacy. Comments on the alternatives should propose alternatives that would satisfy the purpose and need at less cost or with greater effectiveness or less environmental or community impact and were not previously studied and eliminated for good cause. At this time, comments should focus on the scope of the NEPA review and should not state a preference for a particular alternative. The best opportunity for that type of input will be after the release of the draft EIS.

Following the scoping process, public outreach activities with interested parties or groups will continue throughout the duration of work on the EIS. The project Web site, *http://www.GearyBRT.org,* will be updated periodically to reflect the status of the project. Additional opportunities for public participation will be announced through mailings, notices, advertisements, and press releases. Those wishing to be placed on the project mailing list may do so by registering on the Web site at *http://www.GearyBRT.org,* or by calling (415) 522–4819.

Public and agency scoping meetings to be held on:

Thursday, December 4, 2008, Self Help for the Elderly, Jackie Chan Activity Center, 408—22nd Avenue (at Geary), 6–8 p.m.

Saturday, December 6, 2008, Tenderloin Community School, 627 Turk Street (at Polk), 10 a.m.–12 p.m.

An agency scoping meeting will be held on:

Wednesday, December 3, 2008, San Francisco County Transportation Authority, 100 Van Ness Avenue, 26th Floor (at Fell), 1–3 p.m.

Comments on issues and impacts to be considered in preparation of the EIS will be recorded.

III. Purpose and Need

The Authority adopted as part of the 2004 Countywide Transportation Plan and its investment component, the New Expenditure Plan for San Francisco, a BRT strategy for expanding rapid transit service in San Francisco. The BRT

network is intended to address the following purpose:

1. Support the city's growth and development needs;

2. Better serve existing transit riders and stem and reverse the trend toward transit mode share loss; and

3. Improve the operational efficiency and cost effectiveness of the transportation system.

A BRT network can meet those goals by:

- Improving transit levels of service cost effectively;
- Strengthening rapid transit services;
- Raising the cost effectiveness of Muni service and operational efficiency of transit preferential streets; and
- Contributing to the livability of BRT corridors.

IV. Alternatives

Alternatives to be reviewed in the EIS include a (1) combined No-Project/Transportation Systems Management (TSM) Alternative, which would include low-cost improvements to corridor bus services, such as bus stop amenities and limited transit signal priority; (2) a Geary BRT Alternative, which will include design options for the configuration of the BRT transitway and stations; and (3) any additional reasonable alternatives that emerge from the study process.

The No-Project/TSM Alternative assumes a 2015 condition of land use and transit capital and service improvements that are programmed or planned to be implemented by the San Francisco Municipal Transportation Agency (SFMTA) (which includes the San Francisco Municipal Railway and the Department of Parking and Traffic), and other transit providers in the study area (*e.g.*, Golden Gate Transit and the Bay Area Rapid Transit District, or BART, a regional rail service provider). For transit, these include upgraded bus stops and passenger information/communication systems. Other transit improvements could include advanced traffic signal priority systems on Muni vehicles, rationalizing the allocation of limited vs. local Muni service in the corridor, expanding Muni service hours to 7 p.m. on weekdays, and enhanced Muni transit shelters and signage.

The Geary BRT Alternative would include, among other features:

- Dedicated transit lanes within the existing Geary Boulevard right-of-way;
- Sheltered, low-platform passenger stations with real-time bus arrival passenger information signs, lighting, and fare ticketing machines;
- Off-vehicle self-service fare vending and on-board proof-of-payment verification; and
- Advanced transit traffic signal priority and traffic management systems to reduce bus delays at signalized intersections yet maintain acceptable traffic flow.

Preferred spacing for passenger stations would be an average of one-half mile between stops, with local bus stations located every 800 to 1000 feet. BRT transitway and station improvements would be made entirely within existing public rights-of-way; improvements outside of existing public-rights of way are not anticipated with the possible exception of required improvements to existing Muni bus storage and maintenance facilities and to off-alignment intersections for mitigation of project impacts. Variations in the cross-section for the BRT transitway and the locations of stations are anticipated and would comprise design options for the basic BRT alignment. A two-way transitway either in the median of Geary Boulevard or along the outside curbs (one eastbound BRT lane along the south curb/parking lane; one westbound BRT lane along the north curb/parking lane) and, correspondingly, stations in the median or as extensions of the sidewalk were considered in the Geary BRT feasibility study and warrant further evaluation as part of the EIS and alternatives analysis. All BRT alternatives considered would be designed to be ''rail-ready'' in terms of vertical and horizontal clearances and operational requirements.

The Authority, in association with SFMTA, will evaluate the procurement of modern low-floor high-capacity vehicles that would be assigned to the BRT service and have added features, such as two-sided, multi-door access, passenger station docking assist, and other amenities. Streetscape improvements, such as enhanced landscaping and pedestrian access along Geary Boulevard, are also included in the proposed BRT project.

V. Probable Effects

The EIS will evaluate and fully disclose the environmental consequences of the construction and operation of a fixed guideway transit system in the Geary Transit Corridor. The EIS will evaluate the impacts of all reasonable alternatives on land use, zoning, residential and business displacements, parklands, economic development, community disruptions, environmental justice, aesthetics, noise, vegetation, water quality, wetlands, waterways, floodplains, hazardous waste materials, and cultural, historic, and archaeological resources. To ensure that all significant issues related to this proposed action are identified and addressed, scoping comments and suggestions on more specific issues of environmental or community impact are invited from all interested parties. Comments and questions should be directed to The Authority as noted in the **ADDRESSES** section above.

VI. FTA Procedures

The EIS will be prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and its implementing regulations by the Council on Environmental Quality (CEQ) (40 CFR parts 1500–1508) and by the FTA and Federal Highway Administration (''Environmental Impact and Related Procedures'' at 23 CFR part 771). In accordance with FTA regulation and policy, the NEPA process will also address the requirements of other applicable environmental laws, regulations, and executive orders, including, but not limited to: Federal transit laws [49 U.S.C. 5301(e), 5323(b), and 5324(b)], Section 106 of the National Historic Preservation Act, Section 4(f) (''Protection of Public Lands'') of the U.S. Department of Transportation Act (49 U.S.C. 303), Section 7 of the Endangered Species Act, and the Executive Orders on Environmental Justice, Floodplain Management, and Protection of Wetlands.

Issued on November 19, 2008.

Leslie T. Rogers,

Regional Administrator, Region IX, Federal Transit Administration.

[FR Doc. E8–27868 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2008 0106]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BIKINI KIM.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief

description of the proposed service, is listed below.

The complete application is given in DOT docket MARAD–2008–0106 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before December 24, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0106. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BIKINI KIM is:

Intended Use: ''Snorkeling, sailing instruction, pleasure sailing, overnight anchoraging.''

Geographic Region: ''Hawaii Islands.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: November 17, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–27821 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2008 0107]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SINGAWING.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

The complete application is given in DOT docket MARAD–2008–0107 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before December 24, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0107. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SINGAWING is:

Intended Use: ''6 passenger charters upon the inside passage from Olympia to Ketchican Alaska.''

Geographic Region: ''Alaska.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: November 17, 2008.

By order of the Maritime Administrator.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–27822 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Admnistration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. There applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before December 9, 2008.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on November 13, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials Special Permits and Approvals.

MODIFICATION SPECIAL PERMITS

Application No./ Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
12516–M	Poly-Coat Systems, Inc. Houston, TX.	49 CFR 107.503(b)(c); 172.1 02(c)(3) B15 and B23; 173.241; 173.242; 178.345–1; –2; –3; –4; –7; –14; –15; 178.347–1; –2; 178.348–1; 178.348–2; 180.405; 180.4 13(d).	To modify the special permit that authorizes the manufacture, mark, sale and use of non-DOT specification cargo tanks constructed of fiberglass reinforced plastic by increasing the volumetric capacity.
14702–M	CRI/Criterion, Inc. and its affiliate businesses Houston, TX.	49 CFR 178.8 12(a) and 178.801(1).	To reissue the special permit originally issued on an emergency basis for the transportation in commerce of approximately 2,500 UN1IHG2W, UN11HH2 and UN11HH2W certified intermediate bulk containers that do not meet all the requirements of the competent authority approval that authorized their manufacture.

[FR Doc. E8–27594 Filed 11–21–08; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2008–0300]

Pipeline Safety: Proper Identification of Internal Corrosion Risk

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: This advisory bulletin reminds operators of their responsibilities under 49 CFR 195.579(a) and 49 CFR 195.589(c) with respect to the identification of circumstances under which the potential for internal corrosion must be investigated.

FOR FURTHER INFORMATION CONTACT: Alan Mayberry by phone at (202) 366–5124.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline, Inspection, Protection, Enforcement, and Safety Act of 2006, Public Law 109–468, Section 22, required PHMSA to review the internal corrosion control regulations to determine if the regulations are currently adequate to ensure that the pipeline facilities subject to the regulations will not present a hazard to public safety or the environment. PHMSA completed the required review and reported its results in a Report to Congress on June 23, 2008. To review the Report, log on to *http://www.phmsa.dot,* click on ''Pipeline Safety Community,'' then click on ''Reports to Congress.'' In conducting this review, PHMSA identified the need to emphasize to the regulated community its responsibilities with respect to determining the need for internal corrosion preventive and mitigative measures. Many technical factors interrelate in complex ways to affect the likelihood, location, and/or aggressiveness of internal corrosion, including the factors listed above.

Pipeline safety regulations at 49 CFR 195.579(a) require operators to determine if the hazardous liquids they are transporting could corrode the pipeline and, if so, take adequate steps to mitigate that corrosion potential. If an operator fails to take adequate steps to mitigate internal corrosion, PHMSA may determine that the operator is not in compliance with 49 CFR part 195. Also, if the operator erroneously determines the fluid is not corrosive and does not take the necessary steps to manage the internal corrosion threat, PHMSA may determine that the operator is not in compliance with 49 CFR part 195.

Although the base commodity may not be corrosive, all hazardous liquids regulated under part 195 could be corrosive during some phase of the production and/or manufacturing process when contaminants could be introduced. Often, the only barrier separating untreated product or corrosive materials from a pipeline transporting processed/refined products

is the processing plant or refinery. These plants occasionally undergo upset conditions where all or a portion of the untreated product may bypass the treatment process and enter the downstream piping. During those upset conditions, corrosive materials might be introduced into the pipeline and could create a corrosive condition.

Pipeline operators who previously concluded that an internal corrosion control program was not needed should critically re-analyze operating conditions and internal corrosion risk factors as described in this advisory and periodically monitor, or otherwise reconfirm, that the pipeline is free of corrosive materials. Operators should perform a periodic system analysis and document the results, confirming that they properly analyzed the pipeline for possible internal corrosion precursors. In addition, operators should also conduct periodic monitoring for changes that might increase this risk and identify possible sites of selective internal corrosion risks.

In addition, operators are required to take the following steps as part of the operator's integrity management program:

- Examine and record corrosion data;
- Demonstrate an understanding of the risk of internal corrosion;
- Identify the locations of greatest risk;
- Conduct integrity assessments that will effectively discover pipeline defects caused by internal corrosion;
- Promptly repair or remediate discovered defects;
- Identify the root cause of discovered internal corrosion defects; and
- Identify the need for additional or different preventive and mitigative measures, through mitigation measures such as online pigging for removal of the corrosive materials and injection of corrosion inhibitors inline the product stream.

PHMSA's unique statutory role in pipeline safety allows the agency to monitor research and operator performance nationwide and to take action through an array of regulatory actions, including this bulletin, if incident trends or other findings such as research, deem the actions necessary. PHMSA will conduct a workshop on internal corrosion on hazardous liquid pipelines in the first quarter of 2009. Information on this workshop will be posted on the PHMSA Web site.

II. Advisory Bulletin (ADB–08–08)

To: Owners or Operators of Hazardous Liquid Transmission Pipelines.

Subject: Proper Identification of Internal Corrosion Risk.

Purpose: Notice to Pipeline Owners and Operators.

Advisory: PHMSA is advising operators of hazardous liquid transmission pipelines to review and analyze the following risk factors to determine if the commodity transported could corrode the pipeline:

- Type of commodity;
- Flow rate;
- Velocity;
- Operating Pressure;
- Topography;
- Amount of foreign material and/or contaminants present in the pipeline and/or commodity stream such as sand, silt, water, or other materials that could cause or promote internal corrosion;
- Amount of sulfur, salts, acids, hydrogen sulfide, carbon dioxide or other corrosive material present and corrosive effect based upon partial pressures of material in the pipeline;
- Presence of microbes;
- Temperature;
- Pipe configuration, design, and material specifications;
- Operating conditions, including but not limited to, steady state conditions, slack line conditions, upset conditions in the pipeline system, and upset conditions in upstream facilities such as refineries or processing facilities; and
- Any other circumstance or condition that could cause, promote, or increase the likelihood of internal corrosion.

Significant changes to any of the above risk factors and considerations must be promptly reflected in a revised analysis.

PHMSA is further advising operators that, in accordance with 49 CFR 195.589(c), you must maintain a record of the above analysis required by 49 CFR 195.579(a) in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion control measures are not necessary. You must retain these records for at least five years. The records must be readily available for inspection.

Issued in Washington, DC on November 17, 2008.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E8–27869 Filed 11–21–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel will be held. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, December 2, 2008, from 1:15 to 5 p.m., Wednesday, December 3, 2008, from 8 a.m. to 5 p.m., and Thursday, December 4, 2008, from 8 a.m. to 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Anita Fields at (954) 423–7974.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel will be held Tuesday, December 2, 2008, from 1:15 to 5 p.m., Wednesday, December 3, 2008, from 8 a.m. to 5 p.m., and Thursday, December 4, 2008, from 8 a.m. to 4:15 p.m., at the Sheraton National Hotel in Arlington, VA. If you would like to have the Taxpayer Advocacy Panel consider a written statement, please call (954) 423–7974, fax to (954) 423–7975, or write to Anita Fields at Taxpayer Advocacy Panel, Room 340, 1000 South Pine Island Road, Plantation, FL, 33324, or you can post comments to the web site at *http://www.improveirs.org.*

The agenda will include the following: Discussion of various IRS issues.

Dated: November 12, 2008.

Roy L. Block,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8–27861 Filed 11–21–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–27: OTS Nos. 02248 and 114552]

Midwest FS&LA of St. Joseph, St. Joseph, MO; Approval of Conversion Application

Notice is hereby given that on November 12, 2008, the Office of Thrift Supervision approved the application of Midwest FS&LA of St. Joseph, St. Joseph, Missouri, to convert to the stock

form of organization. Copies of the application are available for inspection by appointment (phone number: (202) 906–5922 or e-mail: *public.info@ots.treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Midwest Regional Office, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326.

Dated: November 14, 2008.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E8–27648 Filed 11–21–08; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–26: OTS Nos. 05091 and H–4541]

Ocean Shore Holding Corporation, Ocean City, NJ; Approval of Conversion Application

Notice is hereby given that on November 12, 2008, the Office of Thrift Supervision approved the application of Ocean City Home Bank, Ocean City, New Jersey, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail *Public.Info@OTS.Treaas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 14, 2008.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. E8–27647 Filed 11–21–08; 8:45 am]

BILLING CODE 6720–01–M

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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*.

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60 (60.1–End)	(869–064–00144–7)	61.00	July 1, 2008
60 (Apps)	(869–064–00145–5)	60.00	July 1, 2008
61–62	(869–064–00146–3)	48.00	July 1, 2008
63 (63.1–63.599)	(869–064–00147–1)	61.00	July 1, 2008
63 (63.600–63.1199)	(869–064–00148–0)	50.00	[8] July 1, 2008
63 (63.1200–63.1439)	(869–064–00149–8)	53.00	July 1, 2008
63 (63.1440–63.6175)	(869–064–00150–1)	35.00	July 1, 2008
63 (63.6580–63.8830)	(869–064–00151–0)	35.00	July 1, 2008
63 (63.8980–End)	(869–064–00152–8)	38.00	July 1, 2008
64–71	(869–064–00153–6)	32.00	July 1, 2008
72–80	(869–064–00154–4)	65.00	July 1, 2008
81–84	(869–064–00155–2)	53.00	July 1, 2008
85–86 (85–86.599–99)	(869–064–00156–1)	64.00	July 1, 2008
86 (86.600–1–End)	(869–064–00157–9)	53.00	July 1, 2008
87–99	(869–064–00158–7)	63.00	July 1, 2008
100–135	(869–064–00159–5)	48.00	July 1, 2008
136–149	(869–064–00160–9)	64.00	July 1, 2008
150–189	(869–064–00161–7)	53.00	July 1, 2008
190–259	(869–064–00162–5)	42.00	July 1, 2008
260–265	(869–064–00163–3)	53.00	July 1, 2008
266–299	(869–064–00164–1)	53.00	July 1, 2008
300–399	(869–064–00165–0)	45.00	July 1, 2008
400–424	(869–064–00166–8)	59.00	July 1, 2008
425–699	(869–064–00167–6)	61.00	[8] July 1, 2008
700–789	(869–064–00168–4)	64.00	July 1, 2008
790–End	(869–064–00169–2)	64.00	July 1, 2008
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–064–00170–6)	27.00	July 1, 2008
101	(869–064–00171–4)	21.00	[8] July 1, 2008
102–200	(869–064–00172–2)	56.00	July 1, 2008
201–End	(869–064–00173–1)	27.00	July 1, 2008
42 Parts:			
1–399	(869–062–00174–6)	61.00	Oct. 1, 2007
400–413	(869–062–00175–4)	32.00	Oct. 1, 2007
414–429	(869–062–00176–2)	32.00	Oct. 1, 2007
430–End	(869–062–00177–1)	64.00	Oct. 1, 2007
43 Parts:			
1–999	(869–062–00178–9)	56.00	Oct. 1, 2007
1000–end	(869–062–00179–7)	62.00	Oct. 1, 2007
44	(869–062–00180–1)	50.00	Oct. 1, 2007
45 Parts:			
1–199	(869–062–00181–9)	60.00	Oct. 1, 2007
200–499	(869–060–00182–7)	34.00	[10] Oct. 1, 2007
500–1199	(869–062–00183–5)	56.00	Oct. 1, 2007
1200–End	(869–062–00184–3)	61.00	Oct. 1, 2007
46 Parts:			
1–40	(869–062–00185–1)	46.00	Oct. 1, 2007
41–69	(869–062–00186–0)	39.00	Oct. 1, 2007
70–89	(869–062–00187–8)	14.00	Oct. 1, 2007
90–139	(869–062–00188–6)	44.00	Oct. 1, 2007
140–155	(869–062–00189–4)	25.00	Oct. 1, 2007
156–165	(869–062–00190–8)	34.00	Oct. 1, 2007
166–199	(869–062–00191–6)	46.00	Oct. 1, 2007
200–499	(869–062–00192–4)	40.00	Oct. 1, 2007
500–End	(869–062–00193–2)	25.00	Oct. 1, 2007
47 Parts:			
0–19	(869–062–00194–1)	61.00	Oct. 1, 2007
20–39	(869–062–00195–9)	46.00	Oct. 1, 2007
40–69	(869–062–00196–7)	40.00	Oct. 1, 2007
70–79	(869–062–00197–5)	61.00	Oct. 1, 2007
80–End	(869–062–00198–3)	61.00	Oct. 1, 2007
48 Chapters:			
1 (Parts 1–51)	(869–062–00199–1)	63.00	Oct. 1, 2007
1 (Parts 52–99)	(869–062–00200–9)	49.00	Oct. 1, 2007
2 (Parts 201–299)	(869–062–00201–7)	50.00	Oct. 1, 2007
3–6	(869–062–00202–5)	34.00	Oct. 1, 2007

Title	Stock Number	Price	Revision Date
7–14	(869–062–00203–3)	56.00	Oct. 1, 2007
15–28	(869–062–00204–1)	47.00	Oct. 1, 2007
29–End	(869–062–00205–0)	47.00	Oct. 1, 2007
49 Parts:			
1–99	(869–062–00206–8)	60.00	Oct. 1, 2007
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400–599	(869–062–00210–3)	64.00	Oct. 1, 2007
600–999	(869–062–00212–2)	19.00	Oct. 1, 2007
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50 Parts:			
1–16	(869–062–00215–7)	11.00	Oct. 1, 2007
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17.96–17.99(h)	(869–062–00218–1)	61.00	Oct. 1, 2007
17.99(i)–end and 17.100–end	(869–062–00219–0)	47.00	[9] Oct. 1, 2007
18–199	(869–062–00226–3)	50.00	Oct. 1, 2007
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Complete set (one-time mailing)		332.00	2006

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2007. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2006, through July 1, 2007. The CFR volume issued as of July 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2007, through July 1, 2008. The CFR volume issued as of July 1, 2007 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2007. The CFR volume issued as of October 1, 2005 should be retained.

[10] No amendments to this volume were promulgated during the period October 1, 2006, through October 1, 2007. The CFR volume issued as of October 1, 2006 should be retained.